<table>
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<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>Cliff Strong</td>
<td>1/30/2018</td>
<td></td>
<td>1/30/2018</td>
<td>Introduction</td>
</tr>
<tr>
<td>Division Head:</td>
<td></td>
<td></td>
<td></td>
<td>2/13/18</td>
<td>Special COTW</td>
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<tr>
<td>Dept. Head:</td>
<td></td>
<td></td>
<td></td>
<td>2/13/18</td>
<td>Hearing</td>
</tr>
<tr>
<td>Prosecutor:</td>
<td>[Initial]</td>
<td>02/07/18</td>
<td></td>
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<tr>
<td>Purchasing/Budget:</td>
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<td>Executive:</td>
<td></td>
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</table>

**TITLE OF DOCUMENT:**
Interim ordinance repealing ord 2017-057 (Hirst)

**ATTACHMENTS:**
Ordinance and exhibit

<table>
<thead>
<tr>
<th>SEPA review required?</th>
<th>( ) Yes</th>
<th>( ) NO</th>
<th>Should Clerk schedule a hearing?</th>
<th>( ) Yes</th>
<th>( ) NO</th>
</tr>
</thead>
<tbody>
<tr>
<td>SEPA review completed?</td>
<td>( ) Yes</td>
<td>( ) NO</td>
<td>Requested Date:</td>
<td>2/13/2018</td>
<td></td>
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</table>

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

An interim interim ordinance repealing Ordinance No. 2017-057 and adopting amendments to the Whatcom County Comprehensive Plan and the Whatcom County Code Title 15 Buildings and Construction, Title 20 Zoning, Title 21 Land Division Regulations, and Title 24 Health Code, relating to water resources and implementing ESSB 6091.

**COMMITTEE ACTION:**

**COUNCIL ACTION:**
1/30/2018: Introduced 7-0

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

TO: The Honorable Jack Louws, Whatcom County Executive
    The Honorable Whatcom County Council
FROM: Mark Personius, Assistant Director
DATE: February 1, 2018
SUBJECT: Interim Water Resources Ordinance

At your January 30th Council meeting where Emergency Ordinance 2018-001 was adopted and the proposed Interim Water Resources Ordinance was introduced, Council had questions as to how “legal availability” of water is defined.

Under general water law principles, a person who proposes to use water for a certain purpose must first obtain the right, or legal authority from the state, to do so. Remember that the surface and ground waters of the state belong to the state, not private citizens. Even when granted a right by the state to use such water, it implies only the right to use the water for a beneficial purpose.

Legal availability of water for beneficial purposes (especially for permit exempt withdrawals authorized under RCW 90.44.050) typically varies between counties and even within different watersheds in the same county. Legal availability differs based on whether or not the Department of Ecology has adopted instream flow rules affecting the legal use of surface and ground waters in those individual river basins or Water Resource Inventory Areas (WRIAs); whether or how state statutory amendments or court decisions may have altered the interpretation of those rules; or whether or how counties choose to allow rainwater catchment or other sources of potable water as authorized by the state (or interpreted by the courts) for development purposes. Each instream flow rule is unique and may or may not apply unique conditions to make water legally available for use in those specific geographic areas due to the particular water resource circumstances in those basins.

Whatcom County is required by other state laws to document that every building and land use permit necessitating potable water has an “adequate water supply” prior to approval. Adequate water supply as defined by WCC 20.97.451 includes a three-part requirement: 1) water quantity (i.e., the water source has enough physical water to meet state Department of Health minimum requirements to supply a proposed use); 2) water quality (i.e., the proposed withdrawal of water meets state safe drinking water quality standards); and 3) legal availability (i.e., the applicant has legal authority to access and use the water source).

The determination of legal water availability in Whatcom County for development purposes (where Whatcom County has to issue a permit for a use requiring an adequate water supply) is
defined in WCC 24.11.060(B). Staff has created the attached table to help the public better understand under what conditions water is considered legally available to use pursuant to ESSB 6091 and Emergency Ordinance 2018-001. Staff will use this table to help customers more easily understand how they can legally obtain water.

We have also attached a revised Figure 24.11.060, in which we have changed the map symbols to better visually distinguish between the different areas within the county subject to the different legal availability standards contained in WCC 24.11.060.B.

Feel free to contact me at 778-5950 if you have any questions.
<table>
<thead>
<tr>
<th>Situation/Location</th>
<th>WRIA 1 (Nooksack)</th>
<th>WRIA 3 (Lower Skagit-Samish)</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Legally Available?</strong></td>
<td><strong>Limit/Conditions</strong></td>
<td><strong>Legally Available?</strong></td>
</tr>
<tr>
<td>1. A water right permit from the Department of Ecology</td>
<td>Yes Up to whatever amount the DOE approves the water right for</td>
<td>Yes Up to whatever amount the DOE approves the water right for</td>
</tr>
<tr>
<td>2. A letter from an approved public water purveyor with sufficient water rights, stating the ability to provide water</td>
<td>Yes Up to whatever amount the purveyor has adequate water rights for (as approved by the DOE) and is willing to sell, plus whatever service conditions/costs they impose</td>
<td>Yes Up to whatever amount the purveyor has adequate water rights for (as approved by the DOE) and is willing to sell, plus whatever service conditions/costs they impose</td>
</tr>
<tr>
<td>3. Water supplied by a rainwater catchment system</td>
<td>Yes System must be approved by the Whatcom County Health Department, per Dept. of Ecology Policy 1017</td>
<td>Yes System must be approved by the Whatcom County Health Department, per Dept. of Ecology Policy 1017</td>
</tr>
<tr>
<td>4. Groundwater withdrawals (wells) exempt from permitting pursuant to RCW 90.44.050 for development requiring both potable water and approval from Whatcom County, and</td>
<td></td>
<td></td>
</tr>
<tr>
<td>a. Associated with a well legally constructed prior to January 19, 2018</td>
<td>Yes Up to 5,000 gallons per day</td>
<td>Yes Up to 5,000 gallons per day</td>
</tr>
<tr>
<td>b. Located in Point Roberts, Eliza Island, or Lummi Island</td>
<td>Yes Up to 5,000 gallons per day. Wells on Lummi Island area also subject to WCC 16.16.540.</td>
<td>N/A</td>
</tr>
<tr>
<td>c. Located within certain Limited Coastal Areas, as shown on Figure 24.11.060, and</td>
<td>Yes Up to 5,000 gallons per day</td>
<td>N/A</td>
</tr>
<tr>
<td>o Are not in hydraulic continuity with regulated surface waterbodies (as determined by a property specific hydraulic study), or</td>
<td></td>
<td></td>
</tr>
<tr>
<td>o Is mitigated for</td>
<td></td>
<td></td>
</tr>
<tr>
<td>d. Any other well not meeting conditions a, b, or c</td>
<td>Yes • Water shall be for domestic use only, with a maximum annual average withdrawal of 3,000 gallons per day per connection,</td>
<td>Yes Up to 5,000 gallons per day</td>
</tr>
<tr>
<td></td>
<td>• The applicant shall record with the property title any relevant restrictions or limitations associated with water supply, and,</td>
<td></td>
</tr>
<tr>
<td></td>
<td>• The applicant shall pay any applicable fees for each project permit.</td>
<td></td>
</tr>
</tbody>
</table>
ORDINANCE NO. 2018-00

AN INTERIM ORDINANCE REPEALING ORDINANCE NO. 2017-057 AND ADOPTING AMENDMENTS TO THE WHATCOM COUNTY COMPREHENSIVE PLAN AND THE WHATCOM COUNTY CODE TITLE 15 BUILDINGS AND CONSTRUCTION, TITLE 20 ZONING, TITLE 21 LAND DIVISION REGULATIONS, AND TITLE 24 HEALTH CODE, RELATING TO WATER RESOURCES

WHEREAS, RCW 36.70A.070(1), requires that the land use element of a county comprehensive plan “shall provide for protection of the quality and quantity of groundwater used for public water supplies”; and,

WHEREAS, RCW 36.70A.070(5)(c)(iv) requires that the rural element of a county comprehensive plan “shall include measures that apply to rural development and protect the rural character of the area, as established by the County, by: ... protecting critical areas...and surface water and groundwater resources”; and,

WHEREAS, RCW 19.27.097(1) requires that applicants for building permits of buildings necessitating potable water provide evidence of an adequate water supply for the intended use of the building; and,

WHEREAS, RCW 58.17.110(2) requires that “A proposed subdivision and dedication shall not be approved unless the... county legislative body makes written findings that... appropriate provisions are made for... potable water supplies...”; and,

WHEREAS, Whatcom County Code (WCC) Chapter 15.04 specifies information required for a complete building permit application; and,

WHEREAS, WCC Chapter 20.97 provides definitions of terms used in the code; and

WHEREAS, WCC Chapters 21.04 and 21.05 contain requirements for water supply in short subdivisions and long subdivisions, respectively; and,

WHEREAS, WCC Chapter 24.11 contains requirements for potable water; and,

WHEREAS, Whatcom County adopted Ordinance 2012-032, amending its Comprehensive Plan to adopt by reference existing development regulations regulating groundwater withdrawals, adding Policy 2DD-2.C.3.6, which adopts by reference WCC 21.04.090 and 21.05.080, and Policy 2DD-2.C.3.7, which adopts by reference WCC 24.11.050 and 24.11.060; and,

WHEREAS, because Comprehensive Plan Policy 2DD-2.C.3.6 adopts by reference WCC 21.04.090 and 21.05.080, and Policy 2DD-2.C.3.7 adopts by reference WCC 24.11.050 and 24.11.060, any amendments to these WCC provisions are also amendments to the Comprehensive Plan; and,
WHEREAS, the Growth Management Hearings Board (Board) found the amended Comprehensive Plan lacked the required measures to protect water resources (GMHB Case No. 12-2-0013); and,

WHEREAS, on October 6, 2016, the Washington State Supreme Court (Court), in reversing a Court of Appeals decision, upheld the Board’s decision that the County’s Comprehensive Plan does not satisfy the GMA requirements to protect water availability, and stated, “We hold that the Board properly concluded that the GMA requires counties to make determinations of water availability.”; and,

WHEREAS, the Court stated, “…the GMA places the burden on counties to protect groundwater resources, and requires counties to assure that water is both factually and legally available before issuing building permits.”; and,

WHEREAS, the Court stated, “...The county’s policies incorporate WCC provisions that do not allow water to be withdrawn from ‘an area where [the Department of Ecology] has determined by rule that water for development does not exist.’ …these ordinances further provide that an application for a permit-exempt appropriation will be approved without any analysis of that withdrawal’s impact on instream flows. The Board found that these provisions result in water withdrawals from closed basins and senior instream flows—flows that the record indicated drop below the minimum levels 100 days out of the year. The Board properly held that this conflicts with the requirement placed on counties to protect water availability under the GMA...”; and,

WHEREAS, Chapter 173-501 WAC Instream Resources Protection Program – Nooksack Water Resource Inventory Area (WRIA) 1 identifies waterbodies in Whatcom County that are closed or partially closed to further appropriation, by listing their status as “closure,” “partial year closure,” “low flow,” or “minimum flow,”; and,

WHEREAS, on October 25, 2016 Whatcom County adopted Ordinance 2016-048, an emergency moratorium on the filing, acceptance, and processing of new applications for project permits for uses that rely on permit-exempt groundwater withdrawals within a closed or partially closed basin, to allow the County time to review its Comprehensive Plan and development regulations in light of the Supreme Court ruling, and to draft and enact the necessary amendments as soon as feasible; and,

WHEREAS, RCW 36.70.790 and RCW 36.70.795 allow for adoption of interim official controls as long as a public hearing is held within 60 days of adoption; and,

WHEREAS, on December 6, 2016 the County Council adopted Ordinance 2016-066, an interim ordinance adopting amendments to the Whatcom County Comprehensive Plan and WCC Title 15, Title 20, Title 21, and Title 24 relating to water resources, which is effective until March 18, 2017, and the County has applied the provisions of the ordinance to project permit applications relying on new permit-exempt groundwater withdrawals; and,

WHEREAS, on March 7, 2017 the County Council adopted Ordinance 2017-008, a second interim ordinance; and,
WHEREAS, on April 18, 2017 the County Council adopted Ordinance 2017-008, a third interim ordinance; and,

WHEREAS, on October 10, 2017, the County Council adopted Ordinance 2017-057, a fourth interim ordinance, which is effective until March 30, 2018; and,

WHEREAS, on January 18, 2018, the Washington State Legislature adopted ESSB 6091, which requires the Department of Ecology to work with the initiating governments and the planning unit in WRIA I to review existing watershed plans to identify the potential impacts of exempt well use, identify evidence-based conservation measures, and identify projects to improve watershed health. Until rules are adopted that specify otherwise, Section 202(5), which effectively reverses the Court's decision in Hirst, allows new domestic water uses in WRIA 1 that rely on groundwater withdrawals exempt from permitting under RCW 90.44.050, provided that applicants pay a fee of five hundred dollars to the permitting authority and limit their maximum annual average withdrawal of three thousand gallons per day, per connection, and record this limitation on the property title; and,

WHEREAS, ESSB 6091, in Section 101(5), also provides that “[a]ny permit-exempt groundwater withdrawal authorized under RCW 90.44.050 associated with a water well constructed in accordance with the provisions of chapter 18.104 RCW before the effective date of this section is deemed to be evidence of adequate water supply under this section”; and,

WHEREAS, the amendments proposed by this ordinance are consistent with the aforementioned requirements of ESSB 6091 and are therefore consistent with the GMA, as specifically addressed in Section 102 of ESSB 6091; and,

WHEREAS, a determination of non-significance (DNS) was issued under the State Environmental Policy Act (SEPA) on January 30, 2018; and,

WHEREAS, ESSB 6091 was signed by Governor Inslee on January 19, 2018, and, pursuant to the emergency clause in Section 307, it became effective immediately as the Legislature declared that it was “necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing institutions . . .”; and,

WHEREAS, with the enactment of ESSB 6091, Ordinance No. 2017-057 is no longer necessary to ensure that Whatcom County is in compliance with state law; and,

WHEREAS, in accordance with RCW 36.70A.106, Whatcom County Planning and Development Services notified the Department of Commerce of the proposed interim amendments contained herein; and,

WHEREAS, this ordinance shall be effective for not longer than six months following its effective date, but may be renewed for one or more six month periods if subsequent public hearings are held and findings of fact are made prior to each renewal; and,

WHEREAS, the County Council is scheduled to hold a public hearing on this ordinance on February 13, 2018;
NOW, THEREFORE, BE IT ORDAINED that the Whatcom County Council adopts the above "WHEREAS" recitals as findings of fact in support of its action as required by RCW 36.70A.390.

BE IT FURTHER ORDAINED that Ordinance No. 2017-057 is hereby repealed in its entirety upon the effective date of this ordinance.

BE IT FURTHER ORDAINED that if a section, subsection, paragraph, sentence, clause, or phrase of this ordinance is declared unconstitutional or invalid for any reason by any court of competent jurisdiction; such decision shall not affect the validity of the remaining portions of this ordinance, and if the provisions of this ordinance are found to be inconsistent with other provisions of the Whatcom County Code, this ordinance shall control.

BE IT FURTHER ORDAINED by the Whatcom County Council that the Whatcom County Comprehensive Plan and the Whatcom County Code are hereby amended, on an interim basis, as shown in Exhibit A.

BE IT FINALLY ORDAINED that this ordinance shall be effective for not longer than six months following its effective date.

ADOPTED this ______ day of ____________, 2018.

WHATCOM COUNTY COUNCIL
WHATCOM COUNTY, WASHINGTON

ATTEST:

______________________________  ______________________________
Dana Brown-Davis, Council Clerk  Rud Browne, Chairperson

APPROVED as to form:

______________________________  ______________________________
Civil Deputy Prosecutor  Jack Louws, Executive

( ) Approved   ( ) Denied

Date: ________________________

Page 4 of 4
EXHIBIT A
Whatcom County Code
AMENDMENTS

TITLE 15 BUILDINGS AND CONSTRUCTION
CHAPTER 15.04 BUILDING CODES

15.04.020 Amendments to the International Building Code.
A. The IBC is amended as follows:

5. Section 105.3, Application for Permit, is amended to include the following:

To obtain the permit, the applicant shall first file an application therefor in writing on a form furnished by the Department of Building Safety for that purpose. Such application shall:

1. Identify and describe the work to be covered by the permit for which application is made.

2. Describe the land on which the proposed work is to be done by legal description, street address or similar description that will readily identify and definitely locate the proposed building or work.

3. Indicate the use and occupancy for which the proposed work is intended.

4. Be accompanied by construction documents and other information as required in Section 107.

5. State the valuation of the proposed work.

6. Be signed by the applicant, or the applicant’s authorized agent.

7. Include signature by the applicant or the applicant’s authorized agent of a statement for guarantee of fee payment. The statement must be signed in the presence of County staff or staff will provide a statement which includes verification of signature by a licensed notary public.

8. Provide verification of approval to connect to a public sewer system or a septic system installation permit issued by the Whatcom County Environmental Health Department for any permit application that requires sewage disposal. The approval to connect or issued septic system permit shall be specific to the project application.

9. For buildings requiring potable water, provide evidence of an adequate water supply (as defined in WCC 20.97.451) for the intended use of the building(s).
10. Provide additional data and information in the designated sequence, as required by the Building Official.

......

15.04.030 Amendments to the International Residential Code.
......

D. Section R105.3, Application for permit, is amended to include the following:

To obtain the permit, the applicant shall first file an application therefor in writing on a form furnished by the Department of Building Safety for that purpose. Such application shall:

1. Identify and describe the work to be covered by the permit for which application is made.

2. Describe the land on which the proposed work is to be done by legal description, street address or similar description that will readily identify and definitely locate the proposed building or work.

3. Indicate the use and occupancy for which the proposed work is intended.

4. Be accompanied by construction documents and other information as required in Section 107.

5. State the valuation of the proposed work.

6. Be signed by the applicant, or the applicant’s authorized agent.

7. Include signature by the applicant or the applicant’s authorized agent of a statement for guarantee of fee payment. The statement must be signed in the presence of County staff or staff will provide a statement which includes verification of signature by a licensed notary public.

8. Provide verification of approval to connect to a public sewer system or a septic system installation permit issued by the Whatcom County Environmental Health Department for any permit application that requires sewage disposal. The approval to connect or issued system permit shall be specific to the project application.

9. For buildings requiring potable water provide evidence of an adequate water supply (as defined in WCC 20.97.451) for the intended use of the building(s).

10. Provide additional data and information in the designated sequence, as required by the Building Official.

......
TITLE 20 ZONING
CHAPTER 20.84 VARIANCES, CONDITIONAL USES, ADMINISTRATIVE APPROVAL USES AND APPEALS

20.84.200 Conditional uses.

20.84.220 Criteria.
Before approving an application for a conditional use permit, the hearing examiner shall ensure that any specific standards of the use district defining the conditional use are fulfilled, and shall find adequate evidence showing that the proposed conditional use at the proposed location:

(5) Will be serviced adequately by necessary public facilities such as highways, streets, police and fire protection, drainage structures, refuse disposal, adequate water supply (as defined in WCC 20.97.451), and sewers, and schools; or that the persons or agencies responsible for the establishment of the proposed use shall be able to provide adequately any such services.

CHAPTER 20.97 DEFINITIONS

20.97.451 Water Supply, Adequate
“Adequate water supply” means a supply of potable water adequate to serve a land use associated with a project permit in terms of quality, quantity, and legal availability, as documented by a water availability notification signed by the director of the Whatcom County Health Department, per WCC 24.11.060.

TITLE 21 LAND DIVISION REGULATIONS

CHAPTER 21.04 SHORT SUBDIVISIONS

21.04.090 Water supply.
(1) Water from a public water system(s) shall be provided to serve each lot in a short plat, except as specified in subsection (2) of this section.
(2) For a residential short subdivisions, private water supplies may be utilized under the following circumstances:

(a) All lots served by the private water supplies are five acres or larger, unless smaller because of clustering. If the lots are smaller because of clustering, the gross density of the short subdivision shall not exceed one dwelling per five acres; and

(b) The withdrawal is not from a defined portion of an aquifer of known regional groundwater contamination that exceeds state standards and that has been identified by the director of the Whatcom County Health Department and confirmed by the Health Board; and

(c) The water source is groundwater and not surface water; and

(d) The applicant demonstrates that an adequate water supply (as defined in WCC 20.97.451) exists to serve the short subdivision; and

(e) The short subdivision is not located within the designated water service area of a public water purveyor, as shown on the coordinated water system plan map, or within one-half mile of an existing water purveyor’s water line; or

(e)(f) If the short subdivision is located within the designated water service area of a public water purveyor, that is shown on the coordinated water system plan map, or within one-half mile of an existing water purveyor’s water lines:

(i) The purveyor cannot provide water service to the applicant within 120 calendar days of submitting a written request and applicable fees to the purveyor unless specified otherwise by the Hearing Examiner or County Council; or

(ii) The purveyor states in writing that it is unable or unwilling to provide the service; or

(iii) The purveyor and applicant are unable to achieve an agreement on the schedule and terms of provision of service within 120 calendar days.

(3) If a public water supply is required, all the requirements of Chapter 246-290 WAC, Group A Public Water Systems, or Chapter 246-291 WAC, Group B Public Water Systems, must be met prior to final plat approval.

......

CHAPTER 21.05 PRELIMINARY LONG SUBDIVISIONS

......

21.05.080 Water supply.
(1) Water from a public water system(s) shall be provided to serve each lot in a subdivision, except as specified in subsection (2) of this section.

(2) For a residential subdivision with six or fewer residences, private water supplies may be utilized under the following circumstances:

(a) All lots served by the private water supplies are five acres or larger, unless smaller because of clustering. If the lots are smaller because of clustering, the gross density of
the subdivision shall not exceed one dwelling per five acres and the number of clustered lots shall not exceed four; and

(b) The withdrawal is not from a defined portion of an aquifer of known regional ground water contamination that exceeds state standards and that has been identified by the director of the Whatcom County Health Department and confirmed by the Health Board; and

(c) The water source is groundwater and not surface water; and

(d) The long subdivision is not located within the designated water service area of a public water purveyor, as shown on the coordinated water system plan map, or within one-half mile of an existing water purveyor’s water line; or

(d) If the subdivision is located within the designated water service area of a public water purveyor that is shown on the coordinated water system plan map or within one-half mile of an existing water purveyor’s water lines and:

(i) The purveyor water cannot be provided water service to the applicant within 120 calendar days of submitting a written request and applicable fees to the purveyor unless specified otherwise by the hearing examiner or county council; or

(ii) The purveyor states in writing that it is unable or unwilling to provide the service; or

(iii) The purveyor and applicant are unable to achieve an agreement on the schedule and terms of provision of service within 120 calendar days.

(3) The applicant shall demonstrate that adequate water right(s) supply (as defined in WCC 20.97.451) exists to serve the subdivision, except when water withdrawal is exempt from obtaining a water right permit under RCW 90.44.050.

(4) If a Group B public water system is created to serve the subdivision, the number of wells shall be limited to the minimum needed to serve the water needs of the subdivision as determined by the Whatcom County Health Department.

(5) If a public water supply is required, all the requirements of Chapter 246-290 WAC, Group A Public Water Systems, or Chapter 246-291 WAC, Group B Public Water Systems, must be met prior to final plat approval.

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**TITLE 24 HEALTH CODE**

**CHAPTER 24.11 DRINKING WATER**

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24.11.050 General requirements.

A. Applicants must submit all required forms, letters, and documents to the director.
B. The director will consider applications for water availability proposing to use groundwater, spring water, surface water, sea water or rainwater.

C. The director shall evaluate the availability of a public water system prior to approving the use of a private water system. If it is determined that a public water system is available and willing to provide water, the applicant must connect to that public water system when:

1. The applicant proposes to use surface water, spring water, rainwater, or contaminated groundwater; or

2. The applicant proposes to build on a lot located in a short subdivision or long subdivision that Whatcom County approved based on the availability of public water; or

3. The existing public water system has water lines adjacent to the property line of the applicant and connection is consistent with RCW 36.70A.110(4); or

4. The existing public water system has defined a “service area boundary” in accordance with the Whatcom County Coordinated Water System Plan which includes the property of the applicant.

D. The director will only approve a private or Non-Group B two-party well for proposed short subdivisions or long subdivisions when analytical results of untreated water samples for primary inorganic or organic contaminants do not exceed a maximum contaminate level (MCL) adopted by Washington State Department of Health.

E. Purveyors of public water systems and private water system applicants must comply with Washington State Department of Ecology water right requirements and must demonstrate that they have an adequate water supply for their proposed service per WCC 24.11.060. Compliance will include at a minimum, possession of a water right permit or certificate for:

1. All surface water sources excluding seawater.

2. All groundwater sources using more than 5,000 gallons per day.

3. Irrigating more than one-half acre of lawn or noncommercial garden.

24.11.060 Water availability required.

A. Prior to issuance of a building or other project permit, and unless exempt pursuant to subsection (C), the applicant must provide Whatcom County Planning and Development Services evidence of adequate water supply as documented by a water availability notification signed by the director, to Whatcom County planning and development services (PDS) except when: The water availability notification shall document a supply of potable water adequate to serve a land use associated with a project permit in terms of quality, quantity, and legal availability.

B. The applicant must provide evidence of legal availability in the form of:

1. A water right permit from the Department of Ecology; or,

2. A letter from an approved public water purveyor with sufficient water rights, stating the ability to provide water; or,
3. Evidence that a permit-exempt groundwater withdrawal (authorized under RCW 90.44.050) is associated with a well constructed (in accordance with the provisions of RCW Chapter 18.104) prior to January 19, 2018; or,

4. Documentation that water can be supplied by a rainwater catchment system approved by the Whatcom County Health Department, per Department of Ecology Policy 1017; or,

5. Documentation that water will be supplied by a new withdrawal exempt from permitting under RCW 90.44.050 and the well site is located in WRIA 3 (Lower Skagit-Samish) or in Point Roberts, Eliza Island, or Lummi Island, as shown in Figure 24.11.060.

6. Documentation that water will be supplied by a new withdrawal exempt from permitting under RCW 90.44.050 and the well site is located in those Limited Coastal Areas that may not be in hydraulic continuity with regulated surface waterbodies, as shown on Figure 24.11.060, and:

   a. A study prepared by a qualified hydrogeologist licensed in the State of Washington demonstrating a proposed groundwater withdrawal would not impair a senior water right, including instream flows established in Chapter 173-501 WAC where applicable, in accordance with current statutes and case law. Such documentation must be verified by the county either through consultation with the Department of Ecology, or a qualified technical review team appointed by the county. The county may require a third party review by an independent qualified hydrogeologist if the county determines additional technical expertise is needed. The cost of the third party review shall be borne by the County; or,

   b. A mitigation plan prepared by a qualified hydrogeologist licensed in the State of Washington, and approved by Whatcom County. The plan shall include:

      i. Evidence that the proposed withdrawal with mitigation in place will not impair a senior water right, including instream flows established in Chapter 173-501 WAC where applicable, in accordance with current statutes and case law. Such documentation must be verified by the county either through consultation with the Department of Ecology, or a qualified technical review team appointed by the county. The county may require a third party review by an independent qualified hydrogeologist if the county determines additional technical expertise is needed. The cost of the third party review shall be borne by the County.

      ii. A monitoring and reporting plan, including a quality assurance/quality control plan.

      iii. Documentation adequate to demonstrate that the mitigation will remain in place for the duration of the impact, including, for example, financial assurances or documentation of permanent dedication of water for mitigation purposes.

7. Except in Point Roberts, Eliza Island, or Lummi Island, for new permit-exempt groundwater withdrawals per RCW 90.44.050 within WRIA 1 (Nooksack) or within those
Limited Coastal Areas where the applicant has not met subsection (B)(6), the applicant may obtain approval for a withdrawal exempt from permitting pursuant to RCW 90.44.050 under the following conditions:

a. Water shall be for domestic use only, with a maximum annual average withdrawal of 3,000 gallons per day per connection.

b. The applicant shall record with the property title any relevant restrictions or limitations associated with water supply; and

c. The applicant shall pay to the permitting authority any applicable fees for each project permit.

C. A water availability notification is not required for:

1. A building A project permit that does not require potable water.

2. A project permit relying on either a permit-exempt groundwater withdrawal per RCW 90.44.050 or a surface water withdrawal for potable water for (a) a remodel of an existing building or (b) replacement of a demolished or removed building, but not proposing a change of use, either of which would increase the floor area by no more than 50 percent over that of the existing building; however, such permits shall require documentation of current water quality and quantity, as approved by the director. A residential remodeling does not add additional bedrooms or result in an increase of floor space of more than 50 percent.

2. A project permit relying on surface water withdrawal for potable water (a) a remodel of an existing building or (b) replacement of a demolished or removed building, either of which would increase the floor area by no more than 50 percent over that of the existing building; however, such permits shall require documentation of water quality and quantity, as approved by the director. PDS determines that the building will replace a demolished or removed building and the building will not have more bedrooms or more than 50 percent greater floor space than the previous building.
24.11.070 Determining adequacy of water supply for building permit applications proposing to use an existing public water system.
A. Prior to director approval of evidence of an adequate water supply where the applicant proposes to obtain water from an existing public water system the applicant must:
   1. Submit to the director, an Availability Notification for Public Water form (as amended) signed by an authorized representative of the water system proposing to serve water to the building. The authorized representative:
      a. Must indicate on the form that the water system will provide water to the proposed building.
      b. Must sign a statement that they have reviewed the system records and ensures that the water system complies with Chapters 246-290 and 246-291 WAC and department requirements.
B. The director will review the completed Availability Notification for Public Water (form) for approval. The director will approve the completed form if:
   1. The applicant and the authorized representative met all the criteria listed on the form.
   2. The purveyor of the water system has the approval from Department of Health or the department to provide water to the building.
   3. The applicant has provided evidence of legal availability of water for the proposed project per WCC 24.11.060.

24.11.080 Determining adequacy of water supply for building permit applications proposing to create a new public water system.
Prior to director approval of evidence of an adequate water supply, an applicant proposing to create a new public water system must comply with:
A. Provisions of the Whatcom County Coordinated Water System Plan.
B. Chapters 246-290 and 246-291 WAC, and all other applicable local and state regulations for public water supplies.
C. The applicable sections of this chapter pertaining to public water supplies and water availability.

24.11.090 Determining adequacy of water supply for building permit applications proposing to use a well to serve one single-family dwelling or one single-family living unit.
A. Prior to director approval of evidence of an adequate water supply where the applicant proposes to use a private well, the applicant must:
   1. Notify the director of the intent to use a well.
   2. Request that the director conduct a site inspection and approve the proposed well site.
B. Upon request from the applicant, the director will conduct a site inspection for the purpose of approving the location. If the director cannot approve a well location the director will deny the application and give the reasons for denial.
C. If the director approves the well location the applicant shall submit a completed Water Availability Notification Private – 1 Home Well form (as amended) and all required documents to the director for approval.

A. Prior to director approval of evidence of an adequate water supply where the applicant proposes to use a private well, the applicant must submit a completed Water Availability Notification Private – 1 Home Well form (as amended) and all required documents to the director for approval.

BD. The director will review the completed form and required documents submitted by the applicant for approval. The director will approve the form if:

1. The applicant met all the criteria listed on the form.
2. The applicant submitted all of the required documents.
3. The applicant has provided evidence of legal availability of water for the proposed project per WCC 24.11.060. The well site proposed by the applicant does not fall within the boundaries of an area where DOE has determined by rule that water for development does not exist.

24.11.100 Determining adequacy of water supply for building permit applications proposing to use a well to serve two single-family dwellings or two single-family living units.

A. Prior to director approval of evidence of an adequate water supply where the applicant proposes to use a well to serve two single-family dwellings or two single-family living units, the applicant must:

1. Notify the director of the intent to use a well or wells.
2. Request that the director conduct a site inspection and approve the proposed well sites.

B. Upon request from the applicant, the director will conduct a site inspection for the purpose of approving the location. If the director cannot approve a well location the director will deny the application and give the reasons for denial.

C. If the director approves the well locations the applicant shall submit a completed Water Availability Notification Non-Group B – 2 Home Well form (as amended) and all required documents for each well to the director for approval.

D. The director will review the completed form and required documents submitted by the applicant for approval. The director will approve the form if:

1. The applicant met all the criteria listed on the form.
2. The applicant submitted all of the required documents.
3. The applicant has provided evidence of legal availability of water for the proposed project per WCC 24.11.060. The well site proposed by the applicant does not fall within the boundaries of an area where DOE has determined by rule that water for development does not exist.
24.11.110 Determining adequacy of water supply for building permit applications proposing to use a spring to serve one single-family dwelling unit or one single-family living unit.
A. Prior to director approval of evidence of an adequate water supply where the applicant proposes to use a spring source, the applicant must:
   1. Notify the director of the intent to use a spring.
   2. Provide information to the director showing that they cannot drill an adequate well on their property.
   3. Request that the director conduct a site inspection and approve the proposed location of the spring.
B. Upon request from the applicant, the director will conduct a site inspection for the purpose of approving the location. If the director does not approve the location the director will deny the application and give the reason for denial.
C. If the director approves the location of the spring the applicant must submit a completed Water Availability Notification Private – 1 Home Spring form (as amended) and all required documents for approval by the director.
D. The director will review the completed form and required documents for approval. The director will approve the application if:
   1. The applicant met all the criteria listed on the form.
   2. The applicant submitted all of the required documents.
   3. The applicant has provided evidence of legal availability of water for the proposed project per WCC 24.11.060. The spring site proposed by the applicant does not fall within the boundaries of an area where DOE has determined by rule that water for development does not exist.

24.11.120 Determining adequacy of water supply for building permit applications proposing to use a spring to serve two single-family dwelling units or two single-family living units.
A. Prior to director approval of evidence of an adequate water supply where the applicant proposes to use a spring source, the applicant must:
   1. Notify the director of the intent to use a spring.
   2. Provide information to the director showing that an adequate well cannot be drilled on their property.
   3. Request that the director conduct a site inspection and approve the proposed location of the spring.
B. Upon request from the applicant, the director will conduct a site inspection for the purpose of approving the location. If the director does not approve the location, the director will deny the application and give the reasons for denial.

C. If the director approves the location of the spring the applicant must submit a completed Water Availability Notification – 2 Home Spring form (as amended) and all required documents for approval by the director.

D. The director will review the completed form and required documents for approval. The director will approve the application if:

1. The applicant met all the criteria listed on the form.
2. The applicant submitted all of the required documents.
3. The applicant has provided evidence of legal availability of water for the proposed project per WCC 24.11.060. The spring or spring sites proposed by the applicant does not fall within the boundaries of an area where DOE has determined by rule that water for development does not exist.

24.11.130 Determining adequacy of water supply for building permit applications proposing to use surface water, sea water, or rainwater for one or two single-family dwelling units or two single-family living units.

A. The director shall not approve use of surface water, sea water, or rainwater as evidence of an adequate water source unless the applicant:

1. Cannot obtain water from an existing public water supply.
2. Cannot use an approved source of groundwater from a well.
3. Could only use contaminated groundwater.

B. Prior to director approval of evidence of adequate water supply the applicant must:

1. Meet all applicable requirements for surface water, sea water or rainwater treatment design, maintenance and operation contained in Whatcom County health and human services Water Availability for a Private Surface Water Source (as amended) Notification as determined by the director.

2. Provide evidence of legal availability of water for the proposed project per WCC 24.11.060. The surface water site proposed by the applicant does not fall within the boundaries of an area where DOE has determined by rule that water for development does not exist.

3. Meet all other state and local regulations.

4. Sign and have recorded with the Whatcom County auditor’s office the following documents:
   a. A document stating which contaminate the untreated source water exceeded.
b. A document stating that the applicant has had a water treatment system designed that meets Whatcom County health and human services Water Availability Approval for a Surface Water Source (as amended), and secures a potable water supply for the building.

c. A document stating that the applicant has installed a treatment system according to the design reviewed by the director and treated water sample results that verify system performance.

d. A document stating that the applicant agrees to adhere to the operation, maintenance, and monitoring plan for the designed treatment system.

e. A document stating that the applicant understands that the obligation to comply with treatment system design, installation, operation and monitoring lies with the applicant and not Whatcom County.

f. When the public system is available, any person obtaining water from contaminated source must provide current test results showing water treatment is adequately maintaining water quality below maximum contaminant levels (MCL). If the quality does not meet the MCL, the applicant is required to hook up to a public system.

24.11.140 Determining adequacy of water supply for short subdivisions, long subdivisions or binding site plans proposing to use an existing public water system.

A. Prior to director approval of availability of an adequate water supply where the applicant proposes to obtain water from an existing public water supply to service lots of a short subdivision, long subdivision, or a binding site plan the applicant must:

1. Provide to the director an Availability Notification for Public Water (as amended) form or a letter signed by an authorized representative of the water system proposing to serve water to each lot. The authorized representative of the public water system:
   a. Must indicate that the water system will provide water to each proposed lot.
   b. Must sign a statement that they have reviewed the system records and ensures that the water system is in compliance with Chapters 246-290 and 246-291 WAC and department requirements.

B. The director will review the completed form or letter to determine the availability of adequate water. The director will make a determination of adequate water when:

1. The applicant and the authorized representative meet all the criteria listed on the form.

2. The purveyor of the water system has the approval from Department of Health or the department to provide water to the short subdivision, long subdivision, or binding site plan, except for Group A water systems the following conditions also apply:
   a. DOH has issued a green operating permit to the purveyor; or
   b. DOH has determined that the purveyor significantly complies with Chapter 246-290 WAC.
3. The applicant has provided evidence of legal availability of water for the proposed project per WCC 24.11.060.

24.11.150 Determining adequacy of water supply for short subdivisions, long subdivisions or binding site plans proposing to use a new public water system.  
Prior to director approval of availability of an adequate water supply where the applicant proposes to create a new public water supply to service lots of a short subdivision, long subdivision, or a binding site plan the applicant must comply with:

A. Provisions of the Whatcom County Coordinated Water System Plan.
B. Chapters 246-290 and 246-291 WAC, and all other applicable local and state regulations for public water supplies.
C. The applicable sections of this chapter pertaining to public water supplies and water availability.

24.11.160 Determining adequacy of water supply for short subdivisions or long subdivisions proposing to use a private well or private wells to serve one single-family dwelling or one single-family living unit.
A. Prior to director approval of availability of an adequate water supply where the applicant proposes to use a private well or private wells to service lots of a short subdivision or long subdivision the applicant must:
   1. Notify the director of the intent to use a private well or wells.
   2. Request that the director conduct a site inspection and approve the proposed well sites.
B. Upon request from the applicant, the director will conduct a site inspection for the purpose of approving the location. If the director cannot approve a well location the director will deny the application and give the reasons for denial.
C. If the director approves the well locations the applicant shall submit a completed Subdivision Water Availability form (as amended) and all required documents for each well to the director for approval.
D. The director will review each completed form and required documents for approval. The director will approve the availability of adequate water when:
   1. The applicant met all the criteria listed on the form.
   2. The applicant submitted all of the required documents.
   3. The applicant has provided evidence of legal availability of water for the proposed project per WCC 24.11.060. The well site or well sites proposed by the applicant does not fall within the boundaries of an area where DOE has determined by rule that water for development does not exist.
24.11.170 Determining adequacy of water supply for short subdivisions or long subdivisions proposing to use a well to serve two single-family dwellings or two single-family living units.

A. The applicant shall create a Group B Public water supply as defined in Chapter 246-291 WAC when WCC Title 21 requires the applicant to provide public water service to each lot. This includes a water system where one well services two lots.

B. Prior to director approval of availability of an adequate water supply where the applicant proposes to use one well to service two lots of a short subdivision or long subdivision when public water is not required the applicant must:

1. Notify the director of the intent to use a well or wells.

2. Request that the director conduct a site inspection and approve the proposed well sites.

C. Upon request from the applicant, the director will conduct a site inspection for the purpose of approving the location. If the director cannot approve a well location the director will deny the application and give the reasons for denial.

D. If the director approves the well locations the applicant shall submit a completed Subdivision Water Availability form (as amended) and all required documents for each well to the director for approval.

E. The director will review each completed form and required documents for approval. The director will approve the availability of adequate water when:

1. The applicant met all the criteria listed on each of the forms.

2. The applicant submitted all of the required documents.

3. The applicant has provided evidence of legal availability of water for the proposed project per WCC 24.11.060. The well site or well sites proposed by the applicant does not fall within the boundaries of an area where DOE has determined by rule that water for development does not exist.
### Clearances

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### Title of Document:

Ordinance amending Whatcom County Code Title 2 Administration and Personnel; Title 9 Public Peace, Morals and Welfare; Title 16 Environment; Title 20 Zoning; Title 21 Land Division Regulations; Title 23 Shoreline Management Program; Title 24 Health; and creating a new Title 22 Land Use and Development Procedures, to relocate and revise procedures for land use and development related project permits and legislative actions.

### Attachments:

1. Staff Memorandum
2. Draft Ordinance
3. Staff Report, October 18, 2017
4. Findings and recommendations of the Planning Commission

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### SEPA Review

- **SEPA Review Required?**
  - (x) Yes
  - ( ) No

- **SEPA Review Completed?**
  - (x) Yes
  - ( ) No

### Should Clerk Schedule a Hearing?

- ( ) Yes
- (x) No

### SUMMARY STATEMENT OR LEGAL NOTICE LANGUAGE:

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

Ordinance amending Whatcom County Code Title 2 Administration and Personnel; Title 9 Public Peace, Morals and Welfare; Title 16 Environment; Title 20 Zoning; Title 21 Land Division Regulations; Title 23 Shoreline Management Program; Title 24 Health; and creating a new Title 22 Land Use and Development Procedures, to relocate and revise procedures for land use and development related project permits and legislative actions.

### Committee Action:

- 1/30/2018: Introduced 7-0

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### Council Action:

- 1/30/2018: Introduced 7-0

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### Related County Contract #:

- PLN2016-00008

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### Related File Numbers:

- PLN2016-00008

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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: The Honorable Jack Louws, Whatcom County Executive
   The Honorable Whatcom County Council

FROM: Amy Keenan, AICP, Senior Planner
       Nick Smith, Permit Center Specialist

THROUGH: Mark Personius, AICP, Assistant Director

DATE: January 17, 2018

SUBJECT: Code Amendment: Land Use and Development Procedures

Whatcom County PDS has identified a need to consolidate and clarify Whatcom County permit review procedures to provide the public with a clear and predictable permit review process. This proposed ordinance is developed in accordance with the Washington State Local Project Review Act (Chapter 36.70B RCW), recent Washington State Supreme Court decisions, as well as various Washington State jurisdictions including Snohomish County, Skagit County, Pierce County, City of Bainbridge Island and City of Bellingham.

In 1995, the state adopted legislation regarding procedures for county land use and development applications. The intent of the legislation was to ensure applications throughout Washington State were processed in a timely, predictable manner, and that different applications involving the same project could be consolidated.

Whatcom County adopted a new Chapter 2.33 in 1996 in response to the state legislation. Chapter 2.33 contained many of the project permit review procedures, but many procedural sections remained or were subsequently added in various sections of the County code. These procedural sections predominately involve requirements for application materials, review timelines, legal notifications, public hearings and appeals.

Staff now proposes consolidating all land use and development procedures in a new land use and development procedures code, Title 22. Predominately, the proposed amendments move code from various sections to Title 22, include grammatical improvements and do not alter the substance of the procedures. There are several areas where substantive changes were made to improve clarity and predictability, to remove inconsistencies and to address recent court cases. Those changes are discussed in depth in the staff report but generally include:

- Vesting and expiration;
• Designate Superior Court as the appeal body for hearing examiner decisions;
• Allow a waiver for preapplication meetings and clarify which project types require a preapplication meeting;
• Add sections to clarify the definition of “quasi-judicial actions;”
• Alter time limits for major project permits and planned unit developments to meet the statutory timeframes in Chapter 36.70B RCW;
• Remove an optional review by Planning Commission for Major Project Permits;
• Reword current WCC 2.33.090(G) to provide clarity and a process for dispute resolution with the director;
• Add specific requirements for written appeal and;
• Standardize review and comment timeframes to 14 or 28 days.

The Planning Commission held a public hearing on October 26, 2017 and recommended approval of the attached draft with a vote of 7-0. Staff would like to present and discuss the draft with the Planning and Development Committee and schedule the draft ordinance for introduction. For your review a clean version and strikethrough version of Title 22 (Exhibit A) and all amended titles (Exhibits B-E) have been included in your packet. If you have any questions, please feel free to contact Amy Keenan, Senior Planner, at 778-5943 or Nick Smith, Permit Center Specialist, at 778-5913.

Thank you.

Attachments:
Draft Ordinance
Staff Report, October 18, 2017
Findings and recommendations of the Planning Commission
ORDINANCE NO. __________________

ADOPTING AMENDMENTS TO WHATCOM COUNTY CODE TITLE 2 ADMINISTRATION AND PERSONNEL; TITLE 9 PUBLIC PEACE, MORALS AND WELFARE; TITLE 15, BUILDING AND CONSTRUCTION; TITLE 16 ENVIRONMENT; TITLE 20 ZONING; TITLE 21 LAND DIVISION REGULATIONS; TITLE 23 SHORELINE MANAGEMENT PROGRAM; TITLE 24 HEALTH; AND CREATING A NEW TITLE 22 LAND USE AND DEVELOPMENT PROCEDURES, TO RELOCATE AND REVISE PROCEDURES FOR LAND USE AND DEVELOPMENT RELATED PROJECT PERMITS AND LEGISLATIVE ACTIONS

WHEREAS, Whatcom County Planning and Development Services has proposed amendments to the Whatcom County Code; and

WHEREAS, The Whatcom County Council reviewed and considered Planning Commission recommendations, staff recommendations, and public comments on the proposed amendments; and

WHEREAS, The County Council hereby adopts the following findings of fact:

FINDINGS OF FACT

1. Whatcom County Planning and Development Services has submitted an application for amendments to add a new Title 22 Land Use and Development Procedures, and amend Titles 2, 9, 15, 16, 20, 21, 23 and 24 to move procedural content to the new Title 22.

2. A determination of non-significance (DNS) was issued under the State Environmental Policy Act (SEPA) on October 16, 2017.

3. Notice of the subject amendment was submitted to the Washington State Department of Commerce on September 20, 2017.

5. The Planning Commission held a public hearing on the proposed amendments on October 26, 2017.

6. In 1995 the State Legislature adopted legislation regarding procedures for county land use and development applications (ESHB 1724; 36.70B RCW). The intent of the legislation was to ensure that applications were processed in a timely, predictable manner, and that different applications involving the same project could be consolidated.

7. Whatcom County Code adopted a new Chapter 2.33 in 1996 in response to the 1995 state legislation. This new chapter contained many of the project permit review procedures, but many procedural sections remained in various sections of the County code, including Title 16 Environment, Title 20, Zoning, Title 21 Land Division Regulations, and Title 23 Shoreline Management.

8. The proposed Title 22 Land Use and Development Procedures would contain administrative procedures that are now located throughout different titles and chapters in Whatcom County Code, eliminating redundancy and, in some cases, inconsistency between code chapters.

9. The proposed Chapter 22.05 Project Permit Procedures would consolidate procedures for project permits in one place.

10. RCW 36.70B.020(4) defines project permits as "...any land use or environmental permit or license required from a local government for a project action, including but not limited to building permits, subdivisions, binding site plans, planned unit developments, conditional uses, shoreline substantial development permits, site plan review, permits or approvals required by critical area ordinances, site-specific rezones authorized by a comprehensive plan or subarea plan, but excluding the adoption or amendment of a comprehensive plan, subarea plan, or development regulations..."

11. Because vesting principles apply to applications beyond those described in Title 20 Zoning, the vesting provisions are proposed to be moved from Title 20 to the new Title 22, which applies to all land use and development projects. The revised wording in the proposed 22.05.060 uses state law's phrase, "zoning or other land use control ordinances" so that County regulations will be consistent with state statute and case law.

12. RCW 19.27.095(1) states, "A valid and fully complete building permit application for a structure, that is permitted under the zoning or other land use control ordinances in effect on the date of the application shall be considered under the building permit ordinance in effect at the time of application, and the zoning or other land use control ordinances in effect
on the date of application.”

13. RCW 58.17.033(1) states, “A proposed division of land, as defined in RCW 58.17.020, shall be considered under the subdivision or short subdivision ordinance, and zoning or other land use control ordinances, in effect on the land at the time a fully completed application for preliminary plat approval of the subdivision, or short plat approval of the short subdivision, has been submitted to the appropriate county, city, or town official.”

14. The proposed Chapter 22.10 Legislative Procedures combines procedures for comprehensive plan amendments and zoning amendments (including both zoning map changes and code text amendments), from current Chapters 2.160 and 20.90, respectively.

15. The proposed Chapter 22.20 Land Use and Development Code Interpretation Procedures would add procedures for citizens to request PDS interpretations of the County’s land use and development codes to clarify conflicting or ambiguous wording. Interpretation procedures commonly appear in other jurisdictions’ codes, but Whatcom County Code has no such provision.

16. The proposed Chapter 22.25 would contain the fee provisions now contained in WCC 20.04.090 - .092 so that it would apply to other development-related titles of the Whatcom County Code beyond Title 20 Zoning.

17. Some highly detailed requirements currently found in the code are proposed to be removed from code and consolidated into an Administrative Manual that can be updated without requiring a code amendment.

18. The Whatcom County Comprehensive Plan supports streamlining regulations.

CONCLUSIONS

1. The amendments to the zoning code are in the public interest.

2. The amendments are consistent with the Whatcom County Comprehensive Plan.

NOW, THEREFORE, BE IT ORDAINED by the Whatcom County Council that:

Section 1. Amendments to the Whatcom County Code are hereby adopted as shown on Exhibits A through E.
ADOPTED this ______ day of ______________, 2018.

WHATCOM COUNTY COUNCIL
WHATCOM COUNTY, WASHINGTON

ATTEST:

__________________________________________
Dana Brown-Davis, Council Clerk

APPROVED as to form:

__________________________________________
Civil Deputy Prosecutor

__________________________________________
Rud Browne, Chairperson

( ) Approved  ( ) Denied

__________________________________________
Jack Louws, Executive

Date: ____________________________
EXHIBIT A
Whatcom County Code Title 22
AMENDMENTS

Title 22
Land Use and Development Procedures

(This would create a new WCC Title 22 that would be the location for all procedural requirements for land use and development applications, separate from the land use and development regulations. This takes the place of the previous Title 22, the Guide Meridian Improvement Plan, which was repealed during the 2016 Comprehensive Plan update.)

Chapters:
22.05 Project Permit Procedures
22.10 Legislative Action Procedures
22.15 Code Compliance Procedures
22.20 Land Use and Development Code Interpretation Procedures
22.25 Land Use and Development Fees

Chapter 22.05
PROJECT PERMIT PROCEDURES

(This new chapter is adapted mostly from the current Chapter 2.33 Permit Review Procedures, and procedural passages from other chapters. Current text is shown in normal black font with proposed changes shown in red. The current chapter/section numbers are shown as deleted with the proposed numbers replacing them.)

Sections:
22.05.010 Purpose and applicability.)
22.05.010 Purpose and applicability.
(1) The purpose of this chapter is to combine and consolidate the application, review, and approval processes for project permits and appeals as defined in WCC 20.97.321. It is further intended for this chapter to comply with the provisions of Chapter 36.70B RCW. These procedures provide for a consolidated land use permit process and integrate the environmental review process with the procedures for review of land use decisions.

(2) This chapter applies to the processing of project permit applications for development and appeals related to the provisions of WCC Title 15 Building and Construction, Title 16 Environment, Title 17 Flood Damage Prevention, Title 20 Zoning, Title 21 Land Division Regulations, and Title 23 Shoreline Management. The provisions of this chapter shall apply to all project permit applications as defined in RCW 36.70B.020, and other administrative decisions, as listed in the table in WCC 22.05.020.

22.05.020 Project Permit Processing Table
(1) Marked boxes in the table below indicate the required general steps for processing all project permit applications or administrative actions. The requirements for each step listed in the top row of the table are provided in WCC sections 22.05.040 through 22.05.160, as indicated. Specific requirements for each project permit can be found through the references given in the table.
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<td>Hearing Examiner</td>
<td>County Council</td>
</tr>
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</table>

Check marks indicate a step is required; reference letters refer to the notes in subsection (2).
(2) Project Permit Processing Table Notes. As indicated in the table in subsection (1), project permits are subject to the following additional requirements:

(a) Preapplication conference subject to Title 23 Shoreline Master Program.

(b) Single family residential uses in critical areas or critical area buffers, except all uses in geological hazardous areas and setbacks.

(c) Shoreline Permit public hearing decision determined pursuant to Title 23 Shoreline Master Program. If a public hearing is required the Shoreline Permit shall be processed as a Type III application.

(d) Final decision filed with the Washington State Department of Ecology.

(e) All uses in geological hazardous areas and setbacks and all non-single family residential uses in critical areas or critical area buffers.

(f) Building permit preapplication conference, subject to WCC 15.04.020(A)(3)(a).

(g) The hearing examiner may choose to consult with the development standards technical advisory committee concerning technical matters relating to land division applications. [from WCC 21.01.170]

(h) Whatcom County shall consider an appeal of a decision on a shoreline substantial development permit, shoreline variance, or shoreline conditional use only when the applicant waives his/her right to a single appeal to the shoreline hearings board. When an applicant has waived his/her right to a single appeal, such appeals shall be processed in accordance with the appeal procedures of section WCC 23.60.150.H.

(i) Except that appeals of Title 15 fire and building code requirements shall be made to the board of appeals per current building code, as adopted in WCC 15.04.010.

22.05.030 Consolidated permit review.¹
The county shall integrate and consolidate the review and decision on two or more project permits subject to this chapter that relate to the proposed project action unless the applicant requests otherwise. Consolidated Type I, II, III and IV permits shall be reviewed under the process required for the permit with the highest process type number per WCC 22.05.020. Level IV is considered the highest and Level I is considered the lowest process type.

22.05.040 Preapplication conference.
The purpose of a preapplication conference is to assist applicants in preparing development applications for submittal to the county by identifying applicable regulations and procedures. It is not intended to provide a staff recommendation on future permit decisions. Preapplication review does not constitute acceptance of an application by the county nor does it vest an application, unless otherwise indicated in Whatcom County Code.

¹ RCW 36.70B.060(3)
(1) A preapplication conference is required as indicated in WCC 22.05.020, unless the director or designee grants a written waiver. For other permits, the applicant may request a preapplication conference.

(2) The county shall charge the applicant a fee for a preapplication conference per the Unified Fee Schedule. If the county makes a determination of completeness on a project permit submitted within one year of the notice of site-specific submittal requirements per subsection (6) of this section, the preapplication fee shall be applied to the application cost.

(3) It is the responsibility of the applicant to initiate a preapplication conference through a written application. The application shall, at a minimum, include all items identified on the preapplication form and the department’s administrative manual. The applicant may provide additional information to facilitate more detailed review.

(4) A preapplication conference shall be scheduled as soon as possible and held no later than 30 calendar days from the date of the applicant’s request, unless agreed upon by the applicant and the county.

(5) The county shall invite the appropriate city to the preapplication meeting if the project is located within that city’s urban growth area or which contemplates the use of any city utilities. Notice shall also be given to appropriate public agencies and public utilities, if within 500 feet of the area submitted in the application. [Subsection (5) wording is proposed to be moved from 21.01.090(2) so the requirement to involve cities in preapplication review would apply to all project permits, not just subdivisions. This is consistent with adopted interlocal agreements.]

(6) The county should provide the applicant with notice of site-specific submittal requirements for application no later than 14 calendar days from the date of the conference.

(7) A new preapplication conference shall be required if an associated project permit application is not filed with the county within one year of the notice of site-specific submittal requirements per subsection (6) or the application is substantially altered, unless waived per WCC 22.05.040(1).

22.05.050 Application and determination of completeness.
(1) Project permit applications shall be submitted using current forms provided by the review authority. The submittal shall include: all applicable fees per Chapter 22.25 WCC, all materials required by the department’s administrative manual, and all items identified in the preapplication notice of site-specific submittal requirements.

(2) Upon submittal by the applicant, the county will accept the application and note the date of receipt. Receipt of an application does not constitute approval of the project proposal.
(3) Within 14 calendar days\(^2\) of receiving the application, the county shall provide to the applicant a written determination which states either that the application is complete or the application is incomplete. To the extent known by the county, other agencies of local, state, or federal government that may have jurisdiction shall be identified on the determination.

(4) A project permit application is complete when it meets the submittal requirements of the department’s administrative manual, includes items identified through the preapplication conference process and contains sufficient information to process the application even if additional information will be required. A determination of completeness shall not preclude the county from requiring additional information or studies at any time prior to permit approval. A project permit application shall be deemed complete under this section if the county does not issue a written determination to the applicant that the application is incomplete by the end of the 14th calendar day from the date of receipt.

(5) If the application is determined to be incomplete, the following shall take place:

(a) The county will notify the applicant that the application is incomplete and indicate what is necessary to make the application complete.

(b) The applicant shall have 90 calendar days from the date that the notification was issued to submit the necessary information to the county. If the applicant does not submit the necessary information to the county in writing within the 90-day period, the application shall be rejected. The director or designee may extend this period for an additional 90 calendar days upon written request by the applicant.

(c) Upon receipt of the necessary information, the county shall have 14 calendar days to make a determination and notify the applicant whether the application is complete or what additional information is necessary.\(^3\)

(6) A determination of an incomplete application is an appealable final administrative determination, subject to WCC 22.05.160(1).

22.05.060 Vesting. [The proposal would replace the County’s vesting provisions of WCC 20.04.031 in this subsection so that they will clearly apply to all development permits (not just those listed in Title 20 Zoning) and to add clearer language that is more consistent with wording in state law and with recent court decisions. The current WCC 20.04.031(1)’s definition of project permit is proposed to be deleted, with a new reference to the County Code’s definition (consistent with state law) to be added to 22.05.010.]

(1) Complete applications. For a project permit application the department has determined to be complete per WCC 22.05.050(4), the application shall be

\(^2\) RCW 36.70B.070(1) allows 28 days; Title 21 currently has 28 days for subdivision plat applications, which would be changed to 14 days under this proposal.

\(^3\) RCW 36.70B.070(4)(b)
considered under the zoning or other land use control ordinances in effect on the date the application was submitted to the department.

(2) Incomplete applications. For a project permit application the department has determined to be incomplete per WCC 22.05.050(5), the application shall be considered under the zoning or other land use control ordinances in effect on the date the department determines the application to be complete based on the necessary information required by the department.

(3) Applications subject to preapplication conference. Notwithstanding the provisions of subsections (1) and (2) of this section, for a project permit application that is (a) subject to a preapplication conference per WCC 22.05.020 and .040, (b) submitted no more than 28 calendar days from the date the department issued its notice of site-specific submittal requirements, and (c) determined complete by the department, the application shall be considered under the zoning or other land use control ordinances in effect on the date the preapplication conference request was submitted to the department.

[Proposed subsection (3) would prevent the requirement of a preapplication meeting from delaying vesting, provided the preapplication materials are complete enough that a building permit can be issued within 30 days of the preapplication findings. (See West Main Assoc. vs. Bellevue decision)]

(4) Continuation of vesting. Building or land disturbance permit applications that are required to complete a valid (i.e. not expired) project permit approval for project permits identified in the following list (a-m) shall vest to the zoning and land use control ordinances in effect at the time the project permit application identified below was determined complete.

(a) Administrative Use;
(b) Commercial Site Plan Review;
(c) Conditional Use;
(d) Critical Areas Variance;
(e) Major Project Permit;
(f) Natural Resource Review;
(g) Planned Unit Development;
(h) Reasonable Use (Type II and III);
(i) Shoreline Conditional Use;
(j) Shoreline Exemption;
(k) Shoreline Substantial;
(l) Shoreline Variance;
(m) Zoning Variance.

(5) Building permit applications within recorded long and short subdivisions and binding site plans. Building permit applications, including associated land disturbance permits, shall be governed by conditions of approval, statutes, and ordinances in effect at the time of final approval pursuant to RCW 58.17.170.
Vesting duration for those building permit applications shall be governed by the time limits established for long subdivisions in RCW 58.17.170, unless the county finds that a change in conditions creates a serious threat to the public health or safety.

[Under this proposal, the 5- or 7-year vesting that applies specifically to long plats in RCW 58.17.170 is proposed to be extended to short plats and binding site plans. This is intended to provide greater clarity and predictability, and to be consistent with recent case law. Based on the County’s current understanding of statute and case law, water rights are not currently considered “zoning or other land use controls.”]

(6) Building and fire code requirements. Building and fire code provisions adopted per WCC Title 15 vest at the time a building permit application is determined complete.

[The proposed subsection clarifies that building and fire code vests at the time of complete building permit application, whereas land use controls (e.g. zoning and critical areas) vest with the original project permit, consistent with current 20.04.031(3)(d).]

(7) Duration. Vesting status established through subsections (1) through (5) of this section runs with the application and expires upon denial of the application by the county, withdrawal of the application by the applicant, rejection of the application per WCC 22.05.050(5), expiration of the application per WCC 22.05.130(1)(a)(i), or expiration of the approved permit per WCC 22.05.140.

[Current 20.04.031(1) through (5) on vesting to be deleted:]

22.05.070 Notice of application.
(1) For Type II, III, and IV applications per WCC 22.05.020, the county shall issue a notice of application within 14 calendar days⁴ of a determination of completeness. The date of notice shall be the date of mailing.

(2) If the county has made a State Environmental Policy Act (SEPA) threshold determination of significance concurrently with the notice of application, the county shall combine the determination of significance and scoping notice with the notice of application.

(3) Notice shall include:

(a) The date of application, the date of determination of completeness for the application, and the date of the notice of application;

(b) A description of the proposed project action and a list of the project permits included in the application, and, if applicable, a list of any studies requested by the county;

⁴ RCW 36.70B.110(2)
(c) The identification of other permits not included in the application to the extent known by the county;

(d) The identification of environmental reviews conducted, including notice of existing environmental documents that evaluate the proposed project (including but not limited to reports, delineations, assessments and/or mitigation plans associated with critical area reviews) and, if not otherwise stated on the document providing notice of application, the location where the application and any studies can be reviewed;

(e) Any other information determined appropriate by the county;

(f) A statement indicating those development regulations that will be used for project mitigation or a determination of consistency if they have been identified at the time of notice;

(g) A statement of the minimum public comment period which shall be 14 calendar days for all project permits except for shoreline substantial development, shoreline conditional use, shoreline variance and major project permits for mitigation banks which shall have a minimum comment period of no more than 30 calendar days.

(h) A statement of the right of any person to comment on the application and receive notice of and participate in any hearings, request a copy of the decision once made and to appeal a decision when allowed by law. The department may accept public comments at any time prior to the close of the open record public hearing, or if there is no public hearing, prior to the decision on the project permit. In addition, the statement shall indicate that any person wishing to receive personal notice of any decisions or hearings must notify the department.

(4) The department shall issue a notice of application in the following manner:

(a) The notice shall be published once in the official county newspaper and on the Whatcom County website. The applicant shall bear the responsibility of paying for such notice.

[As a courtesy the department also provides notice to other publications and individuals who have submitted a written request to receive such notice through the County’s web site.]

(b) Additional notice shall be given using the following method:

(i) For sites within urban growth areas: Application notice shall be sent to all property owners within 300 feet of the external boundaries of the subject property as shown by the records of the county assessor;

(ii) For sites outside urban growth areas: Application notice shall be sent to all property owners within 1,000 feet of the external boundaries of the subject property as shown by the records of the county assessor;

(5) The county shall send notices of application to neighboring cities and other agencies or tribes that will potentially be affected, either directly or indirectly, by
the proposed development. Notice shall also be given to public utilities, if within 500 feet of the area submitted in the application.

(6) All public comments received on the notice of application must be received by the department of planning and development services by 4:30 p.m. on or before the last day of the comment period.

(7) Except for a determination of significance, the county shall not issue its SEPA threshold determination or issue a decision or recommendation on a permit application until the end of the public comment period on the notice of application. If an optional determination of nonsignificance (DNS) process is used, the notice of application and DNS comment period shall be combined.

(8) Public notice given for project permit applications, SEPA documents, project hearings, and appeals hearings as required by this chapter and other provisions of the county code may be combined when practical, where such combined notice will expedite the permit review process, and where provisions applicable to each individual notice are met through the combined notice.

22.05.080 Posting of Application. [existing text from 20.84.235(2)]
Where posting of public notice is required per WCC 22.05.020, the department shall post public notices of the proposal on all road frontages of the subject property and adjacent shorelines on or before the notice of application date and shall be visible to adjacent property owners and to passing motorists. Said notices shall remain in place until three days after the comment period closes.

22.05.090 Open record hearings.
As shown in WCC 22.05.020, Type III and Type IV applications require an open record public hearing. These hearings are subject to the following:

(1) Open record hearing notice.

(a) The hearing examiner shall publish a notice of open record hearing once in the official county newspaper and on the Whatcom County website at least 14 calendar days prior to the hearing. The notice shall consist of the date, time, place, and type of the hearing. In addition, personal notice shall be provided to any person who has requested such notice in a timely manner, consistent with WCC 22.05.070(3)(h).

(b) Within two days of the published notice the applicant shall be responsible for posting three copies of the notice in a conspicuous manner on the property upon which the use is proposed. Notices shall be provided by the hearing examiner.

(c) An affidavit verifying distribution of the notice must be submitted to the hearing examiner two working days prior to the open record hearing.

(d) The hearing examiner shall send notice of an open record hearing to neighboring cities and other agencies or tribes that will potentially be affected, either directly or indirectly by the proposed development. The hearing examiner shall be responsible for such notification.
(e) The applicant shall pay all costs associated with providing notice.

(2) One open record hearing. A project proposal subject to WCC 22.05 shall be provided with no more than one open record hearing and one closed record hearing pursuant to RCW 36.70B. This restriction does not apply to an appeal of a determination of significance as provided in RCW 43.21C.075.

(3) Combined county and agency hearing. Unless otherwise requested by an applicant, the county shall allow an open record hearing to be combined with a hearing that may be necessary by another local, state, regional, federal or other agency for the same project if the joint hearing can be held within the time periods specified in WCC 22.05, or if the applicant agrees to waive such time periods in the event additional time is needed in order to combine the hearings. The combined hearing shall be conducted in Whatcom County pursuant to RCW 36.70B.

(4) Quasi-judicial actions, including applications listed as Type III and IV applications in WCC 22.05.020, are subject to the appearance of fairness doctrine, RCW 42.36. The hearing examiner shall administer the open record hearing and issue decisions or recommendations in accordance with RCW 42.36.

22.05.100 Consistency review and recommendations.
During project permit review, the review authority shall determine if the project proposal is consistent with the county’s comprehensive plan, other adopted plans, existing regulations and development standards.

(1) For Type I and II applications, the conclusions of a consistency determination made under this section shall be documented in the project permit decision.

(2) For Type III and IV applications the department shall prepare a staff report on the proposed development or action. Staff shall file one consolidated report with the hearing examiner at least 10 calendar days prior to the scheduled open record hearing. The staff report shall:

(a) Summarize the comments and recommendations of county departments, affected agencies, special districts and public comments received within the 14-day or 30-day comment period as established in WCC 22.05.070(6).

(b) Provide an evaluation of the project proposal for consistency as indicated in this section.

(c) Include recommended findings, conclusions, and actions regarding the proposal.

[The proposal to change the staff report time frame to ten days is consistent with public notice publication requirements of 22.05.090(1)(a).]

(3) For all project permit applications, if more information is required to determine consistency at any time in review of the application, the department may issue a notice of additional requirements. The notice of additional requirements shall allow
the applicant 180 calendar days from the date of issuance to submit all required
information. The director or designee may extend this period for no more than
cumulative 24 months upon written request by the applicant, provided the request
is submitted before the end of the first 180-day period. A notice of additional
requirements is not a final administrative determination.

[Proposed subsection (3) codifies a 180-day response period for NOAR,
consistent with current PDS practice.]

22.05.110 Final decisions.
(1) The director or designee’s final decision on all Type I or II applications shall be
in the form of a written determination or permit. The determination or permit may
be granted subject to conditions, modifications, or restrictions that are necessary to
comply with all applicable codes.

(2) The hearing examiner’s final decision on all Type III applications per WCC
22.05.020 or appeals per 22.05.160(1) shall either grant or deny the application or
appeal.

(a) The hearing examiner may grant Type III applications subject to conditions,
modifications or restrictions that the hearing examiner finds are necessary to
make the application compatible with its environment, carry out the objectives
and goals of the Comprehensive Plan, statutes, ordinances and regulations as
well as other official policies and objectives of Whatcom County.

(b) Performance bonds or other security, acceptable to the prosecuting attorney,
may be required to ensure compliance with the conditions, modifications and
restrictions.

(c) The hearing examiner shall render a final decision within 14 calendar days
following the conclusion of all testimony and hearings. Each final decision of the
hearing examiner shall be in writing and shall include findings and conclusions
based on the record to support the decision.

(d) No final decision of the hearing examiner shall be subject to administrative
or quasi-judicial review, except as provided herein.

(e) The applicant, any party of record or any county department may appeal any
final decision of the hearing examiner to superior court, except as otherwise
specified in WCC 22.05.020.

[22.05.020 proposes changing the appeal body from County Council to
Superior Court to separate legislative and quasi-judicial functions.
Accordingly, the current 20.92.620 through .840, which describes the
County Council appeal process, is proposed to be omitted.]

22.05.120 Recommended decisions to county council.
(1) For Type IV applications per WCC 22.05.020 the hearing examiner’s
recommendations to the county council may be to grant, grant with conditions or
deny an application. The hearing examiner’s recommendation may include
conditions, modifications or restrictions as may be necessary to make the
application compatible with its environment, carry out the objectives and goals of the Comprehensive Plan, statutes, ordinances and regulations as well as other official policies and objectives of Whatcom County.

(2) Each recommended decision of the hearing examiner for an application identified as a Type IV application per WCC 20.05.020 shall be in writing to the clerk of the county council and shall include findings and conclusions based upon the record to support the decision. Such findings and conclusions shall also set forth the manner in which the decision carries out and conforms to the county’s Comprehensive Plan and complies with the applicable statutes, ordinances or regulations.

(3) The deliberation of the county council on quasi-judicial actions shall be in accordance with WCC 22.05.090(4) and Chapter 42.36 RCW.

(4) For planned unit developments and major project permits the following shall apply:

(a) The recommendation of the hearing examiner regarding planned unit developments and major project permits shall be based upon the criteria set forth in WCC 20.85.335 and 20.88.130, respectively.

(b) The hearing examiner shall file the recommendation with the clerk of the county council within 21 calendar days following the conclusion of the open record hearing.

(c) Within 28 calendar days after the hearing examiner’s recommendation has been filed, the county council shall hold a public meeting, not an open record public hearing, to deliberate on the project application and, within 21 calendar days of the meeting, issue a final written decision. The county council may exceed the time limits in this subsection if it makes written findings that a specified amount of additional time is needed to process a specific application or project type, per RCW 36.70B.080(1).

[The optional review by Planning Commission is proposed for omission because that step makes it difficult to complete the project review within 120 days required in proposed 22.05.130(1)]

(5) The county council’s final written decision may include conditions when the project is approved and shall state the findings of fact upon which the decision is based.

(6) Any deliberation or decision of the county council shall be based solely upon consideration of the record established by the hearing examiner, the recommendations of the hearing examiner and the criteria set forth in county code.

22.05.130 Permit review timeframes.
(1) The county shall issue a notice of final decision for all permit types, including procedures for administrative appeal and notice that affected property owners may request a change in valuation for property tax purposes, to the applicant, the Whatcom County assessor, and any person who requested notice or submitted
substantive comments on the application within 120 calendar days of the date the department determined the application complete\(^5\), except as provided below:

(a) The following time periods shall be excluded from the calculation of the number of days elapsed:

(i) Any period during which the applicant has been required by the county to correct plans, perform required studies, or provide additional, required information through a notice of additional requirements, per WCC 22.05.100(3). The period shall be calculated from the date the county issues a notice of additional requirements until the date the county receives all of the requested additional information.

(ii) Any period during which an environmental impact statement is being prepared following a determination of significance pursuant to Chapter 43.21C RCW and WCC Title 16;

(iii) The period specified for administrative appeals of project permits as provided in Chapter 2.11 WCC;

(iv) The period specified for administrative appeals of development standards as provided in WCC 12.08.035(I);

(v) Any period in which the applicant has not met public notification requirements;

(vi) Any period of time mutually agreed upon in writing by the applicant and the county.

(b) The time limits established by this section shall not apply to a project permit application that:

(i) Requires an amendment to the Whatcom County comprehensive plan or a development regulation in order to obtain approval.

(ii) Requires approval of a new fully contained community as provided in RCW 36.70A.350, a master planned resort as provided in RCW 36.70A.360, or the siting of an essential public facility as provided in RCW 36.70A.200.

(iii) Is substantially revised by the applicant, including all redesigns of proposed land divisions, in which case a new time period shall start from the date at which the revised project application is determined to be complete.

(c) The county may extend notice of final decision on the project if the county can document legitimate reasons for such a delay. In such a case the county shall provide written notice to the applicant at least 14 calendar days prior to the deadline for the original notice of final decision. The notice shall include a

\(^5\) RCW 36.70B.130
statement of reasons why the time limits have not been met and a date of issuance of a notice of final decision.

(2) If an applicant believes a project permit application has not been acted upon by the county in a timely manner or otherwise consistent with this chapter, the applicant or authorized representative may request a meeting with the director to resolve the issue. Within 14 calendar days of the meeting, the director shall:

(a) Approve the permit if it is within the director’s authority to do so, provided the approval would not violate state or county regulations, or

(b) Deny the permit if it is within the director’s authority to do so, or

(c) Respond in writing with the department’s position, or a mutually acceptable resolution of the issue, which may include a partial refund of application fees at the director’s discretion.

[This proposed change is intended to maintain accountability on the part of the county and provide an avenue for resolving disputes, while removing a provision that could potentially approve an application that violates state or county regulations.]

(3) Any final order, permit decision or determination issued by Whatcom County shall include a notice to the applicant of his or her appeal rights per WCC 22.05.160.

22.05.140 Expiration of project permits.
(1) Project permit approval status shall expire two years from the date of approval except where a different duration of approval is authorized by Whatcom County Code, or is established by a court decision or state law, or executed by a development agreement. The decision maker may extend this period up to one year from the date of original expiration upon written request by the applicant.

(2) Any complete project permit application for which no information has been submitted in response to the department’s notice of additional requirements per WCC 22.05.100(3) shall expire at the end of the time limit established in 22.05.100(3).

[This provision for applications to expire after no response within the NOAR time frames allows for consistent predictable outcomes, and establishes clear expectations.]

(3) For projects that have received a SEPA determination of significance per WCC 16.08, all underlying project permit applications shall expire when one of the following occurs:

(a) The applicant has not in good faith maintained a contract with a person or firm to complete the Environmental Impact Statement (EIS) as specified in the scoping document. The applicant is responsible for informing the county of the status of such contract. If there is no notice given to the County, all underlying project permit applications shall expire upon the end date of the contract; or
(b) The mutually agreed timeframe to complete the Draft EIS or Final EIS has lapsed.

(4) Project permits which received preliminary approval or a final decision prior to February 22, 2009 that did not include an expiration timeframe in the conditions of approval shall expire on [two years after the effective date of this ordinance].

[Proposed subsection (4) allows opportunity to obtain approval or implementation within two years for projects without an approval timeframe.]

22.05.150 Permit revocation procedure.
(1) Upon notification by the director that a substantial violation of the terms and conditions of any previously granted zoning conditional use, shoreline substantial development or shoreline conditional use permit exists, the hearing examiner shall issue a summons as per WCC 2.11.220 to the permit holder requiring said permit holder to appear and show cause why revocation of the permit should not be ordered. Failure of the permit holder to respond may be deemed good cause for revocation.

(2) Upon issuance of a summons as set forth in subsection (1) of this section, the hearing examiner shall schedule an open record hearing to review the alleged violations. The summons shall include notice of the hearing and shall be sent to the permit holder and the director of planning and development services no less than 12 calendar days prior to the date of the hearing. At the hearing the hearing examiner shall receive evidence of the alleged violations and the responses of the permit holder, as per the business rules of the hearing examiner’s office. Testimony shall be limited to that of the division and the permit holder except where additional evidence would be of substantial value in determining if revocation should be ordered. The land use division’s evidence may include the testimony of witnesses.

(3) Upon a showing of violation by a preponderance of the evidence as alleged, the hearing examiner may revoke the permit or allow the permit holder a reasonable period of time to cure the violation. If the violation is not cured within the time set by the hearing examiner, the permit shall be revoked. Where a time to cure the violation has been set out, no further hearing shall be necessary prior to the revocation. The permit holder shall have the burden of proving that the violation has been cured within the time limit previously set. Such evidence as is necessary to demonstrate that the violation has been cured may be submitted to the hearing examiner by either the permit holder or the director of planning and development services. Any revocation shall be accompanied by written findings of fact and conclusions of law. The permit holder shall be notified of any revocation within 14 calendar days of the revocation.

22.05.160 Appeals.
(1) Any party of record may appeal any order, final permit decision or final administrative determination made by the director or designee in the administration or enforcement of any chapter to the hearing examiner, who has the authority to hear and decide such appeals per WCC 2.11.210.
(a) An appeal shall be filed with the department within 14 calendar days of the issuance of a final permit decision and shall be accompanied by a fee as specified in the Unified Fee Schedule. The written appeal shall include:

(i) The action or decision being appealed and the date it was issued;

(ii) Facts demonstrating that the person is adversely affected by the decision;

(iii) A statement identifying each alleged error and the manner in which the decision fails to satisfy the applicable decision criteria;

(iv) The specific relief requested; and

(v) Any other information reasonably necessary to make a decision on the appeal.

[Proposed items 1(a)(i)-(v) are copied from Bellingham Municipal Code 21.10.250]

(b) The hearing examiner shall schedule a public hearing on the appeal to be held within 60 calendar days following the department’s receipt of the application for appeal unless otherwise agreed upon by the county and the appellant.

(2) The applicant, any party of record, or any county department may appeal any final decision of the hearing examiner to Superior Court or other body as specified by WCC 22.05.020. The appellant shall file a written notice of appeal within 14 calendar days of the final decision of the hearing examiner.

22.05.170 Annual report.
Staff shall prepare an annual report on the implementation of this chapter and submit it to the council.

22.05.180 Interpretation, conflict and severability.

(1) Interpret to Protect Public Welfare. In the event of any discrepancies between the requirements established herein and those contained in any other applicable regulation, code or program, the regulations which are more protective of the public health, safety, environment and welfare shall apply.

(2) Severability. The provisions of this chapter are severable. If a section, sentence, clause, or phrase of this title is adjudged by a court of competent jurisdiction to be invalid, the decision shall not affect the remaining portions of this chapter.
Chapter 22.10

LEGISLATIVE ACTION PROCEDURES

(This new chapter is adapted from the current Chapter 2.160 Comprehensive Plan Amendments, and Chapter 20.90 Amendments, along with new text that combines and streamlines existing process descriptions. Current text is shown in normal black font, with proposed changes shown in red. The current chapter/section numbers are shown as deleted with the proposed numbers replacing them.)

Sections:
22.10.010 Purpose and applicability.
22.10.020 The docket.
22.10.030 Processing of docketed amendments.
22.10.040 Concurrent review of comprehensive plan amendments
22.10.050 Notice of public hearing.
22.10.060 Approval criteria.

22.10.010 Purpose and applicability.
This chapter establishes the procedures for legislative actions amending the Whatcom County Comprehensive Plan and the development regulations that implement that plan. Amendments to the comprehensive plan includes changes to the plan’s text and maps, and amendments to the development regulations include changes to the official zoning map and the text in WCC Titles 16, 20, 21, and 23. For purposes of this chapter, comprehensive plan amendments include amendments to subarea plans.

22.10.020 The docket.
(1) The department of planning and development services ("department") shall maintain a proposed docket of comprehensive plan and development regulation amendment applications and shall present it to the county council for review once a year on or about March 1. The county council may, by resolution, approve a docket listing all applications that may be processed per the provisions of this chapter.

(2) The department, the executive, the planning commission, or the county council by majority vote, may place a proposed amendment on the docket at any time.

(3) A party other than the county council, executive, the planning commission or the department may suggest an amendment to the comprehensive plan or development regulations by making application on forms provided by the department and submitting any required docketing fee.

(a) Applications for suggested amendments must be submitted by December 31 in order to be included on the proposed docket presented to the county council at its next annual docket review. The department shall review the application for completeness and may request additional information to ensure the application is complete before scheduling it for the annual docket review.
(b) If the county council docket a suggested amendment, all required amendment application fees are due within 30 calendar days after it is docketed. If all fees are not paid within 30 calendar days after being docketed, the department shall close the application and remove it from the docket. When docketing an application, the county council may waive the application fees if it finds the proposed amendment would clearly benefit the community as a whole.

[The intent of proposed section 22.10.020(1)-(3) is to clearly differentiate between the proposed docket presented by the department, and the final docket approved by resolution of the County Council. RCW 36.70.470's allowance for suggested amendments is accommodated, with the requirement that the suggestion be accompanied by a completed application and a docketing fee (not the full application fee, which is charged if it is docketed, unless waived by the County Council; the "clearly benefit the community" finding is currently required in WCC 2.160.110.]

(4) The county council, by majority vote, may remove a proposed amendment from the approved docket by motion, unless:
   (a) the amendment was proposed by a party other than the county council or the department per WCC 22.10.020(3), and
   (b) the applicant has provided all information required by the planning and development services department. The department shall notify the applicant not less than 30 calendar days prior to consideration of removal from the docket. If the county council has not acted upon a docketed proposed amendment during the year for which it has been docketed, the county council may place the amendment on the following year's docket.

22.10.030 Processing of docketed amendments.
(1) The department shall review docketed comprehensive plan and development regulation amendment applications as provided below:

   (a) For suggested amendment applications filed per WCC 22.10.020(3), the department shall evaluate the applications for completeness and may request additional information of the applicant prior to requesting the appropriate hearing body to schedule a public hearing. Where a development regulation amendment requires a comprehensive plan amendment, the two amendments shall be processed at the same time.

   (b) The department shall conduct environmental review under SEPA and prepare a staff report including recommendations and/or options for each docketed amendment. Both the report and the result of the environmental review shall be forwarded to the planning commission, and to the applicable city staff if the proposed amendment applies to land within a city's urban growth area.

   (c) The staff report shall evaluate the proposed amendment(s) in relationship to the approval criteria of WCC 22.10.060, and consider any environmental impacts or mitigation measures identified by the Whatcom County SEPA official. If the proposed amendment includes land within a city's urban growth area, the staff report shall also address any comments from the city regarding consistency with
the applicable city comprehensive plan and the ability of the city to provide needed utility services.

(2) Docketed comprehensive plan and development regulation amendment applications shall receive a public hearing by the planning commission subject to the notice requirements of 22.10.050. Following the public hearing, the planning commission shall vote to adopt findings of fact and recommended actions, which the department shall transmit to the county council. In addition to the public hearing, the planning commission may hold public work sessions to discuss a proposed amendment.

(3) The county council may hold a public hearing on the docketed amendment in addition to the planning commission’s public hearing. If the county council decides the public interest is better served by considering a final action that differs from the planning commission recommendation, the county council shall hold a public hearing. The county council, by majority vote, may adopt the amendment by ordinance, reject the amendment, or remand the proposed amendment to the planning commission for further review.

(4) Actions that are quasi-judicial as defined in 42.36.010 RCW (including but not limited to a zoning map amendment for a single lot) are subject to the appearance of fairness doctrine, Chapter 42.36 RCW. For a proposed amendment that is a quasi-judicial action, the planning commission and county council shall process the application in accordance with Chapter 42.36 RCW in addition to the requirements of this section.

22.10.040 Concurrent review of comprehensive plan amendments
(1) While public hearings and other public discussion of proposed comprehensive plan amendments may take place at any time of the year, the county council’s final review and adoption of those amendments shall take place concurrently, no more frequently than once per calendar year, in accordance with RCW 36.70A.130(2)(a). Final adoption should occur on or about February 1.

(2) The following comprehensive plan amendments are excluded from the requirement of annual concurrent review and may be adopted at any time:

(a) The initial adoption of a subarea plan,

(b) Adoption or amendment of the shoreline master program under procedures set forth in Chapter 90.58 RCW,

(c) The amendment of the capital facilities element concurrent with adoption or amendment of the county budget,

(d) Amendments needed to resolve an appeal of the comprehensive plan filed with the growth management hearings board or the court, or

(e) Amendments necessary in cases where the county council finds an emergency exists.
22.10.050 Notice of public hearing.
(1) The county shall publish notice of the public hearing at least once in the official county newspaper and on the Whatcom County web site no fewer than 10 calendar days prior to the hearing. The notice shall include the date, time, place, and subject of the hearing.

[As a courtesy the department also provides notice to other publications and individuals who have submitted a written request to receive such notice through the County’s web site.]

(2) For public hearings involving a quasi-judicial zoning map amendment application, per WCC 22.10.030D, the county shall provide the following notice in addition to the requirements of subsection A of this section:

(a) The county shall mail notice to property owners as follows:

(i) For zoning map amendments within existing urban growth areas: At least 10 calendar days prior to the scheduled hearing date, hearing notice shall be mailed to all property owners within 300 feet of the external boundaries of the subject property as shown by the records of the county assessor. The applicant shall submit mailing labels with a typed address for each of the above-referenced property owners.

(ii) For zoning map amendments outside existing urban growth areas: At least 10 calendar days prior to the scheduled hearing date, hearing notice shall be mailed to all property owners within 1,000 feet of the external boundaries of the subject property as shown by the records of the county assessor. The applicant shall submit mailing labels with a typed address for each of the above-referenced property owners.

(iii) For zoning map amendments that involve rezoning property to an Airport Operations District: At least 10 calendar days prior to the scheduled hearing date, hearing notice shall be mailed to all property owners within 1,500 feet of the external boundaries of the subject property as shown by the records of the county assessor. The applicant shall submit mailing labels with a typed address for each of the above-referenced property owners.

(iv) For zoning map amendments that involve rezoning property to a Mineral Resource Land designation: At least 10 calendar days prior to the scheduled hearing date, hearing notice shall be mailed to all property owners within 2,000 feet of the external boundaries of the subject property as shown by the records of the county assessor. The applicant shall submit mailing labels with a typed address for each of the above referenced property owners.

(b) The county shall prepare and the applicant shall post signs giving notice of the hearing in conspicuous locations on the property at least 10 calendar days prior to the hearing.

(c) The county shall send notice to the appropriate city, when the proposed amendment is within or would expand the urban growth area, and to agencies,
school districts, and tribes that will potentially be affected by the proposed amendment at least 10 calendar days prior to the hearing.

(d) For sites within 4,500 feet of the runway of Lynden Airport or Floathaven Sea Plane Base: At least 10 calendar days prior to the scheduled hearing date, application notice shall be sent to the city manager (if applicable), airport board or commission (if applicable), and an official representative of the airport.

(e) For sites within 10,000 feet of the runway of Bellingham International Airport: At least 10 calendar days prior to the scheduled hearing date, application notice shall be sent to the Port of Bellingham.

(f) All notices shall specify the date, time, location, and purpose of the hearing and provide a description and the location of the proposed rezone. The public shall be invited to submit written comments and attend the hearing to provide oral comments.

**22.10.060 Approval criteria.**
(1) In order to approve a comprehensive plan amendment, the planning commission and the county council shall find all of the following:

(a) The amendment conforms to the requirements of the Growth Management Act, is internally consistent with the county-wide planning policies and is consistent with any interlocal planning agreements.

(b) Further studies made or accepted by the department of planning and development services indicate changed conditions that show need for the amendment.

(c) The public interest will be served by approving the amendment. In determining whether the public interest will be served, factors including but not limited to the following shall be considered:

   (i) The anticipated effect upon the rate or distribution of population growth, employment growth, development, and conversion of land as envisioned in the comprehensive plan.

   (ii) The anticipated effect on the ability of the county and/or other service providers, such as cities, schools, water and/or sewer surveyors, fire districts, and others as applicable, to provide adequate services and public facilities including transportation facilities.

   (iii) Anticipated impact upon designated agricultural, forest and mineral resource lands.

(d) The amendment does not include or facilitate spot zoning.
(2) In order to approve an amendment to the development regulations, the planning commission and county council shall find that the amendment is consistent with the comprehensive plan.

Chapter 22.15
CODE COMPLIANCE PROCEDURES
(Reserved)

[This is a place-holder for a future consolidated chapter on enforcement procedures. It would largely be based on current Chapter 20.94 Enforcement and Penalties, with enforcement procedures from other titles added, because PDS staff enforces more than just Title 20 Zoning.]

Chapter 22.20
LAND USE AND DEVELOPMENT CODE INTERPRETATION PROCEDURES

[Based on City of Bellingham’s code interpretation process, BMC 21.10.270]
Sections:
22.20.010 Purpose and applicability.
22.20.020 Request for interpretation.
22.20.030 Procedure.
22.20.040 Factors for Consideration.
22.20.050 Issuance of Interpretation.
22.20.060 Appeals.

22.20.010 Purpose and applicability
(1) The purpose of this chapter is to establish the procedure for interpreting provisions of Whatcom County’s land use and development codes to clarify conflicting or ambiguous wording.

(2) The director of planning and development services (director) is authorized to make written interpretations of the provisions of the following titles of WCC:

(a) Title 16 Environment,
(b) Title 20 Zoning,
(c) Title 21 Land Division Regulations,
(d) Title 22 Land Use and Development Procedures, and
(e) Title 23 Shoreline Management.

(3) Issuance of an interpretation of the provisions of the code shall not amend the code.

**22.20.020 Request for interpretation.**
Anyone may request an interpretation consistent with the provisions of this chapter. Any person requesting an interpretation of the code shall submit a written request specifying each provision of the code for which an interpretation is requested, why an interpretation of each provision is necessary, and any reasons or material in support of a proposed interpretation.

**22.20.030 Procedure.**
(1) The director shall determine how to process the code interpretation request. The request may be:

   (a) Processed as a Type I decision per WCC 22.05.020; or

   (b) Consolidated with the process associated with the review of the application.

(2) The director shall consult with the Department of Ecology regarding any interpretation of the shoreline management program.

**22.20.040 Factors for consideration.**
In making an interpretation of the provisions of the code, the director shall consider the following:

(1) The applicable provisions of the code including their purpose and context;

(2) The impact of the interpretation on other provisions of the code;

(3) The implications of the interpretation for development within the county as a whole; and

(4) The applicable provisions of the comprehensive plan and other relevant codes and policies.

**22.20.050 Issuance of interpretation.**
The director shall issue a written interpretation within 30 calendar days of the department’s receipt of the interpretation request. Issuance of the interpretation shall include notification of the person making the request and publication of the interpretation on the county’s web site. The director may docket an amendment to clarify the affected section of county code per WCC 22.10.020(2).

**22.20.060 Appeals.**
Any party of record may file an appeal of a formal code interpretation. The appeal shall follow all rules and procedures for appeals to the hearing examiner as set forth in WCC 22.05.160.
Chapter 22.25
LAND USE AND DEVELOPMENT FEES

[Proposed to be moved from WCC 20.04.090 - .092 because it applies to all land use and development fees, not just those in Title 20 zoning.]

Sections:
22.25.010 Purpose and applicability
22.25.020 Application fees and other fees.
22.25.030 Reduced application fees.
22.25.040 Refund of application fees.

22.25.010 Purpose and applicability
(1) The purpose of this chapter is to establish the authority for collecting fees for various land use and development review services, as well as provisions for reductions and refunds of those fees.

(2) The provisions of this chapter shall apply to fees charged for procedures contained in the following titles of WCC:

(a) Title 15 Building and Construction,
(b) Title 16 Environment,
(c) Title 17 Flood Damage Prevention,
(d) Title 20 Zoning,
(e) Title 21 Land Division Regulations,
(f) Title 22 Land Use and Development Procedures, and
(g) Title 23 Shoreline Management.

22.25.020 Application fees and other fees.
Fees for project permit applications, legislative amendments and fees for other approvals and reviews as set forth in this title shall be as provided in the Unified Fee Schedule.

22.25.030 Reduced application fees.
When any given project requires more than one of the following permits or applications, the total amount of fees shall be reduced by 25 percent of the required aggregate permit and application fees; provided any fees required for processing of an EIS shall not be included as part of the total amount of fees to be reduced by 25 percent.

(1) Subdivision plat application;
(2) Rezone application;
(3) Shoreline substantial development permit, variance or conditional use;
(4) Major development permit;
(5) Conditional use permit;
(6) Variance;
(7) Planned unit development.

22.25.040 Refund of application fees.
Refunds of application fees for project permits and for amendments to the Whatcom County Comprehensive Plan, development regulations and official maps shall be computed based on the following, unless otherwise indicated in Whatcom County Code. All refund requests shall be submitted in writing to the department of planning and development services. The date of application for a refund request shall be the date the written refund request is received by the department. For the purpose of computing elapsed calendar days, the day after the date of application or deadline date as appropriate shall be counted as day one.

(1) Fees for Project Permits.

(a) Applications withdrawn on or before the fourteenth calendar day after the date of application shall be eligible for a refund of 90 percent of all application fees including any SEPA fees.

(b) Applications withdrawn after the period set forth in subsection (1)(a) of this section but on or before the ninetieth calendar day after the date of application shall be eligible for a refund of 50 percent of all application fees except for any SEPA fees which shall not be eligible for a refund.

(c) Applications withdrawn after the ninetieth calendar day after the date of application shall not be eligible for a refund.

(d) Notwithstanding the above, no fees shall be refunded for any permit or approval that has been issued or granted by the county.

(e) The director may authorize a full refund of any project permit application fee paid in error.

(2) Fees for Amendments to the Whatcom County Comprehensive Plan, Development Regulations, and Official Maps.

(a) Applications for amendments that are withdrawn on or before the fourteenth calendar day after the deadline for submitting the fee shall be eligible for a refund of 90 percent of all application fees including SEPA fees. If there is no deadline for submitting the fee, the 90-percent refund shall be given if the application is withdrawn on or before the fourteenth calendar day after the fee was submitted.
(b) Applications for amendments that are withdrawn after the period set forth in subsection (2)(a) of this section but on or before the ninetieth calendar day after the deadline for submitting the fee shall be eligible for a refund of 50 percent of all application fees except for SEPA fees which shall not be eligible for a refund. If there is no deadline for submitting the fee, the 50-percent refund shall be given if the application is withdrawn on or before the ninetieth calendar day after the fee was submitted.

(c) Applications for amendments that are withdrawn after the 90 calendar days shall not be eligible for a refund.

(3) Withdrawal of an application shall constitute full surrender of any express or implied rights inherent in an application which has been perfected and accepted by the planning and development services department or its designees.
EXHIBIT A
Whatcom County Code Title 22
AMENDMENTS

Title 22

ReservedLand Use and Development Procedures
[This would create a new WCC Title 22 that would be the location for all procedural requirements for land use and development applications, separate from the land use and development regulations. This takes the place of the previous Title 22, the Guide Meridian Improvement Plan, which was repealed during the 2016 Comprehensive Plan update.]

Chapters:

22.05 Project Permit Procedures
22.10 Legislative Action Procedures
22.15 Code Compliance Procedures
22.20 Land Use and Development Code Interpretation Procedures
22.25 Land Use and Development Fees

Chapter 22.05

PROJECT PERMIT PROCEDURES
[This new chapter is adapted mostly from the current Chapter 2.33 Permit Review Procedures, and procedural passages from other chapters. Current text is shown in normal black font with proposed changes shown in red. The current chapter/section numbers are shown as deleted with the proposed numbers replacing them.]

Sections:
2.33.010-22.05.010 Purpose and applicability.
A.(1) The purpose of this chapter is to combine and consolidate the application, review, and approval processes for project permits and appeals as defined in WCC 20.97.321, consolidate the application, review, and approval processes for land development in Whatcom County in a manner that is easily understood and concise. It is further intended for this chapter to comply with state direction the provisions of Chapter 36.70B RCW. These procedures provide for a consolidated land use permit process and integrate the environmental review process with the procedures for review of land use decisions.

B.(2) This chapter describes how the county will apply to the processing of project permit applications for development ordinance appeals related to the provisions of WCC Title 15 Building and Construction, Title 16 Environment, Title 17 Flood Damage Prevention, Title 20 Zoning, Title 21 Land Division Regulations, and Title 23 Shoreline Management. The provisions of this chapter shall apply to all project permit applications as defined in RCW 36.70B.020, and other administrative decisions, as listed in the table in WCC 22.05.020, for a project permit that require an open record hearing including, but not limited to:

1. Conditional uses;
   2. Variances;
   3. Subdivisions;
   4. Shoreline permits when an open record hearing is required;
   5. General binding site plans;
   6. Lot consolidation relief;
   7. Site-specific rezones;
8. Reasonable use.

2.33.020 Exemptions:
The following are exempt from the provisions of this chapter:
A. Project permits not subject to open record hearings; including, but not limited to,
building permits and short plats, are exempt from the provisions of this chapter;
provided, that:
   1. The county shall make a determination of completeness pursuant to WCC
      2.33.050; and
   2. A final decision is made by the county pursuant to WCC 2.33.090:
      a. Within 90 days of a determination of completeness if the project is
         exempt from SEPA review unless a shorter review period is provided in
         other provisions of the Whatcom County Code;
      b. Within 120 days of a determination of completeness if the project is
         subject to SEPA review unless a shorter review period is provided in other
         provisions of the Whatcom County Code;
B. Planned unit development permits; provided, that the county shall make a
determination of completeness pursuant to WCC 2.33.050;
C. Major development permits; provided, that the county shall make a
determination of completeness pursuant to WCC 2.33.050;
D. Concomitant rezones; provided, that the county shall make a determination of
   completeness pursuant to WCC 2.33.050;
E. Legislative actions including standard map amendments, comprehensive plans or
   other related plans and regulations.

22.05.020 Project Permit Processing Table
(1) Marked boxes in the table below indicate the required general steps for
processing all project permit applications or administrative actions. The
requirements for each step listed in the top row of the table are provided in WCC
sections 22.05.040 through 22.05.160, as indicated. Specific requirements tofor
each project permit can be found through the references given in the table.
<table>
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<tr>
<th>Permit Application Processing Table</th>
<th>WCC Reference for Specific Requirements</th>
<th>Pre-App. Required (see 22.05.040)</th>
<th>Det. of Completeness Required (see 22.05.050)</th>
<th>Notice of Application Required (see 22.05.070)</th>
<th>Site Posting Required (see 22.05.080)</th>
<th>Issuel Notice of Open Record Hearing Required (see 22.05.090)</th>
<th>Open Record Hearing Held By (see 22.05.120)</th>
<th>County Decision Maker (see 22.11.210, 22.05.160, 23.60.150H)</th>
<th>Appeal Body (see 22.11.210, 22.05.160, 23.60.150H)</th>
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</table>

Check marks indicate a step is required; reference letters refer to the notes in subsection (2).
(2)) Project Permit Processing References

Table Notes. As indicated in the table in subsection (1), project permits are subject to the following additional requirements:

(a) Pre-application conferences subject to Title 23 Shoreline Master Program.

(b) Single family residential uses in critical areas or critical area buffers, except all uses in geological hazardous areas and setbacks.

(c) Shoreline Permit public hearing decision determined pursuant to Title 23 Shoreline Master Program. If a public hearing is required the Shoreline Permit shall be processed as a Type III application.

(d) Final decision filed with the Washington State Department of Ecology.

(e) All uses in a geological hazardous areas and setbacks and all non-single family residential uses in critical areas or critical area buffers.

(f) Building permit pre-application conference, subject to WCC 15.04.020(A)(3)(a).

(g) The hearing examiner may choose to consult with the development standards technical advisory committee concerning technical matters relating to land division applications. [from WCC 21.01.170]

(h) Whatcom County shall consider an appeal of a decision on a shoreline substantial development permit, shoreline variance, or shoreline conditional use only when the applicant/proponent waives his/her right to a single appeal to the shoreline hearings board. When an applicant/proponent has waived his/her right to a single appeal, such appeals shall be processed in accordance with the appeal procedures of subsection WCC 23.60.150.H.

(i) Except that appeals of Title 15 fire and building code requirements shall be made to the board of appeals per current building code, as adopted in WCC 15.04.010.

22.05.030 Consolidated permit review.1

A. At the request of the applicant, the county shall integrate and consolidate the review and decision on two or more project permits subject to this chapter that relate to the proposed project action unless the applicant requests otherwise. Consolidated Type I, II, III and IV permits shall be reviewed under the process required for the permit with the highest process type number per WCC 22.05.020. Level IV is considered the highest and Level I is considered the lowest process type.

B. If the applicant elects the consolidated permit review process, the determination of completeness, notice of application, and notice of final decision must include all project permits being reviewed through the consolidated permit review process.

1 RCW 36.70B.060(3)
C. The consolidated permit review may combine an open record hearing on one or more permits with an open record appeal hearing on other permits.

2.33.030-22.05.040 Preapplication conference.

A. (1) The purpose of a preapplication conference is to assist applicants in preparing development applications for submittal to the county by identifying applicable regulations and procedures. It is not intended to provide a staff recommendation on future permit decisions. Preapplication review does not constitute acceptance of an application by the county nor does it vest an application, unless otherwise indicated in Whatcom County Code, is to acquaint county staff with a sufficient level of detail regarding the proposal. It is also the purpose of this to acquaint the applicant with the applicable requirements of the Whatcom County Code.

(1) A preapplication conference is required as indicated in WCC 22.05.020, unless the planning director or designee grants a written waiver. For other permits, the applicant may request a preapplication conference.

B. (2) WCC 2.33.020(A)22.05.020 indicates the project permits for which a preapplication conference may be requested is required prior to the submittal of a project permit application subject to this chapter. For other permits, the applicant may request a preapplication.

C. (3) The county shall charge the applicant a fee for a preapplication conference per the Unified Fee Schedule. If the county makes a determination of completeness on a project permit submitted within one year of the notice of site-specific submittal requirements per subsection (b) of this section preapplication meeting, the preapplication fee shall be applied to the application cost.

D. (4) It is the responsibility of the applicant to initiate a preapplication conference through a written request or other means allowed by the technical administrator application. The request-application shall, at a minimum, include the following written information: all items identified on the pre-application form and the department’s administrative manual.

1. Property owner’s name, address, phone number, fax number;
2. Applicant/project representative name, address, phone number, fax number;
3. Project site parcel number;
4. Project site address (if available);
5. Written description of the project;
6. One copy of the current deed to the property;
7. A site plan drawn at a scale of one inch equals 100 feet or larger that includes the following:
   a. North arrow;
   b. Scale;
   c. All existing and proposed property lines with dimensions of parcel;
   d. Location and size of existing and proposed structures labelled appropriately;
   e. Location and size of existing and proposed easements and/or rights-of-way on or adjacent to the project site;
E. (5) The applicant may provide additional information to facilitate more detailed review. See WCC 2.33.040, Application submittal information, for additional submittal information the department’s administrative manual for additional submittal information.

F. (64) A preapplication conference shall be held-scheduled as soon as possible, but, in any event, no and held no later than 20-30 calendar days from the date of the applicant’s request, unless agreed upon by the applicant and the county.

(75) The county Whatcom County planning and development services staff shall invite the appropriate city to the preapplication meeting if the project is located within that city’s urban growth area. Invitation to the pre-application meeting for a project permit short plat or preliminary plat adjacent to or within one mile of the municipal boundaries of a city, or which contemplates the use of any city utilities, Notice shall also be given to appropriate public agencies and public utilities, if within 500 feet of the area submitted in the application. [Subsection (75) wording is proposed to be moved from 21.01.090(2) so the requirement to involve cities in preapplication review would apply to all project permits, not just subdivisions. This is consistent with adopted interlocal agreements.]

(86) The county should provide the applicant with notice of site-specific submittal requirements for application as soon as possible, but, in any event, no later than 10-14 calendar days from the date of the conference.

(97) Preapplication review and preapplication agreements shall be valid for one year. A new preapplication conference shall be required if, within one year of notice of site-specific submittal requirements per subsection (8) of this section, a new preapplication meeting, an associated project permit application is not filed with the county within one year of the notice of site-specific submittal requirements per subsection (6) or the application is substantially altered, the applicant shall be subject to a new preapplication review with a corresponding fee, unless waived per WCC 22.05.040(1).

(10) Preapplication review does not constitute acceptance of an application by the county nor does it vest an application, unless otherwise indicated in Whatcom County Code.

2.33.050 Permit receipt and Application, fees, and determination of completeness.

2.33.040 Application submittal information.

A. An application shall meet all submittal requirements before the proposal is submitted to the county for review. Upon submittal by the applicant, the county will accept the application and note the date of receipt. Receipt of an application does not constitute approval of the project proposal.
B. Within 14 days of accepting the application, the county shall make a determination of completeness or issue a determination that the application is incomplete.
C. A project permit application is complete when it meets the submittal information requirements of WCC 2.33.040, Application submittal information.
D. When an application is determined to be complete, the county shall proceed as follows:
   1. Issue a determination of completeness either via postal service or directly provided to the applicant within 14 days of accepting a project permit application.
   2. To the extent known, identify other agencies that may have jurisdiction over the project permit application. A list of agencies shall be included in the determination of completeness.
   3. A determination of completeness shall not preclude the county from requiring additional information or studies at any time prior to permit approval.
E. If the application is determined to be incomplete, then the following procedure shall take place:
   1. The county will notify the applicant that the application is incomplete and indicate what is necessary to make the application complete.
   2. The applicant shall have 90 days from the date that the notification was issued to submit the necessary information to the county. This period shall be extended at the applicant’s request in 90-day increments.
   3. Upon receipt of the requested additional information, the county shall have 14 days to make a determination and notify the applicant.
   4. If the applicant does not submit the necessary information to the county in writing within the 90-day period, the county shall make findings and issue a decision that the application is rejected.
F. If the county rejects an application, all vesting rights are lost.
G. If the county rejects an application because the applicant has failed to submit the required information within the necessary time period the county will return the application materials and the application will be closed.
H. A project permit application shall be deemed complete under this section if the county does not provide a written determination to the applicant that the application is incomplete within 14 days from the date of submittal as required in subsection E of this section. (Ord. 96-031 § 1).
(1) Project permit applications shall be submitted using current forms provided by the review authority. The submittal shall include: all applicable fees per Chapter 22.25 WCC, all materials required by the department’s administrative manual, and all items identified in the preapplication notice of site-specific submittal requirements.
(2) Upon submittal by the applicant, the county will accept the application and note the date of receipt. Receipt of an application does not constitute approval of the project proposal.
(3) Within 14 calendar days of receiving the application, the county shall provide to the applicant a written determination which states either that the application is incomplete...
complete or the application is incomplete. To the extent known by the county, other agencies of local, state, or federal government that may have jurisdiction shall be identified on the determination.

(4) A project permit application is complete when it meets the submittal requirements of the department’s administrative manual, includes items identified through the preapplication conference process and contains sufficient information to process the application even if additional information will be required. A determination of completeness shall not preclude the county from requiring additional information or studies at any time prior to permit approval. A project permit application shall be deemed complete under this section if the county does not issue a written determination to the applicant that the application is incomplete by the end of the 14th calendar day from the date of receipt.

(5) If the application is determined to be incomplete, the following shall take place:

(a) The county will notify the applicant that the application is incomplete and indicate what is necessary to make the application complete.

(b) The applicant shall have 90 calendar days from the date that the notification was issued to submit the necessary information to the county. If the applicant does not submit the necessary information to the county in writing within the 90-day period, the application shall be rejected. The director or designee may extend this period for an additional 90 calendar days upon written request by the applicant.

(c) Upon receipt of the necessary information, the county shall have 14 calendar days to make a determination and notify the applicant whether the application is complete or what additional information is necessary.3

(6) A determination of an incomplete application is an appealable final administrative determination, subject to WCC 22.05.160(1).

20.04.031 22.05.060 Vesting of permits. [The proposal would replace the County’s vesting provisions of WCC 20.04.031 in this subsection so that they will clearly apply to all development permits (not just those listed in Title 20 Zoning) and to add clearer language that is more consistent with wording in state law and with recent court decisions. The current WCC 20.04.031(1)’s definition of project permit is proposed to be deleted, with a new reference to the County Code’s definition (consistent with state law) to be added to 22.05.010.]

(1) Complete applications. For a project permit application the department has determined to be complete per WCC 22.05.050(4), the application shall be considered under the zoning or other land use control ordinances in effect on the date the application was submitted to the department.

3 RCW 36.70B.070(4)(b)
(2) Incomplete applications. For a project permit application the department has determined to be incomplete per WCC 22.05.050(5), the application shall be considered under the zoning or other land use control ordinances in effect on the date the department determines the application to be complete based on the necessary information required by the department.

(3) Applications subject to pre-application conference. Notwithstanding the provisions of subsections (1) and (2) of this section, for a project permit application that is (a) subject to a pre-application conference per WCC 22.05.020 and .040, (b) submitted no more than 28 calendar days from the date the department issued its pre-application meeting findings notice of site-specific submittal requirements, and (c) determined complete by the department, the application shall be considered under the zoning or other land use control ordinances in effect on the date the pre-application conference request was submitted to the department.

[Proposed subsection (3) would prevent the requirement of a pre-application meeting from delaying vesting, provided the pre-application materials are complete enough that a building permit can be issued within 30 days of the pre-application findings. (See West Main Assocs. vs. Bellevue decision)]

(4) Continuation of vesting. Building or land disturbance permit applications that are required to complete a valid (i.e. not expired) project permit approval for project permits identified in the following list (a-m) shall vest to the zoning and land use control ordinances in effect at the time the project permit application identified below was determined complete.

(a) Administrative Use;
(b) Commercial Site Plan Review;
(c) Conditional Use;
(d) Critical Areas Variance;
(e) Major Project Permit;
(f) Natural Resource Review;
(g) Planned Unit Development;
(h) Reasonable Use (Type II and III);
(i) Shoreline Conditional Use;
(j) Shoreline Exemption;
(k) Shoreline Substantial;
(l) Shoreline Variance;
(m) Zoning Variance.

(5) Building permit applications within recorded long and short subdivisions and binding site plans. Building permit applications, including associated land disturbance permits, shall be governed by conditions of approval, statutes, and ordinances in effect at the time of final approval pursuant to RCW 58.17.170. Vesting duration for those building permit applications shall be governed by the
time limits established for long subdivisions in RCW 58.17.170, unless the county finds that a change in conditions creates a serious threat to the public health or safety.

[Under this proposal, the 5- or 7-year vesting that applies specifically to long plats in RCW 58.17.170 is proposed to be extended to short plats and binding site plans. This is intended to provide greater clarity and predictability, and to be consistent with recent case law. Based on the County's current understanding of statute and case law, water rights are not currently considered "zoning or other land use controls." ]

(6) Building and fire code requirements. Building and fire code provisions adopted per WCC Title 15 vest at the time a building permit application is determined complete.

[The proposed subsection clarifies that building and fire code vests at the time of complete building permit application, whereas land use controls (e.g. zoning and critical areas) vest with the original project permit, consistent with current 20.04.031(3)(d).]

(7) Duration. Vesting status established through subsections (1) through (5) of this section runs with the application and expires upon denial of the application by the county, withdrawal of the application by the applicant, rejection of the application per WCC 22.05.050(5), expiration of the application per WCC 22.05.130(1)(a)(i), — or expiration of the approved permit per WCC 22.05.140.

[Current 20.04.031(1) through (5) on vesting to be deleted:]  
(1) Project Permits Defined. For the purpose of this section, “project permit” and “project permit application” shall be as defined in RCW 36.70B.020:

Any land-use or environmental permit or license required from a local government for a project action, including but not limited to building permits, subdivisions, binding site plans, planned unit development permits, site plan review, permits or approvals required by critical areas ordinances, site specific rezones authorized by a comprehensive plan or subarea plan, but excluding the adoption or amendment of a comprehensive plan, subarea plan, or development regulations except as otherwise specifically included in this subsection.

(2) Project Permits Approved Prior to Effective Date.

(a) Project permits which have been approved by Whatcom County on or before the effective date of the ordinance codified in this section are hereby deemed to be vested under the zoning and land use regulations in effect at the time of the complete application therefor.

(b) Future building permits that may be required to construct or complete the project as originally approved shall be subject to the building codes in place at the time of the building permit application.
(3) Project Permit Applications Submitted After the Effective Date:

(a) Project permit applications submitted after the effective date of the ordinance codified in this section shall be vested under the zoning and land use regulations in effect at the time of application; provided, that the county has not subsequently notified the applicant that the application is incomplete.

(b) If the county has notified the applicant that the application is incomplete, the application shall not be deemed vested until the date the county notifies the applicant that the application is complete.

(c) Until the county implements RCW 36.70B.070, the county shall make the determination of completeness in accordance with its existing policy. Once the provisions of RCW 36.70B.070 regarding completeness are implemented, such provision shall govern the determination of a complete application.

(d) Future building permits that may be required to construct or complete the project as originally approved shall be subject to the building codes in place at the time of the building permit application.

(4) Project Permit Applications Submitted Prior to the Effective Date, But Which Have Not Received Final Approval on or Before the Effective Date:

(a) Project permit applications submitted prior to the effective date of the ordinance codified in this section but which have not received final approval on or before the effective date of the ordinance codified in this section shall be deemed vested under the zoning and land use regulations in effect at the time the county accepted payment of an application fee; provided, that the county has not subsequently notified the applicant that the application is incomplete.

(b) If the county has notified the applicant that the application is incomplete, the application shall not be deemed vested until the date the county notifies the applicant that the application is complete.

(c) Future building permits that may be required to construct or complete the project as originally approved shall be subject to the building codes in place at the time of the building permit application.

(5) Additional Provisions:

(a) Nothing herein shall restrict the county’s authority to impose conditions on project permits pursuant to the State Environmental Policy Act (SEPA), Chapter 43.21C RCW and WAC 197-11-600.

(b) Project permit applications for development of lots created by the short plat process shall comply with all development regulations, including but not limited to the critical areas ordinance, impervious surface restrictions, environmental work closure periods, and all other applicable code standards.

2.33.06022.05.070 Notice of application for a proposed land-use action.
A. For Type II, III, and IV applications per WCC 22.05.020, the county shall issue a notice of application shall be issued for project permit applications within 14 calendar days \(^4\) after of a determination of completeness and at least 15 calendar days prior to the open-record hearing. The date of notice shall be the date of mailing.

B. If the county has made a State Environmental Policy Act (SEPA) threshold determination of significance concurrently with the notice of application, the county shall combine the determination of significance and scoping notice shall be combined with the notice of application.

C. Notice shall include:

1. The date of application, the date of notice of completion determination of completeness for the application, and the date of the notice of application;

2. The date, time, place and type of the hearing, if applicable, and scheduled at the date of notice of the application;

3. A description of the proposed project action and a list of the project permits included in the application, and, if applicable, a list of any studies requested by the county;

4. The identification of other permits not included in the application to the extent known by the county;

5. The identification of environmental reviews conducted, including notice of existing environmental documents that evaluate the proposed project (including but not limited to reports, delineations, assessments and/or mitigation plans associated with critical area reviews) and, if not otherwise stated on the document providing notice of application, the location where the application and any studies can be reviewed;

6. Any other information determined appropriate by the county;

7. A statement indicating those development regulations that will be used for project mitigation or a determination of consistency if they have been identified at the time of notice;

8. A statement of the limits of the public of the minimum public comment period, which shall be the right of any person to comment on the application within a 1514 calendar days time period for all project permits except (30 calendar days for shoreline substantial development permits, shoreline conditional use, shoreline variance and major project permits for mitigation banks which shall have a minimum comment period of no more than 30 calendar days).

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\(^4\) RCW 36.70B.110(2)
(h) A statement of the right of any person to comment on the application and receive notice of and participate in any hearings, request a copy of the decision once made and to appeal a decision when allowed by law. The department may accept public comments at any time prior to the close of the open record public hearing, or if there is no public hearing, prior to the decision on the project permit. In addition, the statement shall indicate that any person wishing to receive personal notice of any decisions or hearings must notify the department, hearing examiner’s office within 15 days (30 days for substantial development permits and major project permits for mitigation banks) of the date of the notice of application.

D.(4) The department shall issue a notice of application shall be issued in the following manner:

1. (a) The notice shall be published once in the official county newspaper and on the Whatcom County website. The applicant shall bear the responsibility of paying for such notice.

[As a courtesy the department also provides notice to other publications and individuals who have submitted a written request to receive such notice through the County’s web site.]

2. (b) Additional notice shall be given using the following method:

   a. (i) For sites within urban growth areas: At least 12 days prior to the scheduled hearing date, application notice shall be sent to all property owners within 300 feet of the external boundaries of the subject property as shown by the records of the county assessor. Applicants shall submit, with their completed application, a stamped envelope with a typed address for each of the above referenced property owners;

   b. (ii) For sites outside urban growth areas: At least 12 days prior to the scheduled hearing date, application notice shall be sent to all property owners within 1,000 feet of the external boundaries of the subject property as shown by the records of the county assessor. Applicants shall submit, with their completed application, a stamped envelope with a typed address for each of the above referenced property owners;

3. All cost associated with providing notice shall be paid by the applicant.

E. (5) The county shall send notices of application should be sent to neighboring cities and other agencies or tribes that will potentially be affected, either directly or indirectly, by the proposed development. The county shall be responsible for such notification. Notice shall also be given to public utilities, if within 500 feet of the area submitted in the application.
F.(6) With the exception of substantial development permit applications and major project permit applications for mitigation banks, a public comment period shall be 15 calendar days following the date of notice of application. Substantial development permit applications and major project permit applications for mitigation banks require a 30-calendar-day period. All public comments received on the notice of application must be received by the department of planning and development services by 4:30 p.m. on or before the last day of the comment period. The county may require the applicant to shall pay the cost of providing notice.

G.(7) No SEPA threshold determination until the expiration of the public comment period established for the notice of application. This condition shall not apply if a determination of significance is made by the county. Except for a determination of significance, the county shall not issue its SEPA threshold determination or issue a decision or recommendation on a permit application until the end of the public comment period on the notice of application. If an optional determination of nonsignificance (DNS) process is used, the notice of application and DNS comment period shall be combined.

H.(8) Public notice given for project permit applications, SEPA documents, project hearings, and appeals hearings as required by this chapter and other provisions of the county code may be combined when practical, where such combined notice will expedite the permit review process, and where provisions applicable to each individual notice are met through the combined notice.

22.05.080 Posting of public notice application. [existing text from 20.84.235(2)]
Where posting of public notice is required per WCC 22.05.020, the applicant department shall post public notices of the proposal on all road frontages of the subject property and adjacent shorelines on or before the notice of application date and shall so as to be visible to adjacent property owners and to passing motorists. Said notices shall be provided to the applicant by the planning and development services department and shall remain in place until three days after the comment period closes, for at least 15 days prior to the decision. A signed affidavit of posting shall be returned at least one week prior to the decision.

2.33.11G22.05.090 Open record hearings.
As shown in WCC 22.05.020, Type III and Type IV applications require an open record public hearing. These hearings are subject to the following: Open record hearings subject to this chapter shall be undertaken pursuant to Chapter 20.92 WCC and other relevant chapters relating to specific permit processes.

20.92.215(1) Open record hearing notice.

Notice of the time and place of the open record hearing shall be given pursuant to WCC 2.33.060 and 2.33.070. 2.33.070 Notice of an open record hearing.
A: (a) The hearing examiner shall publish a notice of open record hearing shall be published by the hearing examiner once in the official county newspaper and on the Whatcom County website at least 1014 calendar days prior to an open record hearing. The notice shall consist of the date, time, place, and type of the hearing. In addition, personal notice shall be provided to any person who has requested such notice in a timely manner, consistent with WCC 2.33.060 22.05.0670(C3)(87h).

B: (b) Additional notice shall be given within two days of the published notice by posting of the applicant shall be responsible for posting three copies of the notice in a conspicuous manner on the property upon which the use is proposed. (Notices shall be provided by the county hearing examiner. The applicant shall be responsible for posting.)

C: (c) An affidavit verifying distribution of the notice must be submitted to the county hearing examiner two working days prior to the open record hearing.

D: (d) The hearing examiner shall send notices of an open record hearing should be sent to neighboring cities and other agencies or tribes that will potentially be affected, either directly or indirectly, by the proposed development. The county hearing examiner shall be responsible for such notification.

E: (e) The applicant shall pay all costs associated with providing notice shall be paid by the applicant.

20.92.220(2) Open record hearing.

A project proposal subject to Chapter 2.33—WCC 22.05 shall be provided with no more than one open record hearing and one closed record hearing pursuant to Chapter RCW 36.70B—RCW. This restriction does not apply to an appeal of a determination of significance as provided in RCW 43.21C.075.

20.92.221(3) Combined county and agency hearing. When-Unless otherwise requested by an applicant, the county shall allow an open record hearing to be combined with a hearing that may be necessary by another local, state, regional, federal or other agency for the same project if the joint hearing can be held within the time periods specified in Chapter WCC 2.33-22.05 WCC, or if the applicant agrees to waive such time periods in the event additional time is needed in order to combine the hearings. The combined hearing shall be conducted in Whatcom County pursuant to Chapter RCW 36.70B—RCW.

(4) Quasi-judicial actions, including applications listed as Type III and IV applications in WCC 22.05.020, are subject to the appearance of fairness doctrine, RCW 42.36. The hearing examiner shall administer the open record hearing and issue decisions or recommendations in accordance with RCW 42.36.

2.33.08022.05.100 Consistency review and staff report recommendations.
A. Fundamental land use planning choices made in adopted comprehensive plans and development regulations shall serve as the foundation for project review. During project permit review, the review authority shall determine if the project proposal is consistent with the county’s comprehensive plan, other adopted plans, existing regulations and development standards.

(1) For Type I and II applications, the conclusions of a consistency determination made under this section shall be documented in the project permit decision. The review authority shall at a minimum use four criteria for determining consistency, as follows:

1. Type of land use permitted on the site;

2. Density of development allowed on-site, such as units per acre or floor area ratio or lot coverage;

3. Availability and adequacy of public facilities and infrastructure (when applicable);

4. Character of the development.

(2) For Type III and IV applications the department shall prepare a staff report on the proposed development or action. Staff shall file one consolidated report with the hearing examiner at least 17-10 calendar days prior to a the scheduled open record hearing. The staff report shall:

- address the proposed development or action, summarizing the comments and recommendations of county departments, affected agencies, special districts and public comments received within the 15-day or 30-day comment period as established in WCC 2.33.060(F). The report shall also provide an evaluation of the project proposal for consistency as indicated in this section. The staff report shall include findings, conclusions, and proposed recommendations for response to the proposal.

(a) Summarize the comments and recommendations of county departments, affected agencies, special districts and public comments received within the 14-day or 30-day comment period as established in WCC 22.05.070(6).

(b) Provide an evaluation of the project proposal for consistency as indicated in this section.

(c) Include recommended findings, conclusions, and actions regarding the proposal.

[The proposal to change the staff report time frame to ten days is consistent with public notice publication requirements of 22.05.090(1)(a).]

D. The conclusions of a consistency determination made under this section shall be documented in the project permit decision.
(3) For all project permit applications, if more information is required to determine consistency at any time in review of the application, the department may issue a notice of additional requirements. The notice of additional requirements shall allow the applicant 180 calendar days from the date of issuance to submit all required information. The director or designee may extend this period for no more than cumulative 24 months upon written request by the applicant or authorized agent, provided the request is submitted before the end of the first 180-day period. A notice of additional requirements is not a final administrative determination.

[Proposed subsection (3) codifies a 180-day response period for N.O.A.R, consistent with current PDS practice.]

20.92.40922.05.110 Final decisions.
(1) The director or designee's administrator's final decision on all Type I or II applications shall be in the form of a written determination or permit. The determination or permit may be granted subject to conditions, modifications, or restrictions that are necessary to comply with all applicable codes.

20.92.410 Final decision conditions—Applications and appeals.
(2) The hearing examiner's final decision on all Type III applications or appeals shall either grant or deny the application or appeal.

(a) The hearing examiner may grant Type III the application or appeal subject to conditions, modifications or restrictions that the hearing examiner finds are necessary to make the application compatible with its environment, carry out the objectives and goals of the Comprehensive Plan, statutes, ordinances and regulations as well as other official policies and objectives of Whatcom County. conditions, modifications or restrictions that the hearing examiner finds necessary to make the application compatible with its environment, and carry out the objectives and goals of the Comprehensive Plan, the zoning code, the subdivision code, the critical areas ordinance, or other official policies and objectives of Whatcom County.

(b) Performance bonds or other security, acceptable to the prosecuting attorney, may be required to ensure compliance with the conditions, modifications and restrictions.

20.92.420 Final decision—Findings and conclusions.
(c) The hearing examiner shall render a final decision within 14 calendar days following the conclusion of all testimony and hearings. Each final decision of the hearing examiner shall be in writing and shall include findings and conclusions; based on the record, to support the decision.

20.92.430 Time limitation on decision.
Except for major project permits, each final decision and recommended decision of the hearing examiner shall be rendered within 10 calendar days following the conclusion of all testimony and hearings. For major project permits, the hearing examiner shall render recommendations within 45 calendar days following the conclusion of the open-record hearing.
20.92.440 Review limited.
(d) No final decision of the hearing examiner shall be subject to administrative or quasi-judicial review, except as provided herein.

20.92.600 Appeal to county council.
20.92.610 Applicant appeal.
(e) The applicant, any party of record or any county department may appeal any final decision of the hearing examiner to the county council's superior court, except as otherwise specified in WCC 22.05.020. 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. Any parties of record from the hearing examiner's proceedings who wish to continue to be considered parties of record must register with the county council in writing no later than 10 days after the date of the notification of appeal letter which is sent from the hearing examiner's office. The notification of appeal letter will be sent from the hearing examiner's office within three working days of receiving written notification from the county council office that an appeal has been filed.

[22.05.020 proposes changing the appeal body from County Council to Superior Court to separate legislative and quasi-judicial functions. Accordingly, the current 20.92.620 through .840, which describes the County Council appeal process, is proposed to be omitted.]

20.92.30022.05.120 Recommended decisions to county council.

20.92.310 Recommended conditions.

20.92.30022.05.120 Recommended decisions to county council. 20.92.310 Recommended conditions.
(1) For Type IV applications per WCC 22.05.020 the hearing examiner's recommendations to the county council may be to grant, grant with conditions or deny an application. The hearing examiner's recommendation may include conditions, modifications or restrictions as may be necessary to make the application compatible with its environment, carry out the objectives and goals of the Comprehensive Plan, statutes, ordinances and regulations as well as other official policies and objectives of Whatcom County. 20.92.320 Recommended decision—Findings and conclusions.

(2) Each recommended decision of the hearing examiner, for an application identified as a Type IV application per WCC 20.05.020 major developments, site-specific rezones and subdivisions, shall be in writing to the clerk of the county council and shall include findings and conclusions based upon the record to support the decision. Such findings and conclusions shall also set forth the manner in which the decision carries out and conforms to the county's Comprehensive Plan and complies with the applicable statutes, ordinances or regulations. (1) The hearing examiner's recommendations may be to grant or deny an application identified as Type IV applications per WCC 20.05.020 any subdivision, major development or site-specific rezone application, or the hearing examiner may recommend that the county council approve the application with such conditions, modifications or
restrictions as the hearing examiner finds necessary to make the application compatible with its environment and carry out the objectives and goals of the Comprehensive Plan, the zoning code, the subdivision code, or any other official policies and objectives of Whatcom County:

20.92.320 Recommended decision—Findings and conclusions.

(2) Each recommended decision of the hearing examiner, for an application identified as a Type IV application per WCC 20.05.020 major developments, site-specific rezones and subdivisions, shall be in writing and shall include findings and conclusions, based upon the record, to support the decision. Such findings and conclusions shall also set forth the manner in which the decision carries out and conforms to the county’s Comprehensive Plan and complies with the applicable statutes, ordinances or regulations.

20.92.330 Filing recommended decision.

(3) Each recommended decision of the hearing examiner, for development agreements, major project permits developments, site-specific rezones and subdivisions and planned unit developments, shall be filed with the clerk of the county council. For major project permits, a list of the parties of record as determined by the hearing examiner should shall be filed with the recommended decision.

(3) The deliberation of the county council on quasi-judicial actions shall be in accordance with WCC 22.05.090(4) and Chapter 42.36 RCW.

20.92.500 Process for subdivision application and major project permits.

20.92.510 Subdivisions.
The county council shall process each recommended decision for subdivisions, consistent with the procedure set forth in WCC Title 21. 20.92.520 Major project permits.

20.88.215 A written notice of the scheduled public hearing shall be mailed not less than 10 working days prior to the hearing as follows:

(1) For sites within urban growth areas: Notice shall be mailed to each property owner within 300 feet of the external boundaries of the subject property as shown by the records of the county assessor;

(2) For sites outside urban growth areas: Notice shall be mailed to each property owner within 1,000 feet of the external boundaries of the subject property as shown by the records of the county assessor.

Also notice of the hearing shall be published in a newspaper of general circulation in the area of the proposed project at least 10 working days prior to the public hearing. Notice shall consist of time and date of hearing, and brief description of the property and the proposed project. Further, signs meeting the approval of the zoning administrator shall be erected on each frontage of the project site by the applicant not less than 10 working days prior to the hearing.

(4) For major project permits planned unit developments and major project permits the following shall apply:

20.88.220(a) The recommendation of the hearing examiner regarding planned unit developments and major project permits major project permits shall be based upon the criteria set forth in WCC 20. 85.33588.130 and 20.858.335130, respectively. (1) through (7).
20.92.520(b) The hearing examiner shall file the recommendation with the clerk of the county council within 21 calendar days following the conclusion of the open record hearing, shall, upon receipt of the recommended decision on a major project permit, process that recommendation in the manner set forth in the major project permit chapter of this title (Chapter 20.88 WCC).

20.88.225(c) Within 4528 calendar days after the hearing examiner’s recommendation has been filed, the county council shall do one of the following:
1. Refer the project to the planning commission for a recommendation.
2. Hold a public meeting, not an open record public hearing, to deliberate on the project application and, within 20-21 calendar days of the meeting, issue a final written decision. The county council may exceed the time limits in this subsection if it makes written findings that a specified amount of additional time is needed to process a specific application or project type, per RCW 36.70B.080(1).

[The optional review by Planning Commission is proposed for omission because that step makes it difficult to complete the project review within 120 days required in proposed 22.05.130(1)]

20.88.230 If the project is referred to the planning commission, that body shall within 45 calendar days hold all necessary public meetings and file with the county council a written recommendation for approval or denial and may include conditions of approval, together with the findings upon which the recommendation is based. The applicant may waive the 45 calendar day time limitation.

20.88.235 A written notice of the public meeting before the planning commission or the county council shall be mailed to all parties of record, on file with the clerk of the county council not less than five calendar days prior to the hearing.

20.88.240 The deliberation and recommendation of the planning commission shall be based solely upon consideration of the record, the hearing examiner’s recommendation and the criteria set forth in WCC 20.88.130(1) through (7).

20.88.245 Upon receipt of the planning commission’s recommendation, the county council shall within 45 calendar days hold a public meeting to deliberate on the application and within 20 calendar days of the meeting issue a final written decision on the application considering the recommended decisions of the hearing examiner and planning commission.

20.88.250 Reserved.

20.88.25(5) 5(d) The county council’s final written decision may include conditions when the project is approved and shall state the findings of fact upon which the decision is based.

20.88.260(e) Deliberation at any public meeting before the county council or planning commission may be limited in scope to particular issues or problems at the discretion of either body.

20.88.265(6) The Any deliberation and/or decision of the county council shall be based solely upon consideration of the record established by the hearing examiner, the recommendations of the hearing examiner and the planning commission (when applicable), and the criteria set forth in county code WCC 20.88.130(1) through (7).

20.92.530 Site-specific rezones:
The county council shall, upon receipt of the recommended decision on a site-specific rezone, process that recommendation in the manner set forth in Chapter 20.90 WCC, Amendments:

2.33.090-22.05.130 Notice of final decision and permit review limitation/timeframes and notice of final decision.

A. Unless otherwise exempted in WCC 2.33.020 or subsection (C) of this section, the county shall issue a notice of final decision on a project permit application as follows:

1. Within 90 days of a determination of completeness if the project is exempt from SEPA review unless a shorter review period is provided in other provisions of the Whatcom County Code;

2. Within 90 days of a determination of completeness if the project is a subdivision under WCC Title 21 unless a shorter review period is provided in other provisions of the Whatcom County Code;

3. Within 120 days of a determination of completeness if the project is other than a subdivision and is subject to SEPA review unless a shorter review period is provided in other provisions of the Whatcom County Code.

B. In determining the number of days that have elapsed after an application is determined to be complete, the following time periods shall be excluded:

(1) The county shall issue a notice of final decision for all permit types, on, including procedures for administrative appeal and notice that affected property owners may request a change in valuation for property tax purposes, to the applicant, the Whatcom County assessor, and any person who requested notice or submitted substantive comments on the application within 120 calendar days of the date the department determined the application complete, except as provided below:

(a) The following time periods shall be excluded from the calculation of the number of days elapsed:

1. (i) Any period during which the applicant has been required by the county to correct plans, perform required studies, or provide additional, required information through a notice of additional requirements, per WCC 22.05.100(3). The period shall be calculated from the date the county notifies the applicant of the need for additional information issues a notice of additional requirements until the date the county receives all of the requested additional information. The county shall have 14 days after the date the information has been provided to the county to determine adequacy of the information;

b. If the information submitted by the applicant under this subsection is insufficient, the county shall notify the applicant of the deficiencies and the provisions of this section shall apply as if a new request for information has been made;

2. (ii) Any period during which an environmental impact statement is being prepared following a determination of significance pursuant to Chapter 43.21C RCW and WCC Title 16;

3. (iii) The period specified for administrative appeals of project permits as provided in Chapter 20.92 2.11 WCC;

5 RCW 36.70B.130
4.(iv) The period specified for administrative appeals of development standards as provided in WCC 12.08.035(I);

5.(v) Any period in which the applicant has not met public notification requirements;

6.(vi) Any period of time mutually agreed upon in writing by the applicant and the county.

G.(b) The time limits established by subsections (A) and (B) of this section shall not apply to a project permit application that:

1.(i) Requires an amendment to the Whatcom County comprehensive plan or a development regulation in order to obtain approval.

2.(ii) Requires approval of a new fully contained community as provided in RCW 36.70A.350, a master planned resort as provided in RCW 36.70A.360, or the siting of an essential public facility as provided in RCW 36.70A.200.

3.(iii) Is substantially revised by the applicant, including all redesigns of proposed land divisions pursuant to WCC 21.01.150, in which case a new time period shall start from the date at which the revised project application is determined to be complete.

D.(c) The county may extend notice of final decision on the project if the county can document legitimate reasons for such a delay. In such a case the county shall provide written notice to the applicant at least 20-14 calendar days prior to the deadline for the original notice of final decision. The notice shall include a statement of reasons why the time limits have not been met and a date of issuance of a notice of final decision.

E. The county shall not be liable for damages under this chapter due to the county’s failure to make a final decision within the time limits established in WCC 2.33.080.

F. Notice shall be made by mail to the applicant, the Whatcom County assessor, and any party of record.

G.(2) If an applicant believes a project permit application has not been Unless otherwise acted upon by the county in a timely manner or otherwise consistent with this chapter, permit applications subject to this chapter shall be approved as submitted within the timeliness established in WCC 2.33.090. The applicant or authorized representative may request a meeting with the director to resolve the issue. Within 14 calendar days of the meeting, the director shall:

(a) Approve the permit if it is within the director’s authority to do so, provided the approval would not violate state or county regulations, or

(b) Deny the permit if it is within the director’s authority to do so, or
(c) Respond in writing with the department's position, or a mutually acceptable resolution of the issue, which may include a partial refund of application fees at the director's discretion.

This proposed change is intended to maintain accountability on the part of the county and provide an avenue for resolving disputes, while removing a provision that could potentially approve an application that violates state or county regulations.

21.02.030 Appeals-(1)(3) Any final order, requirement, permit decision or determination issued by Whatcom County shall include a notice to the applicant of his or her appeal rights per WCC 22.05.160.

22.05.140 Expiration of project permits.
(1) Project permit approval status shall expire two years from the date of approval except where a different duration of approval is authorized by Whatcom County Code, or is established by a court decision or state law, or executed by a development agreement. The decision maker may extend this period up to one year from the date of original expiration upon written request by the applicant.

(2) Any complete project permit application for which no information has been submitted in response to the department's notice of additional requirements per WCC 22.05.100(3) shall expire at the end of the time limit established in 22.05.100(3).

This provision for applications to expire after no response within the NOAR time frames allows for consistent predictable outcomes, and establishes clear expectations.

(3) For projects that have received a SEPA determination of significance per WCC 16.08, all underlying project permit applications shall expire when one of the following occurs:

(a) The applicant has not in good faith maintained a contract with a person or firm to complete the Environmental Impact Statement (EIS) as specified in the scoping document. The applicant is responsible for informing the county of the status of such contract. If there is no notice given to the County, all underlying project permit applications shall expire upon the end date of the contract; or

(b) The mutually agreed timeframe to complete the Draft EIS or Final EIS has lapsed.

(4) Project permits which received preliminary approval or a final decision prior to February 22, 2009 that did not include an expiration timeframe in the conditions of approval shall expire on [two years after the effective date of this ordinance].
[Proposed subsection (4) allows opportunity to obtain approval or implementation within two years for projects without an approval timeframe.]

20.92.25022.05.150 Permit revocation procedure.
(1) Upon notification by the zoning administrator or his deputy that a substantial violation of the terms and conditions of any previously granted zoning conditional use, shoreline substantial development or shoreline conditional use permit exists, the hearing examiner shall issue a summons as per WCC 20.92.225 2.11.220 to the permit holder requiring said permit holder to appear and show cause why revocation of the permit should not be ordered. Failure of the permit holder to respond may be deemed good cause for revocation.

20.92.255 Permit revocation hearing;
(2) Upon issuance of a summons as set forth in WCC 20.92.250 subsection (1) of this section, the hearing examiner shall schedule an open record hearing to review the alleged violations. The summons shall include notice of the hearing and shall be sent to the permit holder and the land-use division director of planning and development services no less than 12 calendar days prior to the date of the hearing. At the hearing the hearing examiner shall receive evidence of the alleged violations and the responses of the permit holder, as per the business rules of the hearing examiner's office. Testimony shall be limited to that of the division and the permit holder except where additional evidence would be of substantial value in determining if revocation should be ordered. The land use division's evidence may include the testimony of witnesses.

20.92.260 Permit revocation or grace period;
(3) Upon a showing of violation by a preponderance of the evidence as alleged, the hearing examiner may revoke the permit or allow the permit holder a reasonable period of time to cure the violation. If the violation is not cured within the time set by the hearing examiner, the permit shall be revoked. Where a time to cure the violation has been set out, no further hearing shall be necessary prior to the revocation. The permit holder shall have the burden of proving that the violation has been cured within the time limit previously set. Such evidence as is necessary to demonstrate that the violation has been cured may be submitted to the hearing examiner by either the permit holder or the land-use division director of planning and development services. Any revocation shall be accompanied by written findings of fact and conclusions of law. The permit holder shall be notified of any revocation within 10 working 14 calendar days of the revocation.

20.92.610 Applicant Appeal 22.05.160 Appeals.
(1) Any party of record may appeal any order, final permit decision or final administrative determination made by the director or designee in the administration or enforcement of any chapter to the hearing examiner, who has the authority to hear and decide such appeals per WCC 2.11.210.

(a) An appeal shall be filed with the department within 14 calendar days of the issuance of a final permit decision and shall be accompanied by a fee as specified in the Unified Fee Schedule. The written appeal shall include:

(i) The action or decision being appealed and the date it was issued:
(ii) Facts demonstrating that the person is adversely affected by the decision;

(iii) A statement identifying each alleged error and the manner in which the decision fails to satisfy the applicable decision criteria;

(iv) The specific relief requested; and

(v) Any other information reasonably necessary to make a decision on the appeal.

[Proposed items 1(a)(i)-(v) are copied from Bellingham Municipal Code 21.10.250]

(b) The hearing examiner shall schedule a public hearing on the appeal to be held within 60 calendar days following the department’s receipt of the application for appeal unless otherwise agreed upon by the county and the appellant.

(2) The applicant, any party of record, or any county department may appeal any final decision of the hearing examiner to the county council Superior Court or other body as specified by WCC 22.05.020. The appellant shall file a written notice of appeal at the county council office within 10 business calendar days of the final decision of the hearing examiner. Any parties of record from the hearing examiner’s proceedings who wish to continue to be considered parties of record must register with the county council in writing no later than 10 days after the date of the notification of appeal letter which is sent from the hearing examiner’s office. The notification of appeal letter will be sent from the hearing examiner’s office within three working days of receiving written notification from the county council office that an appeal has been filed.

2.33.120-22.05.170 Annual report.
Staff shall prepare an annual report on the implementation of this chapter and submit it to the council.

22.05.180 Interpretation, conflict and severability.

(1) Minimal Interpretation. In their interpretation and application, the provisions of this chapter shall be held to be the minimum requirements.

(2(1)) Interpret to Protect Public Welfare. In the event of any discrepancies between the requirements established herein and those contained in any other applicable regulation, code or program, the regulations which are more protective of the public health, safety, environment and welfare shall apply.

(32) Severability. The provisions of this chapter are severable. If a section, sentence, clause, or phrase of this title is adjudged by a court of competent jurisdiction to be invalid, the decision shall not affect the remaining portions of this chapter.
Chapter 22.10

LEGISLATIVE ACTION PROCEDURES

(This new chapter is adapted from the current Chapter 2.160 Comprehensive Plan Amendments, and Chapter 20.90 Amendments, along with new text that combines and streamlines existing process descriptions. Current text is shown in normal black font, with proposed changes shown in red. The current chapter/section numbers are shown as deleted with the proposed numbers replacing them.)

Sections:
  22.10.010 Purpose and applicability.
  22.10.020 The docket.
  22.10.030 Processing of docketed amendments.
  22.10.040 Concurrent review of comprehensive plan amendments
  22.10.050 Notice of public hearing.
  22.10.060 Approval criteria.

22.10.010 Purpose and applicability.
This chapter establishes the procedures for legislative actions amending the Whatcom County Comprehensive Plan and the development regulations that implement that plan. Amendments to the comprehensive plan includes changes to the plan’s text and maps, and amendments to the development regulations include changes to the official zoning map and the text in WCC Titles 16, 20, 21, and 23. For purposes of this chapter, comprehensive plan amendments include amendments to subarea plans.

22.10.020 The docket.
(1) The department of planning and development services (“department”) shall maintain a proposed docket of comprehensive plan and development regulation amendment applications and shall present it to the county council for review once a year on or about March 1. The county council may, by resolution, approve a docket listing all applications that may be processed per the provisions of this chapter.

(2) The department, the executive, the planning commission, or the county council, by majority vote, may place a proposed amendment on the docket at any time.

(3) A party other than the county council, executive, the planning commission or the department may suggest an amendment to the comprehensive plan or development regulations by making application on forms provided by the department and submitting any required docketing fee.

(a) Applications for suggested amendments must be submitted by December 31 in order to be included on the proposed docket presented to the county council at its next annual docket review. The department shall review the application for
completeness and may request additional information to ensure the application is complete before scheduling it for the annual docket review.

(b) If the county council docket a suggested amendment, all required amendment application fees are due within 30 calendar days after it is docketed. If all fees are not paid within 30 calendar days after being docketed, the department shall close the application and remove it from the docket. When docketing an application, the county council may waive the application fees if it finds the proposed amendment would clearly benefit the community as a whole.

[The intent of proposed section 22.10.020(1)-(3) is to clearly differentiate between the proposed docket presented by the department, and the final docket approved by resolution of the County Council. RCW 36.70.470’s allowance for suggested amendments is accommodated, with the requirement that the suggestion be accompanied by a completed application and a docketing fee (not the full application fee, which is charged if it is docketed, unless waived by the County Council; the “clearly benefit the community” finding is currently required in WCC 2.160.110.)]

20.90.041(2)(4) The county council, by majority vote, may remove a proposed amendment from the approved docket by motion, unless:
(a) the proposed amendment was: (a) initiated-proposed by a citizen-party other than the county council or the department per WCC 22.10.020(3), 20.90.030(4)(b) the amendment is consistent with state and federal regulations, and (c)(b) the applicant has provided all information required by the planning and development services department. The department shall notify the applicant not less than 30 calendar days prior to consideration of removal from the docket. If the county council has not acted upon a docketed proposed amendment during the year for which it has been docketed, the county council may place the amendment on the following year’s docket.

20.90.050 22.10.030 Processing of initiated-docketed amendments.
(1) The department shall review docketed comprehensive plan and development regulation amendment applications as provided below: Initiated amendments are reviewed by the department of planning and development services as listed below:

1. (a) For suggested citizen-initiated amendments applications filed per WCC 22.10.020(3), the department of planning and development services will evaluate each the applications for completeness and may request additional information of the applicant prior to requesting the appropriate hearing body to schedule a public hearing. Where a development regulation amendment requires a comprehensive plan amendment, the two amendments shall be processed at the same time.

2. (b) The department of planning and development services shall conduct environmental review under SEPA and prepare a staff report including recommendations and/or options for each initiated docketed amendment to this title and/or the official zoning map. Both the report and the result of the environmental review shall be forwarded to the appropriate hearing
bodyplanning commission, and to the applicable city staff and planning commission if the proposed amendment applies to land within a city’s urban growth area.

(a)(c) The staff report shall evaluate the initiated-proposed amendment(s) in relationship to the goals, objectives and policies of the Whatcom County Comprehensive Plan approval criteria of WCC 22.10.060, and consider any environmental implications as impacts or mitigation measures identified by the Whatcom County SEPA official, and evaluate the proposal’s compliance with any other special provision as provided by WCC 20.90.060. If the proposed amendment includes land within a city’s urban growth area, the staff report shall also address any comments from the city regarding consistency with the applicable city comprehensive plan and the ability of the city to provide needed utility services.

(2) Docketed comprehensive plan and development regulation amendment applications shall receive a public hearing by the planning commission subject to the notice requirements of 22.10.050. Following the public hearing, the planning commission shall vote to adopt findings of fact and recommended actions, which the department shall transmit to the county council. In addition to the public hearing, the planning commission may hold public work sessions to discuss a proposed amendment.

(3) The county council may hold a public hearing on the docketed amendment in addition to the planning commission’s public hearing. If the county council decides the public interest is better served by considering a final action that differs from the planning commission recommendation, the county council shall hold a public hearing. The county council, by majority vote, may adopt the amendment by ordinance, reject the amendment, or remand the proposed amendment to the planning commission for further review.

(4) Actions that are quasi-judicial as defined in 42.36.010 RCW (including but not limited to a zoning map amendment for a single lot) are subject to the appearance of fairness doctrine, Chapter 42.36 RCW. For a proposed amendment that is a quasi-judicial action, the planning commission and county council shall process the application in accordance with Chapter 42.36 RCW in addition to the requirements of this section.

22.10.040 Concurrent review of comprehensive plan amendments
(1) While public hearings and other public discussion of proposed comprehensive plan amendments may take place at any time of the year, the county council’s final review and adoption of those amendments shall take place concurrently, no more frequently than once per calendar year, in accordance with RCW 36.70A.130(2)(a). Final adoption should occur on or about February 1.

(2) The following comprehensive plan amendments are excluded from the requirement of annual concurrent review and may be adopted at any time:

(a) The initial adoption of a subarea plan,
(b) Adoption or amendment of the shoreline master program under procedures set forth in Chapter 90.58 RCW,

(c) The amendment of the capital facilities element concurrent with adoption or amendment of the county budget,

(d) Amendments needed to resolve an appeal of the comprehensive plan filed with the growth management hearings board or the court, or

(e) Amendments necessary in cases where the county council finds an emergency exists.

22.10.050 Notice of public hearing.

(1) The county shall publish notice of the public hearing at least once in the official county newspaper and on the Whatcom County website no fewer than 10 calendar days prior to the hearing. The notice shall include the date, time, place, and subject of the hearing.

[As a courtesy the department also provides notice to other publications and individuals who have submitted a written request to receive such notice through the County’s web site.]

(2) For public hearings involving a quasi-judicial zoning map amendment application, per WCC 22.10.030D, the county shall provide the following notice in addition to the requirements of subsection A of this section:

20.90.045 (1) Notice shall be published once in the official county newspaper at least 10 days prior to the hearing. The county shall prepare the notice and the applicant shall pay for the notice.

(2)(a) The county shall mail notice to property owners as follows:

(a)(i) For zoning map amendments within existing urban growth areas: At least 10 calendar days prior to the scheduled hearing date, hearing notice shall be mailed to all property owners within 300 feet of the external boundaries of the subject property as shown by the records of the county assessor. The applicant shall submit a stamped-envelopemailing labels with a typed address for each of the above-referenced property owners.

(b)(ii) For zoning map amendments outside existing urban growth areas: At least 10 calendar days prior to the scheduled hearing date, hearing notice shall be mailed to all property owners within 1,000 feet of the external boundaries of the subject property as shown by the records of the county assessor. The applicant shall submit a stamped-envelopemailing labels with a typed address for each of the above-referenced property owners.

(e)(iii) For zoning map amendments that involve rezoning property to an Airport Operations District: At least 10 calendar days prior to the scheduled hearing date, hearing notice shall be mailed to all property owners within
1,500 feet of the external boundaries of the subject property as shown by the records of the county assessor. The applicant shall submit a stamped envelopemailing labels with a typed address for each of the above-referenced property owners.

(d)(vi) For zoning map amendments that involve rezoning property to a Mineral Resource Land designation: At least 10 calendar days prior to the scheduled hearing date, hearing notice shall be mailed to all property owners within 2,000 feet of the external boundaries of the subject property as shown by the records of the county assessor. The applicant shall submit a stamped envelopemailing labels with a typed address for each of the above referenced property owners.

(3)(b) The county shall prepare and the applicant shall post signs giving notice of the hearing in conspicuous locations on the property at least 10 calendar days prior to the hearing.

(4)(c) The county shall send notice to the appropriate city, when the proposed rezone amendment is within or would expand the urban growth area, and to agencies, school districts, and tribes that will potentially be affected by the proposed rezone amendment at least 10 calendar days prior to the hearing.

(5)(d) For sites within 4,500 feet of the runway of Lynden Airport or Floathaven Sea Plane Base: At least 10 calendar days prior to the scheduled hearing date, application notice shall be sent to the city manager (if applicable), airport board or commission (if applicable), and an official representative of the airport.

(6)(e) For sites within 10,000 feet of the runway of Bellingham International Airport: At least 10 calendar days prior to the scheduled hearing date, application notice shall be sent to the Port of Bellingham.

(7)(f) All notices shall specify the date, time, location, and purpose of the hearing and provide a description and the location of the proposed rezone. The public shall be invited to submit written comments and attend the hearing to provide oral comments.

2.160.080.22.10.060 Approval criteria.
A.(1) In order to approve an initiated a comprehensive plan amendment, the planning commission and the county council shall find all of the following:

1.(a) The amendment conforms to the requirements of the Growth Management Act, is internally consistent with the county-wide planning policies and is consistent with any interlocal planning agreements.

2.(b) Further studies made or accepted by the department of planning and development services indicate changed conditions that show need for the amendment.
3.(c) The public interest will be served by approving the amendment. In determining whether the public interest will be served, factors including but not limited to the following shall be considered:

a.(i) The anticipated effect upon the rate or distribution of population growth, employment growth, development, and conversion of land as envisioned in the comprehensive plan.

b.(ii) The anticipated effect on the ability of the county and/or other service providers, such as cities, schools, water and/or sewer purveyors, fire districts, and others as applicable, to provide adequate services and public facilities including transportation facilities.

e.(iii) Anticipated impact upon designated agricultural, forest and mineral resource lands.

4.(d) The amendment does not include or facilitate spot zoning.

5. Urban growth area amendments that propose the expansion of an urban growth area boundary shall be required to acquire development rights from a designated TDR sending area:

a. One development right shall be transferred for every five acres included into an UGA. The county council may modify this requirement if a development agreement has been entered into that specifies the elements of development in the expanded UGA. The development agreement should include, but not be limited to, affordable housing, density, allowed uses, bulk and setback standards, open space, parks, landscaping, buffers, critical areas, transportation and circulation, streetscapes, design standards and mitigation measures.

b. Exceptions to required TDRs include urban growth area expansion initiated by a government agency, correction of map errors, properties that are urban in character, or expansions where the public interest is served.

c. Urban growth area expansion initiated by the county, cities or other agencies shall be subject to review by county and city planning staff, and the appropriate administrative bodies, to determine whether the subject site is appropriate for designation as a TDR receiving area.

(2) In order to approve an amendment to the development regulations, the planning commission and county council shall find that the amendment is consistent with the comprehensive plan.
Chapter 22.15
CODE COMPLIANCE PROCEDURES
(Reserved)

This is a place-holder for a future consolidated chapter on enforcement procedures. It would largely be based on current Chapter 20.94 Enforcement and Penalties, with enforcement procedures from other titles added, because PDS staff enforces more than just Title 20 Zoning.

Chapter 22.20
LAND USE AND DEVELOPMENT CODE INTERPRETATION PROCEDURES

Based on City of Bellingham’s code interpretation process, BMC 21.10.270

Sections:
22.20.010 Purpose and applicability.
22.20.020 Request for interpretation.
22.20.030 Procedure.
22.20.040 Factors for Consideration.
22.20.050 Issuance of Interpretation.
22.20.060 Appeals.

22.20.010 Purpose and applicability
(1) The purpose of this chapter is to establish the procedure for interpreting provisions of Whatcom County’s land use and development codes to clarify conflicting or ambiguous wording.

(2) The director of planning and development services (director) is authorized to make written interpretations of the provisions of the following titles of WCC:

(a) Title 16 Environment,
(b) Title 20 Zoning,
(c) Title 21 Land Division Regulations,
(d) Title 22 Land Use and Development Procedures, and
(e) Title 23 Shoreline Management.
(3) Issuance of an interpretation of the provisions of the code shall not amend the code.

22.20.020 Request for interpretation.
Anyone may request an interpretation consistent with the provisions of this chapter. Any person requesting an interpretation of the code shall submit a written request specifying each provision of the code for which an interpretation is requested, why an interpretation of each provision is necessary, and any reasons or material in support of a proposed interpretation. The county council may establish an application fee for interpretation requests.

22.20.030 Procedure.
(1) The director shall determine how to process the code interpretation request. The request may be:

(a) Processed as a Type I decision per WCC 22.05.020; or

(b) Consolidated with the process associated with the review of the application.

(2) The director shall consult with the Department of Ecology regarding any interpretation of the shoreline management program.

22.20.040 Factors for consideration.
In making an interpretation of the provisions of the code, the director shall consider the following:

(1) The applicable provisions of the code including their purpose and context;

(2) The impact of the interpretation on other provisions of the code;

(3) The implications of the interpretation for development within the county as a whole; and

(4) The applicable provisions of the comprehensive plan and other relevant codes and policies.

22.20.050 Issuance of interpretation.
The director shall issue a written interpretation within 30 calendar days of the department’s receipt of the interpretation request. Issuance of the interpretation shall include notification of the person making the request and publication of the interpretation on the county’s web site. The director may docket an amendment to clarify the affected section of county code per WCC 22.10.020(2)(b).

22.20.060 Appeals.
Any party of record may file an appeal of a formal code interpretation. The appeal shall follow all rules and procedures for appeals to the hearing examiner as set forth in WCC 22.05.160.
Chapter 22.25

LAND USE AND DEVELOPMENT FEES

[Proposed to be moved from WCC 20.04.090 - .092 because it applies to all land use and development fees, not just those in Title 20 zoning.]

Sections:

22.25.010 Purpose and applicability
22.25.020 Application fees and other fees.
22.25.030 Reduced application fees.
22.25.040 Refund of application fees.

22.25.010 Purpose and applicability
(1) The purpose of this chapter is to establish the authority for collecting fees for various land use and development review services, as well as provisions for reductions and refunds of those fees.

(2) The provisions of this chapter shall apply to fees charged for procedures contained in the following titles of WCC:

(a) Title 15 Building and Construction,

(b) Title 16 Environment,

(c) Title 17 Flood Damage Prevention,

(d) Title 20 Zoning,

(e) Title 21 Land Division Regulations,

(f) Title 22 Land Use and Development Procedures, and

(g) Title 23 Shoreline Management.

20.04.090 22.25.020 Application fees and other fees.
Fees for conditional use permits, variances, planned unit developments, project permit applications, legislative amendments, initiated docketed amendments and fees for other approvals and reviews as set forth in this title shall be as provided in the County’s Unified Fee Schedule.

20.04.091 22.25.030 Reduced application fees.
When any given project requires more than one of the following permits or applications, the total amount of fees shall be reduced by 25 percent of the required aggregate permit and application fees; provided any fees required for processing of an EIS shall not be included as part of the total amount of fees to be reduced by 25 percent.
(1) Subdivision plat application;
(2) Rezone application;
(3) Shoreline substantial development permit, variance or conditional use;
(4) Major development permit;
(5) Conditional use permit;
(6) Variance;
(7) Planned unit development.

29.04.09222.25.040 Refund of application fees.
Refunds of application fees for project permits and for amendments to the Whatcom County Comprehensive Plan, development regulations and official maps shall be computed based on the following, unless otherwise indicated in Whatcom County Code. All refund requests shall be submitted in writing to the department of planning and development services. The date of application for a refund request shall be the date the written refund request is received by the department. For the purpose of computing elapsed calendar days, the day after the date of application or deadline date as appropriate shall be counted as day one.

(1) Fees for Project Permits.

(a) Applications withdrawn on or before the fourteenth calendar day after the date of application shall be eligible for a refund of 90 percent of all application fees including any SEPA fees.

(b) Applications withdrawn after the period set forth in subsection (1)(a) of this section but on or before the ninetieth calendar day after the date of application shall be eligible for a refund of 50 percent of all application fees except for any SEPA fees which shall not be eligible for a refund.

(c) Applications withdrawn after the ninetieth calendar day after the date of application shall not be eligible for a refund.

(d) Notwithstanding the above, no fees shall be refunded for any permit or approval that has been issued or granted by the county.

(e) The director may authorize a full refund of any project permit application fee paid in error.

(2) Fees for Amendments to the Whatcom County Comprehensive Plan, Development Regulations, and Official Maps.

(a) Applications for amendments that are withdrawn on or before the fourteenth calendar day after the deadline for submitting the fee shall be eligible for a refund of 90 percent of all application fees including SEPA fees. If there is no deadline for submitting the fee, the 90-percent refund shall be
given if the application is withdrawn on or before the fourteenth calendar day after the fee was submitted.

(b) Applications for amendments that are withdrawn after the period set forth in subsection (2)(a) of this section but on or before the ninetieth calendar day after the deadline for submitting the fee shall be eligible for a refund of 50 percent of all application fees except for SEPA fees which shall not be eligible for a refund. If there is no deadline for submitting the fee, the 50-percent refund shall be given if the application is withdrawn on or before the ninetieth calendar day after the fee was submitted.

(c) Applications for amendments that are withdrawn after the 90 calendar days shall not be eligible for a refund.

(3) Withdrawal of an application shall constitute full surrender of any express or implied rights inherent in an application which has been perfected and accepted by the planning and development services department or its designees.
EXHIBIT B

Whatcom County Code Title 2
Administration and Personnel

AMENDMENTS

Title 2
ADMINISTRATION AND PERSONNEL

Chapters:

2.11 Repealed Hearing Examiner

2.33 Permit Review Procedures Reserved

2.160 Comprehensive Plan Amendments Reserved

Chapter 2.02
COUNTY COUNCIL

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 20.922.11 WCC.

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Chapter 2.11

INFORMATION-CENTER (Repealed by Ord. 93.042)

HEARING EXAMINER

[Note: Portions of the Hearing Examiner chapter in WCC Title 20 Zoning (Chapter 20.92) that establish the office and its authority are proposed to be moved to a new Chapter 2.11 because the HE holds hearings on applications on items other than zoning. Existing text from Chapter 20.92 is shown in normal font with new additions underlined and deletions struck through. Most of the remaining text from 20.92 related to procedures is moved to the new WCC 22.05 Project Permit Procedures.]

Sections:

20.922.11.010 Purpose.
20.922.11.100 Hearing examiner office.
20.922.11.110 Creation and purpose.
20.922.11.120 Pro tempore hearing examiner.
20.922.11.130 No interference with the hearing examiner.
20.922.11.140 Qualifications.
20.922.11.150 Appointment and removal.
20.922.11.200 Hearing examiner – Duties and powers.
20.922.11.205 Recommended decisions.
20.922.11.210 Final decisions.
20.92.2112.11.215 Administrative Appeals – Appeal Period.
20.92.2252.11.220 Rules and regulations.
20.92.2392.11.225 Department reports.
20.92.2352.11.230 Changes in legislation.
20.92.2492.11.235 Additional powers.
20.92.2452.11.240 Limited jurisdiction.

20.922.11.010 Purpose.
The purpose of this chapter is to establish the authority and responsibilities of the Hearing Examiner, provide a system of considering and applying regulatory devices which will best satisfy these three basic needs:

(1) The need to separate the application of regulatory controls to the land from planning;

(2) The need to better protect and promote the interest of the public and private elements of the community;

(3) The need to expand the principles of fairness and due process in open record hearings.

20.922.11.100 Hearing examiner office.

20.922.11.110 Creation and purpose.
The office of hearing examiner is hereby created. The hearing examiner shall act on behalf of the county council in considering the application of regulatory enactments to particular situations as provided herein.

20.922.11.120 Pro tempore hearing examiner.
The pro tempore hearing examiner shall assist the hearing examiner in the performance of the duties conferred upon them by this chapter, and shall have all of the duties and powers of the hearing examiner.

20.922.11.130 No interference with the hearing examiner.
No county official or any other person shall interfere with the hearing examiner or pro tempore hearing examiner in the performance of his or her designated duties.

20.922.11.140 Qualifications.
The hearing examiner and his pro tempore shall be appointed solely with regard to their qualifications for the duties of their office, and shall have such training or experience as will qualify them to conduct administration of quasi-judicial hearings on the application of regulatory enactments and to discharge other functions conferred upon them, and shall hold no other appointed or elected public office or position in the county government, except as provided in this chapter.

20.922.11.150 Appointment and removal.
The hearing examiner shall be appointed by a majority vote of the county council. The hearing examiner may be removed from office at any time by an affirmative vote of not less than two-thirds of the members of the county council.

20.922.11.200 Hearing examiner – Duties and powers.

20.922.11.205 Recommended decisions.
In accordance with the provisions of Chapter 22.05 WCC, the hearing examiner shall conduct an open record hearing and prepare a record thereof, and make recommendations to the county council for approval or disapproval of:

(1) Major project permits, including major project permit applications for mitigation banks proposed in accordance with the provisions of Chapter 16.16 WCC;

(2) Planned unit developments;

(3) Development Agreements, as authorized in RCW 36.70B Site-specific rezones, including those processed as major project permits, PUDs and/or concomitant rezones;

(4) Such other permits as may be required from the county along with subsection (1) or (2) of this section for a given project. Applications where a major project permit is required shall be processed as set forth in Chapter 20.88 WCC. Where the hearing examiner would normally make a final decision to approve or deny an accompanying permit, the decision shall instead be in the form of a recommendation and accompany the hearing examiner’s recommendation on the major project permit or planned unit development to the county council for final approval;

(5) Proposed rates and charges or special assessments for lake management districts.

20.922.11.210 Final decisions.
In accordance with the provisions of Chapter 22.05 WCC, the hearing examiner shall conduct open record hearings and prepare a record thereof, and make a final decision upon the following matters:

(1) Appeals from any orders, requirements, permits, decisions or final determinations made by an administrative official or committee in the administration of this title, WCC Title 15, except for building and fire code requirements, WCC Title 16, Environment, WCC Title 17 Flood Damage Prevention, WCC Title 20 Zoning, WCC Title 21, Land Division Regulations, WCC 22 Project Permit Procedures, WCC Title 23 Shoreline or WCC Title 24, Health Regulations.

(2) Appeals from a decision of the administrator of the Shoreline Management Program.

(3) Applications for zoning ordinance conditional use permits.

(4) Applications for variances from the terms of the zoning ordinance.

(5) Applications for shoreline management substantial development permits not accompanied by a major project permit when an open record hearing is required.
(6) Applications for variances from the terms of the Whatcom County Shoreline Management Program.

(7) Applications for variances from the terms of Chapter 16.16 WCC, Critical Areas.

(8) Applications for reasonable use permits under the terms of Chapter 16.16 WCC when an open record hearing is required.

(9) Applications for Shoreline Management Program conditional use permits.

(10) Applications for flood damage prevention variances.

(11) Appeals from SEPA determinations of significance, determinations of nonsignificance, and mitigated determinations of nonsignificance.

(12) Preliminary subdivisions and subdivision variances.

(13) Preliminary binding site plan proposals.

(14) Application for variances from the provisions of WCC Title 22. [Reference to former Title 22 Guide Meridian plan to be removed]

(15) Revocation proceedings involving previously approved zoning conditional use permits, shoreline management substantial project permits and shoreline conditional use permits.

(16) Applications to continue operations of nonconforming adult businesses pursuant to WCC 20.83.015.

(17) Appeals of decisions relating to water service issues under Section 9.2 of the Coordinated Water System Plan.

(18) Appeals from any orders, requirements, permits, decisions or determinations made by an administrative official relating to essential public facilities.

20.92.211-2.11.215 Administrative appeals – Appeal period.
Appeals to the hearing examiner on the subjects listed in WCC 22.05.020 20.92.210(1) and (2) must be filed within 14 calendar days of the date of administrative determination pursuant to WCC 22.20.160.

20.92.2252.11.220 Rules and regulations.
The hearing examiner shall have the power to prescribe rules and regulations for the conduct of hearings before him or her, subject to approval by the county council; and also to issue summons for and compel the appearance of witnesses, to administer oath and preserve order. The opportunity of cross-examination of witnesses shall be afforded all interested parties or their counsel in accordance with the rules of the hearing examiner.
20.92.2302.11.225 Department reports.
The hearing examiner may request reports from appropriate staff. See WCC 2.33.080-22.05.100 for details.

20.92.2352.11.230 Changes in legislation.
The hearing examiner may recommend changes in legislation to the planning department or county council.

20.92.2402.11.235 Additional powers.
The hearing examiner may also exercise administrative powers and such other quasi-judicial powers as may be granted by county ordinance.

20.92.2452.11.240 Limited jurisdiction.
The hearing examiner shall, with the exception of site-specific rezones as provided for in WCC 20.90.063, have no jurisdiction over any project that requires a legislative action, such as but not limited to a standard map amendment, a Comprehensive Plan map change or a Shoreline Management Program amendment. All such projects shall be considered and processed concurrent with and in the same manner as applications for legislative action. The approval or denial of such projects shall be solely within the discretion of the county council.

20.92.850 Public hearing process for development agreements under the Growth Management Act. [This subsection on development agreements proposed to be shortened and moved to 2.11.205(3)]

(1) The Whatcom County hearing examiner is designated to conduct the open record public hearing for development agreements as defined in the Growth Management Act, Chapter 36.70B RCW.

(2) The Whatcom County hearing examiner shall conduct an open record public hearing and prepare a record thereof, and make recommendation to the county council for approval or disapproval of development agreements as defined in the Growth Management Act, Chapter 36.70B RCW.

Chapter 2.33

PERMIT REVIEW PROCEDURES

Reserved

[This chapter is proposed to be deleted in its entirety, with most of its content moved to the new Chapter 22.05 Project Permit Procedures.]
2.33.010 Purpose and applicability.
A. The purpose of this chapter is to consolidate the application, review, and approval processes for land development in Whatcom County in a manner that is easily understood and concise. It is further intended for this chapter to comply with state direction by integrating environmental and land-use review within a 120-day period.

B. This chapter describes how the county will process applications for development. The provisions of this chapter shall apply to all applications for a project permit that require an open-record hearing including, but not limited to:

1. Conditional uses;
2. Variances;
3. Subdivisions;
4. Shoreline permits when an open-record hearing is required;
5. General binding site plans;
6. Lot consolidation relief;
7. Site-specific rezones;
8. Reasonable use.

2.33.020 Exemptions.
The following are exempt from the provisions of this chapter:

A. Project permits not subject to open-record hearings; including, but not limited to, building permits and short plats, are exempt from the provisions of this chapter; provided, that:

1. The county shall make a determination of completeness pursuant to WCC 2.33.050; and
2. A final decision is made by the county pursuant to WCC 2.33.090:
   a. Within 90 days of a determination of completeness if the project is exempt from SEPA review unless a shorter review period is provided in other provisions of the Whatcom County Code;
   b. Within 120 days of a determination of completeness if the project is subject to SEPA review unless a shorter review period is provided in other provisions of the Whatcom County Code;

B. Planned unit development permits; provided, that the county shall make a determination of completeness pursuant to WCC 2.33.050;

C. Major development permits; provided, that the county shall make a determination of completeness pursuant to WCC 2.33.050;

D. Concomitant rezones; provided, that the county shall make a determination of completeness pursuant to WCC 2.33.050;

E. Legislative actions including standard map amendments, comprehensive plans or other related plans and regulations;

2.33.030 Preapplication review.
A. The purpose of preapplication review is to acquaint county staff with a sufficient level of detail regarding the proposal. It is also the purpose of this review to acquaint the applicant with the applicable requirements of the Whatcom County Code.

B. A preapplication conference may be requested prior to the submittal of a project permit application subject to this chapter.

C. A fee shall be charged to the applicant for preapplication review. If the county makes a determination of completeness within one year of the preapplication meeting, the preapplication fee shall be applied to the application cost.

D. It is the responsibility of the applicant to initiate a preapplication conference through a written request or other means allowed by the technical administrator. The request shall, at a minimum, include the following written information:
   1. Property owner's name, address, phone number, fax number;
   2. Applicant/project representative name, address, phone number, fax number;
   3. Project site parcel number;
   4. Project site address (if available);
   5. Written description of the project;
   6. One copy of the current deed to the property;
7. A site plan drawn at a scale of one inch equals 100 feet or larger that includes the following:

a. North arrow;
b. Scale;
c. All existing and proposed property lines with dimensions of parcel;
d. Location and size of existing and proposed structures labeled appropriately;
e. Location and size of existing and proposed easements and/or rights-of-way on or adjacent to the project site;
f. Significant physical features such as drainageways, wet areas, steep or unstable slopes;
g. Location of utilities including wells and septic systems when applicable.

E. The applicant may provide additional information to facilitate more detailed review. See WCC 2.33.040 Application submittal information, for additional submittal information.

F. A preapplication conference shall be held as soon as possible, but, in any event, no later than 20 days from the date of the applicant’s request.

G. The county shall provide the applicant with notice of site-specific submittal requirements as soon as possible, but, in any event, no later than 10 days from the date of the conference.

H. Preapplication review and preapplication agreements shall be valid for one year. If, within one year of a preapplication meeting, an associated application is not filed with the county or the application is substantially altered, the applicant shall be subject to a new preapplication review with a corresponding fee.

I. Preapplication review does not constitute acceptance of an application by the county nor does it vest an application.

2.33.040 Application submittal information.
A. Applications for a project permit shall be submitted using forms provided by the review authority.

B. If the applicant decides to mail a notice of application under WCC 2.33.060.D.2.a., the applicant shall include stamped and addressed envelopes (pursuant to WCC 2.33.060.D.2.a) with the application.

C. Submittal requirements for project permits are contained within the specific county code for each type of project proposal, in the corresponding chapter of the Whatcom County Development Standards, in applicable state law or WACs and in any site specific conditions resulting from a preapplication conference.
The submittal information for each permit type constitutes the information necessary to determine whether an application is complete pursuant to WCC 2.33.050, Permit receipt and determination of completeness.

D. All information and agreements resulting from preapplication review must be submitted with the application unless otherwise agreed to by the county.

E. If the proposal submitted with the application has changed to such a degree that it requires substantial re-evaluation, any agreements made by the county may be voided. (Ord. 96-031 § 1).

2.33.050 Permit receipt and determination of completeness.

A. An application shall meet all submittal requirements before the proposal is submitted to the county for review. Upon submittal by the applicant, the county will accept the application and note the date of receipt. Receipt of an application does not constitute approval of the project proposal.

B. Within 14 days of accepting the application, the county shall make a determination of completeness or issue a determination that the application is incomplete.

C. A project permit application is complete when it meets the submittal information requirements of WCC 2.33.040, Application submittal information.

D. When an application is determined to be complete, the county shall proceed as follows:

1. Issue a determination of completeness either via postal service or directly provided to the applicant within 14 days of accepting a project permit application.

2. To the extent known, identify other agencies that may have jurisdiction over the project permit application. A list of agencies shall be included in the determination of completeness.

3. A determination of completeness shall not preclude the county from requiring additional information or studies at any time prior to permit approval.

E. If the application is determined to be incomplete, then the following procedure shall take place:

1. The county will notify the applicant that the application is incomplete and indicate what is necessary to make the application complete.

2. The applicant shall have 90 days from the date that the notification was issued to submit the necessary information to the county. This period shall be extended at the applicant’s request in 90-day increments.

3. Upon receipt of the requested additional information, the county shall have 14 days to make a determination and notify the applicant.
4. If the applicant does not submit the necessary information to the county in writing within the 90-day period, the county shall make findings and issue a decision that the application is rejected.

F. If the county rejects an application, all vesting rights are lost.

G. If the county rejects an application because the applicant has failed to submit the required information within the necessary time period, the county will return the application materials and the application will be closed.

H. A project permit application shall be deemed complete under this section if the county does not provide a written determination to the applicant that the application is incomplete within 14 days from the date of submittal as required in subsection E of this section.

2.33.060 Notice of application for a proposed land-use action.
A. A notice of application shall be issued for project permit applications within 14 days after a determination of completeness and at least 15 days prior to the open record hearing.

B. If the county has made a determination of significance concurrently with notice of application, the determination of significance and scoping notice shall be combined with the notice of application.

C. Notice shall include:

1. The date of application, the date of notice of completion for the application, and the date of the notice of application;

2. The date, time, place and type of the hearing, if applicable, and scheduled at the date of notice of the application;

3. A description of the proposed project action and a list of the project permits included in the application, and, if applicable, a list of any studies requested by the county;

4. The identification of other permits not included in the application to the extent known by the county;

5. The identification of environmental reviews conducted, including notice of existing environmental documents that evaluate the proposed project (including but not limited to reports, delineations, assessments and/or mitigation plans associated with critical area reviews) and, if not otherwise stated on the document providing notice of application, the location where the application and any studies can be reviewed;

6. Any other information determined appropriate by the county;

7. A statement indicating those development regulations that will be used for project mitigation or a determination of consistency if they have been identified at the time of notice;
8. A statement of the limits of the public comment period, the right of any person to comment on the application within a 15-day time period (30 days for substantial development permits and major project permits for mitigation banks), receive notice of and participate in any hearings, request a copy of the decision once made and to appeal a decision when allowed by law. In addition, the statement shall indicate that any person wishing to receive personal notice of any hearings must notify the hearing examiner’s office within 15 days (30 days for substantial development permits and major project permits for mitigation banks) of the date of the notice of application.

D. A notice of application shall be issued in the following manner:

1. The notice shall be published once in the official county newspaper. The applicant shall bear the responsibility of paying for such notice;

2. Additional notice shall be given using the following method:

   a. For sites within urban growth areas: At least 12 days prior to the scheduled hearing date, application notice shall be sent to all property owners within 300 feet of the external boundaries of the subject property as shown by the records of the county assessor. Applicants shall submit, with their completed application, a stamped envelope with a typed address for each of the above-referenced property owners;

   b. For sites outside urban growth areas: At least 12 days prior to the scheduled hearing date, application notice shall be sent to all property owners within 1,000 feet of the external boundaries of the subject property as shown by the records of the county assessor. Applicants shall submit, with their completed application, a stamped envelope with a typed address for each of the above-referenced property owners;

3. All cost associated with providing notice shall be paid by the applicant.

E. Notices of application should be sent to neighboring cities and other agencies or tribes that will potentially be affected, either directly or indirectly, by the proposed development. (The county shall be responsible for such notification.)

F. With the exception of substantial development permit applications and major project permit applications for mitigation banks, a public comment period shall be 15 days following the date of notice of application. Substantial development permit applications and major project permit applications for mitigation banks require a 30-day period. All public comments received on the notice of application must be received in the department of planning and development services by 4:30 p.m. on or before the last day of the comment period. The county may require the applicant to pay the cost of providing notice.

G. No SEPA threshold determination shall be issued until the expiration of the public comment period established for the notice of application. This condition shall not apply if a determination of significance is made by the county.
H. Public notice given for project permit applications, SEPA documents, project
hearings, and appeals hearings as required by this chapter and other provisions of
the county code may be combined when practical, where such combined notice will
expedite the permit review process, and where provisions applicable to each
individual notice are met through the combined notice.

2.33.070 Notice of an open record hearing:
A. A notice of open record hearing shall be published by the hearing examiner once
in the official county newspaper at least 10 days prior to an open record hearing.
The notice shall consist of the date, time, place, and type of the hearing. In
addition, personal notice shall be provided to any person who has requested such
notice in a timely manner, consistent with WCC 2.33.060(C)(8).

B. Additional notice shall be given within two days of the published notice by
posting of three copies of the notice in a conspicuous manner on the property upon
which the use is proposed. (Notices shall be provided by the county. The applicant
shall be responsible for posting.)

C. An affidavit verifying distribution of the notice must be submitted to the county
two working days prior to the open record hearing.

D. Notices of an open record hearing should be sent to neighboring cities and other
agencies or tribes that will potentially be affected, either directly or indirectly, by
the proposed development. The county shall be responsible for such notification.

E. All cost associated with providing notice shall be paid by the applicant.

2.33.080 Consistency review and staff report:
A. Fundamental land use planning choices made in adopted comprehensive plans
and development regulations shall serve as the foundation for project review.
During project review, the review authority shall determine if the project proposal is
consistent with the county’s comprehensive plan, other adopted plans, existing
regulations and development standards. The review authority shall at a minimum
use four criteria for determining consistency, as follows:

1. Type of land use permitted on the site;

2. Density of development allowed on site, such as units per acre or floor area
ratio or lot coverage;

3. Availability and adequacy of public facilities and infrastructure (when
applicable);

4. Character of the development.

B. The county may conduct a more specific evaluation in addition to the evaluation
of the four main categories listed in subsection (A) of this section in considering
project consistency when other criteria are required by federal, state or local
regulations.
C. County staff shall file one consolidated report with the hearing examiner at least 17 days prior to a scheduled hearing. The staff report shall address the proposed development or action, summarizing the comments and recommendations of county departments, affected agencies, special districts and public comments received within the 15-day or 30-day comment period as established in WCC 2.33.060(F). The report shall also provide an evaluation of the project proposal for consistency as indicated in this section. The staff report shall include findings, conclusions, and proposed recommendations for response to the proposal.

D. The conclusions of a consistency determination made under this section shall be documented in the project permit decision.

2.33.090 Permit review limitations and notice of final decision:
A. Unless otherwise exempted in WCC 2.33.020 or subsection (C) of this section, the county shall issue a notice of final decision on a project permit application as follows:

1. Within 90 days of a determination of completeness if the project is exempt from SEPA review unless a shorter review period is provided in other provisions of the Whatcom County Code;

2. Within 90 days of a determination of completeness if the project is a subdivision under WCC Title 21 unless a shorter review period is provided in other provisions of the Whatcom County Code;

3. Within 120 days of a determination of completeness if the project is other than a subdivision and is subject to SEPA review unless a shorter review period is provided in other provisions of the Whatcom County Code.

B. In determining the number of days that have elapsed after an application is determined to be complete, the following time periods shall be excluded:

1. Any period during which the applicant has been required by the county to correct plans, perform required studies, or provide additional, required information:
   a. The period shall be calculated from the date the county notifies the applicant of the need for additional information until the date the county receives the additional information. The county shall have 14 days after the date the information has been provided to the county to determine adequacy of the information;
   b. If the information submitted by the applicant under this subsection is insufficient, the county shall notify the applicant of the deficiencies and the provisions of this section shall apply as if a new request for information has been made;

2. Any period during which an environmental impact statement is being prepared following a determination of significance pursuant to Chapter 43.21C RCW and WCC Title 16;
3. The period specified for administrative appeals of project permits as provided in Chapter 20.92 WCC;

4. The period specified for administrative appeals of development standards as provided in WCC 12.08.035(1);

5. Any period in which the applicant has not met public notification requirements;

6. Any period of time mutually agreed upon in writing by the applicant and the county.

C. The time limits established by subsections (A) and (B) of this section shall not apply to a project permit application that:

1. Requires an amendment to the Whatcom County comprehensive plan or a development regulation in order to obtain approval;

2. Requires approval of a new fully contained community as provided in RCW 36.70A.350, a master planned resort as provided in RCW 36.70A.360, or the siting of an essential public facility as provided in RCW 36.70A.200;

3. Is substantially revised by the applicant, including all redesigns of proposed land divisions pursuant to WCC 21.01.150, in which case a new time period shall start from the date at which the revised project application is determined to be complete.

D. The county may extend notice of final decision on the project if the county can document legitimate reasons for such a delay. In such a case the county shall provide written notice to the applicant at least 20 days prior to the deadline for the original notice of final decision. The notice shall include a statement of reasons why the time limits have not been met and a date of issuance of a notice of final decision.

E. The county shall not be liable for damages under this chapter due to the county's failure to make a final decision within the time limits established in WCC 2.33.080.

F. Notice shall be made by mail to the applicant, the Whatcom County assessor, and any party of record.

G. Unless otherwise acted upon by the county in a manner consistent with this chapter, permit applications subject to this chapter shall be approved as submitted within the timeliness established in WCC 2.33.090.

2.33.100 Consolidated permit review.
A. At the request of the applicant, the county shall integrate and consolidate the review and decision on two or more project permits subject to this chapter that relate to the proposed project action.
B. If the applicant elects the consolidated permit review process, the determination of completeness, notice of application, and notice of final decision must include all project permits being reviewed through the consolidated permit review process.

C. The consolidated permit review may combine an open record hearing on one or more permits with an open record appeal hearing on other permits.

2.33.110 Open record hearings:
Open record hearings subject to this chapter shall be undertaken pursuant to Chapter 20.92 WCC and other relevant chapters relating to specific permit processes.

2.33.120 Annual report:
Staff shall prepare an annual report on the implementation of this chapter and submit it to the council.

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Chapter 2.160

COMPREHENSIVE PLAN AMENDMENTS

Reserved

[This chapter is proposed to be deleted in its entirety, with much of its content moved to the new Chapter 22.10 Legislative Action Procedures.]

Sections:

2.160.010 Authority;
2.160.020 Purpose;
2.160.030 Definitions — Types of comprehensive plan amendments;
2.160.040 Application;
2.160.050 Initiation of comprehensive plan amendments;
2.160.060 Docket of initiated comprehensive plan amendments;
2.160.070 Review and evaluation of comprehensive plan amendments — Staff report;
2.160.080 Approval criteria;
2.160.090 Review and evaluation of comprehensive plan amendments — Planning commission;
2.160.100 Review and evaluation of comprehensive plan amendments — County council;
2.160.110 Fees;

2.160.010 Authority:
The Growth Management Act (GMA) requires that an adopted comprehensive plan shall be subject to continuing review and evaluation, any amendments or revisions to the comprehensive plan conform to the requirements of Chapter 36.70A RCW, and that any changes to development regulations or official controls are consistent with and implement the comprehensive plan (RCW 36.70A.130(2)). Additionally, the GMA requires that the county establish procedures whereby proposed
amendments or revisions of the comprehensive plan are considered by the county council no more frequently than once every year; except, that amendments may be considered more frequently under the following circumstances:

A. The initial adoption of a subarea plan that does not modify the comprehensive plan policies and designations applicable to the subarea;

B. Adoption or amendment of a shoreline master program;

C. The amendment of the capital facilities element of a comprehensive plan that occurs concurrently with the adoption or amendment of a county or city budget; or

D. To resolve an appeal of the comprehensive plan filed with the Growth Management Hearings Board or court.

2.160.020 Purpose.
The purpose of this chapter is to define the types of plan amendments and establish timelines and procedures to be followed when proposals are made for amending or revising the Whatcom County Comprehensive Plan.

2.160.030 Definitions—Types of comprehensive plan amendments.
A. "Capital facilities element amendment" means a proposed change or revision to the capital facilities element of the comprehensive plan, including the six-year capital improvement program.

B. "Comprehensive plan amendment" means a proposed change or revision to the Whatcom County Comprehensive Plan, including but not limited to a capital facilities element amendment, text amendment, change to the comprehensive plan designations map or urban growth area amendment.

C. "Text amendment" means a proposed change or revision in the text of any element of the comprehensive plan including revisions to the goals, policies, objectives, principles or standards of the plan.

D. "Urban growth area amendment" means a proposed change or revision to an urban growth area boundary as adopted by the comprehensive plan.

E. "Final concurrent review" means the consideration by the county council of all comprehensive plan amendments that were reviewed and recommended by the council during the previous docket year. This review shall take place on or about February 1st of the year after the previous docket year.

2.160.040 Application.
A. Applications for suggested comprehensive plan amendments shall include at least the following information:

1. A description of the comprehensive plan amendment being proposed including proposed map or text changes;

2. An explanation of how the comprehensive plan amendment relates to the approval criteria in WCC 2.160.080, Approval criteria;
3. A complete State Environmental Policy Act (SEPA) environmental checklist;

and

4. Name, address, and phone number of the applicant, and, if applicable, 
assessor’s parcel number, section, township, and range.

B. The department of planning and development services may prescribe additional 
information requirements and shall provide forms for proposed comprehensive plan 
amendments.

C. Completed applications for comprehensive plan amendments must be received 
by planning and development services by December 31st to be considered for 
initiation during the next calendar year. Applications proposed by planning and 
development services are not subject to the December 31st deadline.

2.160.050 Initiation of comprehensive plan amendments:
A. Comprehensive plan amendments shall be initiated by a resolution of the county 
council adopted by majority vote on or about March 1st each year.

B. Planning and development services may request a comprehensive plan item be 
initiated at any time during the year. Requested amendments of this type shall be 
placed on the docket by a majority vote of the county council and will be considered 
concurrently with other docketed items in accordance with the procedures in WCC 
2.160.100.

C. In determining whether to initiate a comprehensive plan amendment, the county 
council will consider the following factors:

1. If the amendment relates to a site within a city’s urban growth area; 
modification of a city’s urban growth area boundary, or amends 
comprehensive plan text relating to a city’s urban growth area, the county 
shall consult with and consider the comments from the city, including 
comments relating to the availability of services. Proposed amendments to city 
urban growth areas shall be processed in accordance with adopted interlocal 
agreements between the city and county and any subsequent amendments;

2. If the amendment relates to removing designated agricultural, forestry or 
mineral resource lands, the council shall consider any long-term trends in the 
loss of resource lands and cumulative impacts of approving such an 
amendment;

3. Whether the county has already set a future date for examining the area or 
issue; and

4. Planning and development services’ existing work plan and the additional 
work the amendment would require of planning and development services 
staff.

D. The following amendment proposals shall be deemed initiated and included in 
the resolution that initiates comprehensive plan amendments:
1. Amendment proposals that the county council approves for initiation from those applications received within the application period;

2. Comprehensive plan amendments proposed by councilmembers that the county council approves for initiation;

3. Amendment proposals timely submitted by cities and approved by the county council;

4. Amendment proposals timely submitted by the county executive;

E. The resolution setting the list of comprehensive plan amendments initiated for the amendment cycle, the docket, shall be forwarded to the department of planning and development services. Upon receipt of the resolution, the department shall make copies available to the public and begin the process for the review and evaluation of the proposed amendments as set out in WCC 2.160.070.

F. County planning and development staff shall forward a copy of any suggested plan amendment which would modify a city’s urban growth area to the appropriate city staff within 15 days of receipt, and shall notify the city of the date the county council is scheduled to review the proposed amendment at least 10 days prior to consideration by the county council.

2.160.060 Docket of initiated comprehensive plan amendments:
A. The department of planning and development services shall keep a docket of initiated comprehensive plan amendments and WCC Title 20 map and text amendments as initiated by the procedures in WCC 2.160.050.

B. The docket shall include the following information:

1. File number;

2. Name and address of the person or agency proposing the plan amendment;

3. Type of amendment being proposed and description of the amendment;

4. Initial year of proposed amendment;

5. Section, township and range of affected area, if applicable.

C. The docket and all application files shall be available for public review at the planning and development services department during normal business hours.

2.160.070 Review and evaluation of comprehensive plan amendments—Staff report:
A. The department of planning and development services shall conduct environmental review under SEPA and prepare reports including recommendations on all initiated comprehensive plan amendments and forward both the reports and the result of the environmental review to the planning commission.
B. Reports shall evaluate the merits of each initiated amendment based on the approval criteria of WCC 2.160.080.

C. If a proposed amendment relates to a site within a city's urban growth area, will modify a city's urban growth area or will amend text relating to a city's urban growth area, planning and development services staff shall identify and follow any additional procedures called for in an adopted interlocal agreement between the county and that city.

2.160.080 Approval criteria:
A. In order to approve an initiated comprehensive plan amendment, the planning commission and the county council shall find all of the following:

1. The amendment conforms to the requirements of the Growth Management Act, is internally consistent with the county-wide planning policies and is consistent with any interlocal planning agreements.

2. Further studies made or accepted by the department of planning and development services indicate changed conditions that show need for the amendment.

3. The public interest will be served by approving the amendment. In determining whether the public interest will be served, factors including but not limited to the following shall be considered:

   a. The anticipated effect upon the rate or distribution of population growth, employment growth, development, and conversion of land as envisioned in the comprehensive plan.

   b. The anticipated effect on the ability of the county and/or other service providers, such as cities, schools, water and/or sewer purveyors, fire districts, and others as applicable, to provide adequate services and public facilities, including transportation facilities.

   c. Anticipated impact upon designated agricultural, forest and mineral resource lands.

4. The amendment does not include or facilitate spot zoning.

5. Urban growth area amendments that propose the expansion of an urban growth area boundary shall be required to acquire development rights from a designated TDR sending area.

   a. One development right shall be transferred for every five acres included into an UGA. The county council may modify this requirement if a development agreement has been entered into that specifies the elements of development in the expanded UGA. The development agreement should include, but not be limited to, affordable housing, density, allowed uses, bulk and setback standards, open space, parks, landscaping, buffers,
critical areas, transportation and circulation, streetscapes, design standards and mitigation measures.

b. Exceptions to required TDRs include urban growth area expansion initiated by a government agency, correction of map errors, properties that are urban in character, or expansions where the public interest is served.

c. Urban growth area expansion initiated by the county, cities or other agencies shall be subject to review by county and city planning staff, and the appropriate administrative bodies, to determine whether the subject site is appropriate for designation as a TDR receiving area.

2.160.090 Review and evaluation of comprehensive plan amendments—Planning commission.
A. The planning commission shall receive the staff’s findings and recommendations for the initiated amendments and shall take public comment and hold public hearing(s) on the amendments.

B. At the conclusion of the public hearings and comment period, the commission shall evaluate the merits of each amendment in relationship to the approval criteria of WCC 2.160.080 and shall make a recommendation to the county council as to whether the amendments should be approved, approved with modifications or denied. The planning commission shall then cause written findings of fact, reasons for action, conclusions and recommendations to be prepared for each amendment. The written findings of fact, reasons for action and conclusions shall be forwarded to the county council in the form of a proposed ordinance(s) for its consideration.

2.160.100 Review and evaluation of comprehensive plan amendments—County council.
A. Comprehensive plan amendments, except for amendments adopted by emergency ordinance pursuant to Section 2.40 of the Whatcom County Charter, shall be adopted by ordinance after a recommendation by the planning commission has been submitted to the council for consideration. All initiated amendments to the comprehensive plan with the exception of amendments set forth in WCC 2.160.010 shall be considered by the council no more frequently than once a year and concurrently so the cumulative effect of the various proposals can be ascertained. The council may schedule such additional public hearings as the council deems necessary to serve the public interest.

B. If, after deliberating, the council believes the public interest may be better served by departing from the recommendation of the planning commission on an initiated amendment, the council shall conduct a public hearing on that amendment.

C. The council shall decide to approve, approve with modifications or deny comprehensive plan amendments based upon the approval criteria in WCC 2.160.080. Those amendments may be recommended for final concurrent review throughout the year. Final concurrent review by the county council should occur on or about February 1st.
D. The council shall send recommended comprehensive plan amendments on to final concurrent review by December 31st. Amendments that have not been either recommended or denied by the council by December 31st will be re-docketed for the next amendment cycle with the same number with which they were initially docketed.

2.160.110 Fees:
A. Application fees shall not be required for any application submitted by the county council, county council members, county executive, planning commission, and county planning and development services.

B. All other applicants shall pay application fees as specified in the Unified Fee Schedule.

C. Once an amendment is initiated by resolution of the county council, the applicant shall pay the initiation fee within 15 days. The county council may take official action to waive the initiation fee at the time it approves the initiating resolution if it finds the proposed amendment will clearly benefit the community as a whole and will not be for private financial gain.
EXHIBIT C

Whatcom County Code Title 9
Public Peace, Morals and Welfare

Whatcom County Code Title 15
Building Codes

Whatcom County Code Title 16
Environment

Whatcom County Code Title 23
Shoreline Management Program

Whatcom County Code Title 24
Health

AMENDMENTS

Whatcom County Code Title 9
Public Peace, Morals and Welfare

Chapter 9.52
EROTIC DANCE STUDIOS

9.52.160 Appeals to the council.
Interested parties may appeal adverse decisions of the hearing examiner to the county council, under the provisions of Whatcom County Code Chapter 20.92.600 22.05.

Whatcom County Code Title 15 Building Codes

Chapter 15.04

15.04.010 Adoption of referenced codes.
15.04.015 Department of building safety.
15.04.016 Project Permit Review Procedures.
15.04.020 Amendments to the International Building Code.
15.04.030 Amendments to the International Residential Code.
15.04.040 Amendments to the International Fire Code.
15.04.050 Permit expirations and violations of the above-referenced codes.

15.04.016 Project Permit Review Procedures
All applications for project permits shall be reviewed and processed in accordance with WCC 22.05, except as otherwise stated within this title. Appeals of Title 15 fire and building code requirements shall be made to the board of appeals per current building code. The hearing examiner shall be the appeal body for appeals of non-fire and building code requirements associated with project permits required by this Title.

15.04.020 Amendments to the International Building Code.

5. Section 105.3, Application for Permit, is amended to include the following:
To obtain the permit, the applicant shall first file an application therefor in writing on a form furnished-provided by the department of building safety for that purpose. Such application shall: and shall include all items as stated in the department's administrative manual.
1. Identify and describe the work to be covered by the permit for which application is made.
2. Describe the land on which the proposed work is to be done by legal description, street address or similar description that will readily identify and definitely locate the proposed building or work.
3. Indicate the use and occupancy for which the proposed work is intended.
4. Be accompanied by construction documents and other information as required in Section 107.
5. State the valuation of the proposed work.
6. Be signed by the applicant, or the applicant’s authorized agent.
7. Include signature by the applicant or the applicant’s authorized agent of a statement for guarantee of fee payment. The statement must be signed in the presence of County staff or staff will provide a statement which includes verification of signature by a licensed notary public.
8. Provide verification of approval to connect to a public sewer system or a septic system installation permit issued by the Whatcom County Environmental Health Department for any permit application that requires sewage disposal. The approval to connect or issued septic system permit shall be specific to the project application.
9. Provide additional data and information in the designated sequence, as required by the Building Official.

15.04.030 Amendments to the International Residential Code.

D. Section R105.3, Application for permit, is amended to include the following:

To obtain the permit, the applicant shall first file an application in writing on a form provided by the department and shall include all items as stated in the department’s administrative manual.

To obtain the permit, the applicant shall first file an application therefor in writing on a form furnished by the department of building safety for that purpose. Such application shall:

1. Identify and describe the work to be covered by the permit for which application is made.
2. Describe the land on which the proposed work is to be done by legal description, street address or similar description that will readily identify and definitely locate the proposed building or work.
3. Indicate the use and occupancy for which the proposed work is intended.
4. Be accompanied by construction documents and other information as required in Section 107.
5. State the valuation of the proposed work.
6. Be signed by the applicant, or the applicant’s authorized agent.

7. Include signature by the applicant or the applicant’s authorized agent of a statement for guarantee of fee payment. The statement must be signed in the presence of County staff or staff will provide a statement which includes verification of signature by a licensed notary public.

8. Provide verification of approval to connect to a public sewer system or a septic system installation permit issued by the Whatcom County Environmental Health Department for any permit application that requires sewage disposal. The approval to connect or issued system permit shall be specific to the project application.

9. Provide additional data and information in the designated sequence, as required by the Building Official.

Whatcom County Code Title 16
Environment
Chapter 16.08
STATE ENVIRONMENTAL POLICY ACT (SEPA)

Chapter 16.16
CRITICAL AREAS

[Note: on December 27, 2017 the recently adopted Chapter 16.16 Critical Areas Regulations amendments went into effect. Staff has proposed amendments to the procedural sections to 16.16. These changes were not reviewed by the Whatcom County Planning Commission, however it was recommended these changes be included and reviewed in the Title 22 amendment.]

ARTICLE 2. ADMINISTRATIVE PROVISIONS

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. 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 of this chapter including the mitigation standards set forth in WCC 16.16.260.

C. Project permits must comply with the substantive and procedural requirements of this chapter and the procedural requirements of Chapter 2.33 WCC shall comply with all provisions of this chapter, Title 22 and the department’s administrative manual.

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.

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 22.05 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.

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 within critical areas and/or their buffers

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

4. 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.

5. 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 developments, except single-family building permits, affecting critical areas.

3. Authority to decide on appeals of administrative decisions including, but not limited to, reasonable use permits issued by the technical administrator.

4. Authority to hold public hearings pursuant to Chapters 20.8422.05 and 20.92 WCC.

D. In granting, revising, or extending a permit, the technical administrator, or hearing examiner, as 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 2.33.09022.05 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 WCC 22.05.160.

A. All applicants shall complete a prescreening meeting 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 standards and procedures; to review conceptual site
plans prepared by the applicant; to discuss appropriate 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.

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. 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 appropriate resource agencies, or documentation from a
scientific or other credible source to determine if the project will more
probably than not adversely impact a critical area or its buffer. Identified
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
that the proposal complies with this chapter.

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 2.3322.05 WCC.

16.16.261 Alternative or Innovative Mitigation Plans.
A. The County shall consider and may approve alternative or innovative mitigation plans for major developments (as defined in Article 9 of this chapter), planned unit developments (pursuant to Chapter 20.85 WCC), and/or development agreements (pursuant to RCW 36.70B.170 through 36.70B.210).

B. If 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 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 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.
C. 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. The plan shall be reviewed by the technical administrator to ensure compliance with the general purpose and intent of this chapter 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. 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 2.3322.05 WCC prior to final approval/denial of permission of the plan to substitute for the requirements and standards of this chapter.

16.16.262 Watershed-Based Management Plans.

A. The County may consider watershed-based management plans sponsored by watershed improvement districts, other special purpose districts, or other government agencies.

B. If 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 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 2.33-22.05 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 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 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 a recommendation from the Agricultural Advisory Committee as to whether the conversion 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-provisions of Chapters 20.88 and 22.05 WCC.

6. Following receipt of the recommendation, the County Council shall proceed with review in accordance with the procedures-provisions outlined in Chapters 20.88 and 22.05 WCC.

7. The bank sponsor shall be responsible for the cost of any third-party review.

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16.16.270 Reasonable Use Exceptions.
A. Permit applicants for a property so encumbered by critical areas and/or buffers that application of this chapter—including buffer averagings, buffer reduction, or other mechanism—would deny all reasonable use may seek approval pursuant to the reasonable use standards and procedures provided 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 September 30, 2005, 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 damage to other properties;

   h. The proposed activities will not increase risk to the health or safety of people on or off the site;

   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 September 30, 2005;
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 may be no larger than 4,000 square feet. This impact area shall include the residential structure as well as appurtenant development that are necessarily connected to the use and enjoyment of a single-family residence. These appurtenant developments include garages, decks, driveways, parking, 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 4,000 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.

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. Reasonable Use Procedures.

1. Procedural requirements for reasonable use exception applications shall be as follows:

a. Reasonable use exception applications shall be subject to an open record public hearing; except, that reasonable use exception applications for single-family residential building permits, 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. Reasonable use exception applications that require an open record hearing shall be processed in accordance with Chapter 2.33 WCC and WCC 20.84.23022.05.

c. Reasonable use exception applications that are subject to administrative approval by the technical administrator shall be processed in accordance with WCC 20.84.23522.05.

d. The hearing examiner or technical administrator shall have the authority to set an expiration date for any or all 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 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 20.9222.05 WCC.

f. Any application for a reasonable use exception 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 reasonable use exception 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 reasonable use exception shall be accompanied by a fee as stated in the unified fee schedule.

4. In making reasonable use decisions, the technical administrator 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.

Where strict application of dimensional requirements of this chapter renders compliance with these provisions an undue hardship and when no other feasible alternative exists; permit applicants may seek a variance pursuant to WCC 20.84.100. A variance application shall be processed pursuant to WCC 22.05.

A. Where strict application of requirements of this chapter renders compliance with these provisions an undue hardship, permit applicants may seek a variance pursuant to the variance standards and procedures provided in this section.

A. Variance Standards. The hearing examiner may grant a variance from the dimensional requirements in this chapter when the applicant proves by clear, cogent, and convincing evidence all of the following:

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.

B. 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 20.84.220;
   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 1 year shall expire and a new application and repayment of fees shall be required to reactivate the proposal; provided, that the technical administrator may grant up 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).

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 in the original appeal filing is thereafter waived.

Whatcom County Code Title 23
Shoreline Management Program

Chapter 23.05
ADMINISTRATIVE PROCEDURES

23.05.010 Administrative procedures: Authority

23.05.020 Purpose.

23.05.030 Administrative procedures.

23.05.010 Administrative procedures Authority.
As described in adopted Whatcom County Ordinance 2008-034, the general administrative sections of Title 23 (Whatcom County Shoreline Management
Program) are not part of this program. They are, however, included with the text of this title for consistency and ease of use. Department of Ecology will be notified of any changes to the administrative chapters listed below.

The use of separate local administrative and enforcement procedures is consistent with the 2003 Washington State Shoreline Master Program Guidelines (WAC 173-26-191(2)(a)(iii)(C)), Administrative provisions:

Local governments may include administrative, enforcement, and permit review procedures in the master program or the procedures may be defined by a local government ordinance separate from the master program. In either case, these procedures shall conform to the Shoreline Management Act, specifically RCW 90.58.140, 90.58.143, 90.58.210 and 90.58.220 and to chapter 173-27 WAC.

23.05.020 Purpose.
The purpose of this chapter is to This allows Whatcom County to revise local administrative procedures (fees, application meetings, authority of administrator, etc.) without another a formal state amendment process. These chapters must still be consistent and remain consistent with the related provisions in the Shoreline Management Act and state shoreline rules (WACs). In the event of a conflict, the state RCW or WAC, as amended, will prevail over the local ordinance.

23.05.030 Administrative procedures.

A. All applications for project permits covered by this title shall be reviewed and processed in accordance with WCC 22.05, except as otherwise stated within this title.

B. The following sections and chapters are part of were adopted by the Whatcom County Administrative Procedures Ordinance 2008-034, and are separate from this title:

WCC 23.60.050 – Minimum application requirements.
WCC 23.60.060 – Preapplication conference.
WCC 23.60.070 – Fees.
WCC 23.60.080 – Notice of application.
WCC 23.60.090 – Permit application review.
WCC 23.60.100 – Consolidated permit review.
WCC 23.60.110 – State Environmental Policy Act (SEPA) compliance.
WCC 23.60.130 – Public hearings.
WCC 23.60.140 – Permit conditions.
WCC 23.60.150 – Notice of decision, reconsideration and appeal.
WCC 23.60.160 – Initiation of development.
WCC 23.60.180 – Rescission and modification.
WCC 23.60.190 – Expiration.
Chapter 23.70 WCC – Administration.
Chapter 23.80 WCC – Legal Provisions.
23.60.050 Minimum application requirements.
A. Where other approvals or permits are required for a use or development that does not require an open record hearing, such approvals or permits shall not be granted until a shoreline approval or permit is granted. All shoreline approvals and permits shall include written findings prepared by the administrator documenting compliance with bulk and dimensional standards and other policies and regulations of this program.

B. A complete application for a substantial development, conditional use, or variance permit shall contain all materials required in the department’s administrative manual, at a minimum, the following information; provided, that the administrator may vary or waive these requirements according to as provided in the manual-administrative-application-requirements and may vary or waive these requirements on a case-by-case basis. The administrator may require additional specific information depending on the nature of the proposal and the presence of sensitive ecological features or issues related to compliance with other county requirements.

1. Applicant/Proponent Information:
   a. The name, address and phone number of the applicant/proponent; applicant’s representative, and/or property owner if different from the applicant/proponent.
   b. The applicant/proponent should be the owner of the property or the primary proponent of the project and not the representative of the owner or primary proponent.

2. Property Information:
   a. The property address and identification of the section, township and range to the nearest quarter, quarter section or latitude and longitude to the nearest minute. All applications for projects located in open water areas away from land shall provide a longitude and latitude location.
   b. Identification of the name of the shoreline (water body) that the site of the proposal is associated with.
   c. A general description of the property as it now exists including its use, physical and ecological characteristics, improvements and structures.
   d. A general description of the vicinity of the proposed project including identification of the adjacent uses, structures and improvements, intensity of development and physical characteristics.
   e. A vicinity map showing the relationship of the property and proposed development or use to roads, utilities, existing developments and uses on adjacent properties.
3. A site plan identifying existing conditions consisting of photographs, text, maps and elevation drawings, drawn to an appropriate scale to clearly depict all required information, that shall include:

a. The boundary of the parcel(s) of land upon which the development is proposed. A survey may be required where substantial questions exist regarding the location of property lines or other important features.

b. The ordinary high water mark of all water bodies within, located on or adjacent to the project boundary. For any development where a determination of consistency with the applicable regulations requires a precise location of the ordinary high water mark, the applicant/proponent shall provide a survey and describe the biological and hydrological basis for the location as indicated on the plan. Where the ordinary high water mark is neither adjacent to or within the boundary of the project, the plan shall indicate the distance and direction to the nearest ordinary high water mark of a shoreline.

c. Existing land contours at intervals sufficient to accurately determine the existing character of the property. Areas within the boundary that will not be altered by the development may be indicated as such and contours approximated for that area.

d. Existing critical areas as designated in Chapter 16.16 WCC together with any supporting information consistent with the reporting requirements of Chapter 16.16 WCC.

e. A description of the character of vegetation found on the site, including dominant plant species, vegetation structure, presence of invasive species and related information. A vegetation survey of plant communities may be required.

f. A description of the existing conditions including the ecological functions and processes affecting, maintaining, or influencing the shoreline.

g. The dimensions and locations of all existing structures and improvements including, but not limited to: buildings, paved or gravelled areas, roads, utilities, septic tanks and drainfields, and stormwater management facilities.

4. A site plan and supporting information describing the features of the proposed development:

a. The dimensions and locations of all proposed structures and improvements including but not limited to: buildings, paved or gravelled areas, roads, utilities, septic tanks and drainfields, material stockpiles or surcharge, and stormwater management facilities.

b. Proposed land contours overlain on existing contours. The contours shall be at intervals sufficient to accurately determine the extent of
proposed change to the land that is necessary for the development. Areas within the boundary that will not be altered by the development may be indicated as such and contours approximated for that area.

e. Where applicable, a landscaping plan for the project.

d. Quantity, source and composition of any fill material that is placed on the site whether temporary or permanent.

e. Quantity, composition and destination of any excavated or dredged material.

f. A vicinity map showing the relationship of the property and proposed development or use to roads, utilities, existing developments and uses on adjacent properties.

g. Where applicable, a depiction of the impacts to views from existing residential uses and public areas.

h. A summary characterization of the effects of the project on existing ecological functions and processes in the vicinity of the project. If the project is likely to have adverse effects on shoreline ecological functions or processes, a mitigation plan shall be provided demonstrating measures that will be taken to offset impacts in accordance with the policies in WCC 23.90.030.

i. Where applicable, critical area mitigation plans in accordance with WCC 16.16.260.

j. On all variance applications the plans shall clearly indicate where development could occur without approval of a variance, the physical features and circumstances on the property that provide a basis for the request, and the location of adjacent structures and uses.

5. Shoreline permits shall be applied for on forms provided by the county.

6. Operation and maintenance plan(s) as required pursuant to other applicable sections of this program.

23.60.060 Pre-application conference.

A. Prior to filing a permit application for a shoreline substantial development permit, variance or conditional use permit decision, the applicant shall contact the county to schedule a preapplication conference which shall be held prior to filing the application; provided, that such meetings shall not be required for development activities associated with shoreline restoration projects, agriculture, commercial forestry, or the construction of a single-family residence.

B. The purpose of the preapplication conference is to review and discuss the application requirements with the prospective applicant and provide initial comments on the development proposal. The preapplication conference shall be scheduled by the county, at the request of an applicant, and shall be held in a
timely manner, within 30 days from the date of the applicant’s request. A project coordinator shall be assigned by the county following the preapplication conference.

C. The administrator may waive the requirement for a preapplication conference if it is determined to be unnecessary for review of an application. Nothing in this section shall be interpreted to require more than one preapplication conference or to prohibit the applicant from filing an application if the county is unable to schedule a preapplication conference within 30 days following the applicant’s request.

D. Information presented at or required as a result of the preapplication conference shall be valid for a period of 180 days following the preapplication conference. An applicant wishing to submit a permit application more than 180 days following a preapplication for the same permit application shall be required to schedule another preapplication conference.

E. At or subsequent to a preapplication conference, the county may issue a preliminary determination that a proposed development is not permissible under applicable county policies or regulatory enactments. In that event, the applicant shall have the option to appeal the preliminary determination to the hearing examiner as provided for in WCC 23.60.150 as an alternative to proceeding with a complete application.

23.60.070 Fees.
A. Required fees for all shoreline substantial development permits, shoreline conditional use permits, shoreline variances, statements of exemption, appeals, preapplication conferences and other required reviews and/or approvals shall be paid to the county at the time of application in accordance with the Whatcom County unified fee schedule in effect at that time and WCC 22.25.

B. When any given project requires more than one of the following permits or applications, the total amount of shoreline fees shall be reduced by 25 percent pursuant to WCC 22.25.030:

1. Preliminary plat application.
2. Rezone application.
3. Major development permit.
4. Planned unit development.
5. Binding site plan.

C. When any project requires a shoreline conditional use permit or shoreline variance in addition to a shoreline substantial development permit, the fees for the conditional use or variance shall be reduced by half.

D. In the event that actions of an applicant result in the repetition of the review, inspections and other steps in the approval process, those items or steps repeated shall be charged to and paid by the applicant prior to any further processing of the
application by the county. The cost shall be in accordance with the adopted fee schedule.

E. If an application is withdrawn within 30 days of submittal, and no work has commenced at the site of the proposal for which the application was made, a refund of not more than 50 percent of the shoreline fees paid may be granted by the administrator. This amount may be reduced where staff time, public notice and other costs exceed 50 percent of the fees paid.

F. No fees shall be collected from an agency of Whatcom County government.

23.60.080 Notice of application.
A. Upon receipt of a completed shoreline substantial development permit, shoreline variance, or shoreline conditional use permit application, the county shall issue a notice of application for a proposed land use action in the manner set forth in WCC 22.05.070.2.33.060 (Permit Review Procedures) notwithstanding the requirement for an open record public hearing, and to notify the applicant/proponent of his/her notice responsibility under that section.

B. The public comment period for a shoreline substantial development permit, shoreline variance, or shoreline conditional use permit shall be 30 days following the date of notice of application. Public comments may be submitted at any time prior to the closing of the record of the open record predecision hearing or, if no open record public hearing is required, prior to the decision on the project permit.

C. The public hearing shall not be closed to the receipt of written comments prior to 30 days following the date of the notice.

D. Application for any approval or permit not requiring a shoreline substantial development permit, shoreline variance, or shoreline conditional use permit shall be governed by the applicable notice requirement for that permit and shall not be subject to additional notice by this section. Any public comments submitted pursuant to applications for other approvals or permits shall be considered in review of compliance with standards, policies and regulations of this program.

EB. The rights of treaty tribes to resources within their usual and accustomed areas shall be accommodated through the notification and comment provisions of the permit review process. Tribal treaty rights may be addressed through specific permit conditions. Direct coordination between tribes and the applicant/proponent is encouraged.

23.60.090 Permit application review.
A. All shoreline permit applications, exemptions, or other approvals shall be subject to the provisions of this program that are in effect at the time of application.

B. To facilitate review of an application the decision maker shall consider any or all of the following:

1. The application and attached information;
2. The SEPA checklist, threshold determination, environmental impact statement, or other environmental studies and/or documentation;

3. Written comments from interested persons;

4. Information and recommendations from any public agency and from the administrator in cases where the administrator is not the decision maker;

5. Information or comment presented at a public hearing, if held, on the application; and

6. The policy and provisions of the Act and this program including the criteria enumerated in WCC 23.60.010, 23.60.030 and 23.60.040, as applicable.

C. **In compliance with the provisions of Chapter 23.33-22.05 WCC, the decision maker shall be responsible to process project permit applications for shoreline substantial development permits, shoreline variance and shoreline conditional use permits in a compliance with the provisions of WCC 22.05 timely manner.**

D. **The decision maker shall process project permit applications for shoreline statements of exemption shall be processed in accordance with the provisions of WCC 23.60.023(A) and Chapter 22.05 WCC.**

E. Any application for a shoreline permit or approval 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 administrator may grant a single 90-day extension for good cause. Delays such as those caused by public notice requirements, State Environmental Policy Act review, litigation directly related to the proposal, or changes in government regulations shall not be considered as part of the inactive period.

F. If a shoreline permit is denied, no reapplication for the same or essentially similar development may be made until one year from the date of denial.

**23.60.100 Consolidated permit review.**

A. Whenever an application for a project permit under the program requires a project permit or approval under another county permit authority, such as zoning or subdivision, the shoreline project permit application, time requirements and notice provisions for processing the shoreline permit shall apply, in addition to those of other regulatory programs.

B. The provisions of Chapter 23.33 22.05 WCC shall apply to the consolidated application, review and approval of applications that require an open record hearing. Any shoreline use or development that is subject to other approvals or permits that requires an open record hearing under another permit authority, such as zoning or subdivision, shall be subject to consolidated review and the decision maker designated for the open record hearing shall be the decision maker for the consolidated review.

**23.60.110 State Environmental Policy Act (SEPA) compliance.**
A. Whenever an application for shoreline substantial development permit, shoreline variance, shoreline conditional use permit, or statement of exemption is subject to the rules and regulations of SEPA (Chapter 43.21C RCW), the review requirements of SEPA, including time limitations, shall apply, where applicable.

B. Applications for shoreline permit(s) or approval(s) that are not categorically exempt under SEPA shall be subject to environmental review by the responsible official of Whatcom County pursuant to the State Environmental Policy Act (Chapter 197-11 WAC).

C. As part of SEPA review, the responsible official may require additional information regarding the proposed development in accordance with Chapter 197-11 WAC.

D. Failure of the applicant/proponent to submit sufficient information for a threshold determination to be made shall be grounds for the responsible official to determine the application incomplete.

23.60.120 Burden of proof.
Permit applicants/proponents have the burden of proving that the proposed development is consistent with the criteria set forth in the Act and this program.

23.60.130 Public hearings.
A. The administrator shall determine whether an application requires a public hearing pursuant to the criteria below no later than 15 days after the minimum public comment period provided by WCC 23.60.080. An open record public hearing shall be required for all of the following:

1. The proposal has a cost or market value in excess of $100,000 except for single-family residences, agriculture, commercial forestry and ecological restoration projects; or

2. The proposal would result in development of an area larger than five acres; or

3. The proposal is a new or expanded marina, pier, aquaculture structure, any building over 35 feet high, mine, dam, stream diversion, landfill; or

4. The administrator has reason to believe the proposal would be controversial based on public response to the notice of receipt of application and other information; or

5. The proposal is determined to have a significant adverse impact on the environment and an environmental impact statement is required in accordance with the State Environmental Policy Act; or

6. The proposal requires a variance and/or conditional use approval pursuant to this program; or

7. The use or development requires an open record public hearing for other Whatcom County approvals or permits.
B. An open record public hearing on shoreline permit applications shall be held in accordance with the provisions of Chapter 2.33 22.05 WCC, unless a continuance is granted pursuant to the rules and procedures of the hearing examiner or other hearing body and subject to time requirements for compliance with the State Environmental Policy Act.

C. Decisions and recommended decisions of the hearing examiner shall be rendered within 10 working days of the date the public hearing record is closed unless the applicant/proponent agrees to an extension of time.

D. Where the county council is the permit decision maker they shall meet to consider the hearing examiner’s recommendation within 21 days of receipt thereof, at a closed record proceeding, at which time it may approve or disapprove the application, or remand the matter to the hearing examiner with instructions.

E. Public hearing requirements for permit appeals shall be processed according to WCC 23.60.150.

23.60.140 Permit conditions.
In granting, revising, or extending a shoreline permit, the decision maker may attach such conditions, modifications, or restrictions thereto regarding the location, character, and other elements of the proposed development deemed necessary to assure that the development will be consistent with the policy and provisions of the Act and this program as well as the supplemental authority provided in Chapter 43.21C RCW as applicable. In cases involving unusual circumstances or uncertain effects, a condition may be imposed to require monitoring with future review or reevaluation to assure conformance with the Act and this program. If the monitoring plan is not implemented, the permittee may be found to be noncompliant and the permit may be rescinded in accordance with WCC 23.60.180.

23.60.150 Notice of decision, reconsideration and appeal.
A. A notice of decision for action on a shoreline substantial development permit, shoreline variance, or shoreline conditional use permit shall be provided to the applicant/proponent and any party of record in accordance with the review procedures of Chapter 2.33 22.05 WCC and at least 10 days prior to filing such decisions with the Department of Ecology pursuant to WAC 173-27-130. Decisions filed with the Department of Ecology shall contain the following information:

1. A copy of the complete application;

2. Findings and conclusions that establish the basis for the decision including but not limited to identification of shoreline environment designation(s), applicable program policies and regulations and the consistency of the project with appropriate review criteria for the type of permit(s);

3. The final decision of the local government;

4. A completed permit data sheet (see Appendix A of this title); and
5. Where applicable, local government shall also file the applicable documents required by SEPA, or in lieu thereof, a statement summarizing the actions and dates of such actions taken under Chapter 43.21C RCW.

6. When the project has been modified in the course of the local review process, plans or text shall be provided that clearly indicate the final approved plan.

B. Notice of decision for shoreline statements of exemption shall comply with WCC 23.60.023(E) and WCC 22.05.110(1).

C. This program shall only establish standing for parties of record for shoreline substantial development permits, shoreline variances, or shoreline conditional use permits. Standing as a party of record is not established by this program for exempt actions pursuant to WCC 23.60.022; provided, that in such cases standing may be established through an associated permit process that provides for public notice and provisions for parties of record.

D. The applicant/proponent or any party of record may request reconsideration of any final action by the decision maker within 10 days of notice of the decision. Such requests shall be filed on forms supplied by the county. Grounds for reconsideration must be based upon the content of the written decision. The decision maker is not required to provide a written response or modify his/her original decision. He/she may initiate such action as he/she deems appropriate. The procedure of reconsideration shall not preempt or extend the appeal period for a permit or affect the date of filing with the Department of Ecology, unless the applicant/proponent requests the abeyance of said permit appeal period in writing within 10 days of a final action.

E. Appeals to the shoreline hearings board of a decision on a shoreline substantial development permit, shoreline variance or shoreline conditional use permit may be filed by the applicant/proponent or any aggrieved party pursuant to RCW 90.58.180 within 21 days of filing the final decision by Whatcom County with the Department of Ecology.

F. Whatcom County shall consider an appeal of a decision on a shoreline substantial development permit, shoreline variance or shoreline conditional use only when the applicant/proponent waives his/her right to a single appeal to the shoreline hearings board. Such waivers shall be filed with the county in writing concurrent with a notice of appeal within 10 days of a final action. When an applicant/proponent has waived his/her right to a single appeal, such appeals shall be processed in accordance with the appeal procedures of subsection H of this section and shall be an open record hearing before the hearing examiner.

G. Any order, requirement or administrative permit decision, or determination by the administrator based on a provision of this program, except a shoreline substantial development permit, may be the subject of an appeal to the office of the hearing examiner by any aggrieved person. Such appeals shall be processed in accordance with the appeal procedures of subsection H of this section and shall be an open record hearing before the hearing examiner.
H. Appeal Procedures.

1. Appeals shall be filed on forms supplied by the county within 10 calendar days of the issuance of a substantial development permit, shoreline variance or shoreline conditional use permit and within 20 calendar days of any other action of the administrator being appealed.

2. A public hearing on the appeal shall be held within 45 working days following receipt of the application for appeal.

3. Legal notice of the public hearing shall be made by mailing notice of time, date, and location of the hearing to the appellant, any parties of record, the Washington Department of Ecology, and the administrator at least 15 days prior to the hearing.

4. A decision by the hearing examiner shall be mailed within 10 working days of the public hearing to all parties of record unless otherwise mutually agreed to by all parties to the appeal.

5. Any party of record may request a closed record review of the hearing examiner’s decision issued under subsection (H)(4) of this section by the county council. Such an appeal shall be filed with the county council on forms supplied by the county within 10 calendar days of the written decision. If appeal is made to the county council, notice of appeal shall be provided to all parties of record at least 15 days prior to consideration by the county council. The council shall meet to review the hearing examiner’s decision within 21 days of transmittal thereof, at which time it may approve or disapprove the application, or remand the matter to the hearing examiner.

6. The time period for appeal to the shoreline hearings board shall begin after the decision maker has filed the final county decision with the Department of Ecology.

23.60.160 Initiation of development.
A. Development pursuant to a shoreline substantial development permit, shoreline variance, or conditional use permit shall not begin and shall not be authorized until 21 days after the “date of filing” or until all review proceedings before the shoreline hearings board have terminated.

B. Date of Filing.

1. “Date of filing” of a substantial development permit is the date of actual receipt of the decision by the Department of Ecology.

2. The “date of filing” for a shoreline variance or shoreline conditional use permit shall mean the date the permit decision rendered by the Department of Ecology is transmitted by the department to the county and the applicant/proponent.

23.60.170 Revisions.
A. A revision is required whenever the applicant/proponent proposes substantive changes to the design, terms or conditions of a project from that which is approved in the permit and/or statement of exemption. Changes are substantive if they materially alter the project in a manner that relates to its conformance to the terms and conditions of the permit, this program or the Act. Changes that are not substantive in effect do not require a revision.

B. An application for a revision to a shoreline permit shall be submitted to the administrator. The application shall include detailed plans and text describing the proposed changes. The county decision maker that approved the original permit may approve the request upon a finding that the proposed changes are within the scope and intent of the original approval, and are consistent with this program and the Act.

C. “Within the scope and intent of the original approval” means all of the following:

1. No additional over-water construction is involved except that a pier, dock or floating structure may be increased by 10 percent over that approved under the original approval;

2. Ground area coverage and/or height may be increased a maximum of 10 percent over that approved under the original approval; provided, that the revised approval does not authorize development to exceed the height, impervious surface, setback or any other requirements of this program except as authorized under a variance granted for the original development;

3. Additional or revised landscaping is consistent with any conditions attached to the original approval and with this program;

4. The use authorized pursuant to the original approval is not changed; and

5. The revision will not cause adverse environmental impacts beyond those originally authorized in the approval.

D. Revisions to shoreline permits and statements of exemption may be authorized after the original authorization has expired. Revisions made after the expiration of the original approval shall be limited to changes that are consistent with this program and that would not require a permit under this program. If the proposed change is a substantial development as defined by this program, then a new permit is required. The provisions of this subsection shall not be used to extend the time requirements or to authorize substantial development beyond the time limits or scope of the original approval.

E. A new permit shall be required if the proposed revision and any previously approved revisions in combination would constitute development beyond the scope and intent of the original approval as set forth in subsection C of this section.

F. Upon approval of a revision, the decision maker shall file a copy of the revised site plan and a detailed description of the authorized changes to the original permit with the Department of Ecology together with a final ruling and findings supporting
the decision based on the requirements of this section. In addition, the decision maker shall notify parties of record of the action.

G. If the proposed revision is to a development for which a shoreline conditional use or variance was issued, the decision maker shall submit the revision to the Department of Ecology for approval with conditions or denial, and shall indicate that the revision is being submitted under the requirements of this subsection. Under the requirements of WAC 173-27-110(6), the Department shall render and transmit to the decision maker and the applicant/proponent its final decision within 15 days of the date of the Department’s receipt of the submittal from the decision maker. The decision maker shall notify parties on record of the Department’s final decision. Appeals of a decision of the Department shall be filed in accordance with the provisions of Chapter 461-08C WAC. (Ord. 2009-13 § 1 (Exh. 1)).

23.60.180 Rescission and modification.
A. Any shoreline permit granted pursuant to this program may be rescinded or modified upon a finding by the hearing examiner that the permittee or his/her successors in interest have not complied with conditions attached thereto. If the results of a monitoring plan show a development to be out of compliance with specific performance standards, such results may be the basis for findings of noncompliance.

B. The administrator shall initiate rescission or modification proceedings by issuing written notice of noncompliance to the permittee or his/her successors and notifying parties of record at the original address provided in application review files.

C. The hearing examiner shall hold a public hearing no sooner than 15 days following such issuance of notice, unless the applicant/proponent files notice of intent to comply and the administrator grants a specific schedule for compliance. If compliance is not achieved, the administrator shall schedule a public hearing before the hearing examiner. Upon considering written and oral testimony taken at the hearing, the hearing examiner shall make a decision in accordance with the above procedure for shoreline permits.

D. These provisions do not limit the administrator, the prosecuting attorney, the Department of Ecology or the Attorney General from administrative, civil, injunctive, declaratory or other remedies provided by law, or from abatement or other remedies.

23.60.190 Expiration.
A. The following time requirements shall apply to all substantial development permits and to any development authorized pursuant to a variance, conditional use permit, or statement of exemption:

1. Construction shall be commenced or, where no construction is involved, the use or activity shall be commenced within two years of the effective date of a shoreline permit or exemption or the permit shall expire; provided, that the hearing examiner or administrator, as appropriate, may authorize a single extension for a period of not more than one year based on a showing of good
cause if a request for extension has been filed with the hearing examiner or administrator as appropriate before the expiration date of the shoreline permit or exemption, and notice of the proposed extension is given to parties of record and the Department of Ecology.

2. Authorization to conduct development activities shall terminate five years after the effective date of a shoreline permit or exemption; provided, that the hearing examiner or administrator, as appropriate, may authorize a single extension for a period of not more than one year based on a showing of good cause, if a request for extension has been filed with the hearing examiner or administrator, as appropriate, before the expiration date of the shoreline permit or exemption and notice of the proposed extension is given to parties of record and the Department of Ecology.

3. The effective date of a shoreline permit or exemption shall be the date of last action required on the shoreline permit or exemption and all other government permits and approvals that authorize the development to proceed, including administrative and legal actions on any such permit or approval. The applicant/proponent shall be responsible for informing the county of the pendency of other permit applications filed with agencies other than the county and of any related administrative and legal actions on any permit or approval. If no notice of the pendency of other permits or approvals is given to the county prior to the date of the last action by the county to grant county permits and approvals necessary to authorize the development to proceed, including administrative and legal actions of the county, and actions under other county development regulations, the date of the last action by the county shall be the effective date.

B. Notwithstanding the time limits established in subsections (A)(1) and (2) of this section, upon a finding of good cause based on the requirements and circumstances of the proposed project and consistent with the policies and provisions of this program and the Act, the hearing examiner or administrator as appropriate may set different time limits for a particular substantial development permit or exemption as part of the action to approve the permit or exemption. The hearing examiner may also set different time limits on specific conditional use permits or variances with the approval of the Department of Ecology. The different time limits may be longer or shorter than those established in subsections (A)(1) and (2) of this section but shall be appropriate to the shoreline development or use under review. “Good cause based on the requirements and circumstances of the proposed project” shall mean that the time limits established for the project are reasonably related to the time actually necessary to perform the development on the ground and complete the project that is being permitted, and/or are necessary for the protection of shoreline resources.

C. When permit approval includes conditions, such conditions shall be satisfied prior to occupancy or use of a structure or prior to the commencement of a nonstructural activity; provided, that different time limits for compliance may be specified in the conditions of approval as appropriate.
D. The hearing examiner or administrator as appropriate shall notify the Department of Ecology in writing of any change to the effective date of a permit, authorized by subsections A through C of this section, with an explanation of the basis for approval of the change. Any change to the time limits of a permit other than those authorized by the sections of this program previously listed shall require a new permit application.

23.70.030 Hearing examiner.

The Whatcom County hearing examiner is hereby vested with the authority to conduct open record hearings and prepare a record thereof pursuant to WCC 2.11.210.

A. Grant or deny shoreline permits requiring public hearings.

B. Grant or deny variances from this program.

C. Grant or deny conditional uses under this program.

D. For consolidated applications for permits for which the county council is designated as the decision maker, the hearing examiner shall have the authority to hold an open record public hearing and make a recommendation to the county council on shoreline permits as part of a consolidated review as provided in Chapter 2.33 WCC.

E. Decide on appeals of administrative decisions issued by the administrator of this program. (Ord. 2009-13 § 1 (Exh. 1); Ord. 2008-034 § 1 (Exh. 1)).

Whatcom County Code Title 24
Health

Chapter 24.07
ADMINISTRATIVE NOTICE PROCEEDINGS, CIVIL PENALTIES AND ABATEMENT

24.07.090 Hearing and appeals.
A. Notice of Appeal. Any aggrieved person may appeal any administrative notice, any assessment of civil penalty, director's decision or order by submitting to the director a written request for a hearing within 10-working-fourteen calendar days of the service of the notice, order or decision. The notice of appeal shall cite the notice, order or decision appealed from and contain a brief statement of the reasons for seeking an appeal hearing.
B. Notice and Timing of Appeal Hearing. After receipt of a notice of appeal, the director shall transmit the notice of appeal, and the notice or decision appealed from, to the hearing examiner. An appeal hearing shall be conducted on the record. Written notice of the time and place of the hearing shall be given at least 14 fourteen calendar working days prior to the date of the hearing to each appealing party, to the director whose notice, order or decision is being appealed, and to all other interested persons who have requested in writing that they be so notified.

1. In the case of an appeal from a notice of contamination issued under Chapter 24.13 WCC, the hearing shall be held not less than 20 days and not more than 30 days after serving of the notice as required by RCW 64.44.030.

C. Conduct of Appeals. All appeals shall be conducted in accordance with Chapter 20.92.22.05 WCC, except for timeframes noted in WCC 24.07.090(A) and (B).

D. Combination of Appeal. Whenever possible, the appeal from the director’s administrative notice, order or decision shall be combined with any other appeal from enforcement actions relating to the same subject matter and falling within the jurisdiction of the hearing examiner.
EXHIBIT D

Whatcom County Code Title 20
Zoning

AMENDMENTS

Title 20
ZONING

Chapters:

20.90 Amendments Reserved.
20.92 Hearing Examiner Reserved.

Chapter 20.04
GENERAL PROVISIONS

Sections:

20.04.031 Vesting of permits Reserved.

20.04.090 Application fees and other fees Appeals.
20.04.091 Reduced application fees Reserved.
20.04.092 Refund of application fees Reserved.

20.04.031 Vesting of permits Reserved [Vesting provisions proposed to be revised and moved to 22.05.060 because they pertain to procedures in]
other titles than Title 20 Zoning. Definition of project permit (subsection (1), referencing state law) is proposed to be moved to 22.05.010.]
(1) Project Permits Defined. For the purpose of this section, “project permit” and “project permit application” shall be as defined in RCW 36.70B.020:

Any land use or environmental permit or license required from a local government for a project action, including but not limited to building permits, subdivisions, binding site plans, planned unit development permits, site plan review, permits or approvals required by critical areas ordinances, site specific rezones authorized by a comprehensive plan or subarea plan, but excluding the adoption or amendment of a comprehensive plan, subarea plan, or development regulations except as otherwise specifically included in this subsection.

(2) Project Permits Approved Prior to Effective Date.

(a) Project permits which have been approved by Whatcom County on or before the effective date of the ordinance codified in this section are hereby deemed to be vested under the zoning and land use regulations in effect at the time of the complete application therefor.

(b) Future building permits that may be required to construct or complete the project as originally approved shall be subject to the building codes in place at the time of the building permit application.

(3) Project Permit Applications Submitted After the Effective Date.

(a) Project permit applications submitted after the effective date of the ordinance codified in this section shall be vested under the zoning and land use regulations in effect at the time of application; provided, that the county has not subsequently notified the applicant that the application is incomplete.

(b) If the county has notified the applicant that the application is incomplete, the application shall not be deemed vested until the date the county notifies the applicant that the application is complete.

(c) Until the county implements RCW 36.70B.070, the county shall make the determination of completeness in accordance with its existing policy. Once the provisions of RCW 36.70B.070 regarding completeness are implemented, such provision shall govern the determination of a complete application.

(d) Future building permits that may be required to construct or complete the project as originally approved shall be subject to the building codes in place at the time of the building permit application.

(4) Project Permit Applications Submitted Prior to the Effective Date, But Which Have Not Received Final Approval on or Before the Effective Date:

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(a) Project permit applications submitted prior to the effective date of the ordinance codified in this section but which have not received final approval on or before the effective date of the ordinance codified in this section shall be deemed vested under the zoning and land use regulations in effect at the time the county accepted payment of an application fee; provided, that the county has not subsequently notified the applicant that the application is incomplete.

(b) If the county has notified the applicant that the application is incomplete, the application shall not be deemed vested until the date the county notifies the applicant that the application is complete.

(c) Future building permits that may be required to construct or complete the project as originally approved shall be subject to the building codes in place at the time of the building permit application.

(5) Additional Provisions:

(a) Nothing herein shall restrict the county’s authority to impose conditions on project permits pursuant to the State Environmental Policy Act (SEPA), Chapter 43.21C RCW and WAC 197-11-600.

(b) Project permit applications for development of lots created by the short plat process shall comply with all development regulations, including but not limited to the critical areas ordinance, impervious surface restrictions, environmental work closure periods, and all other applicable code standards.

[**Fees provisions of 20.04.090 - .092 are proposed to be moved to a new chapter, WCC 22.25, because it pertains to all land use and development chapters not just Title 20 zoning.**]

**20.04.090 Application fees and other fees: Appeals.**
Fees for conditional use permits, variances, planned unit developments, initiated amendments and fees for other approvals and reviews as set forth in this title shall be as provided in the County’s Unified Fee Schedule. Any party of record may appeal any order, final permit decision, or final administrative determination in the administration or enforcement of this title. The hearing examiner shall have the authority to hear and decide appeals pursuant to WCC 22.05.160.

**20.04.091 Reduced application fees: Reserved.**
When any given project requires more than one of the following permits or applications, the total amount of fees shall be reduced by 25 percent of the required aggregate permit and application fees; provided any fees required for processing of an EIS shall not be included as part of the total amount of fees to be reduced by 25 percent:

(1) Subdivision plat application;
(2) Rezone application;
(3) Shoreline substantial development permit, variance or conditional use;
(4) Major development permit;
(5) Conditional use permit;
(6) Variance;
(7) Planned unit development.

20.04.092 Refund of application fees. Reserved.
Refunds of application fees for project permits and for amendments to the 
Whatcom County Comprehensive Plan, development regulations and official maps 
shall be computed based on the following. All refund requests shall be submitted in 
writing to the department of planning and development services. The date of 
application for a refund request shall be the date the written refund request is 
received by the department. For the purpose of computing elapsed calendar days, 
the day after the date of application or deadline date as appropriate shall be 
counted as day one.

(1) Fees for Project Permits:
   (a) Applications withdrawn on or before the fourteenth calendar day after the 
       date of application shall be eligible for a refund of 90 percent of all application 
       fees including any SEPA fees.

   (b) Applications withdrawn after the period set forth in subsection (1)(a) of 
       this section but on or before the ninetieth calendar day after the date of 
       application shall be eligible for a refund of 50 percent of all application fees 
       except for any SEPA fees which shall not be eligible for a refund.

   (c) Applications withdrawn after the ninetieth calendar day after the date of 
       application shall not be eligible for a refund.

   (d) Notwithstanding the above, no fees shall be refunded for any permit or 
       approval that has been issued or granted by the county.

(2) Fees for Amendments to the Whatcom County Comprehensive Plan, 
Development Regulations, and Official Maps:
   (a) Applications for amendments that are withdrawn on or before the 
       fourteenth calendar day after the deadline for submitting the fee shall be 
       eligible for a refund of 90 percent of all application fees including SEPA fees. If 
       there is no deadline for submitting the fee, the 90 percent refund shall be 
       given if the application is withdrawn on or before the fourteenth calendar day 
       after the fee was submitted.

   (b) Applications for amendments that are withdrawn after the period set forth 
       in subsection (2)(a) of this section but on or before the ninetieth calendar day
after the deadline for submitting the fee shall be eligible for a refund of 50 percent of all application fees except for SEPA fees which shall not be eligible for a refund. If there is no deadline for submitting the fee, the 50-percent refund shall be given if the application is withdrawn on or before the ninetieth calendar day after the fee was submitted.

(c) Applications for amendments that are withdrawn after the 90 calendar days shall not be eligible for a refund.

(3) Withdrawal of an application shall constitute full surrender of any express or implied rights inherent in an application which has been perfected and accepted by the planning and development services department or its designees.

Chapter 20.13

WIRELESS COMMUNICATION FACILITIES

20.13.050 Administrative approval uses.
The following uses are considered administrative approval uses and shall require a wireless communication facility (WCF) permit in accordance with Chapters 2.33 22.05 and 20.84 WCC, and shall be subject to a threshold determination in accordance with the Whatcom County SEPA Ordinance unless categorically exempt; provided, that WCF permit proposals located in nonresidential related districts shall be exempt from the public noticing requirements found in Chapter 2.33 WCC, Permit Review Procedures.

20.13.060 Conditional uses.
(1) The following uses shall require conditional use permit approval by the hearing examiner, and shall be processed in accordance with Chapters 2.33 22.05 and 20.84 WCC and shall be subject to a threshold determination in accordance with the Whatcom County SEPA Ordinance, unless categorically exempt. Such uses shall comply with county, state, and federal law and regulations and all applicable provisions of this chapter. The applicant or applicant’s agent must also submit documentation to the administrator that demonstrates that any new antennas meet Federal Communication Commission (FCC) emission standards (as applicable). The administrator may refer an application for a conditional use to a technical review committee for review and comment prior to referring the application to the hearing examiner for a decision.

20.13.170 Appeals.
The hearing examiner shall have the authority to decide, in conformity with this chapter, appeals from any order, requirement, permit decision or determination made by an administrative official in the administration or enforcement of this chapter where more than one interpretation is possible; provided, that such appeal shall be filed within 14 days of the action being appealed. The hearing examiner shall hear appeals under this chapter in the same manner as provided in WCC 20.92.210(2) 22.05.160.

Chapter 20.15
COMMERCIAL MUSHROOM SUBSTRATE PRODUCTION FACILITIES

20.15.170 Appeals.
The hearing examiner shall have the authority to decide, in conformity with this chapter, appeals from any order, requirement, permit decision or determination made by an administrative official in the administration or enforcement of this chapter where more than one interpretation is possible; provided, that such appeal shall be filed within 14 days of the action being appealed. The hearing examiner shall hear appeals under this chapter in the same manner as those appeals he has authority to hear under WCC 20.92.210(1) as provided in WCC 22.05.160.

Any such appeal shall be reviewed de novo by the hearing examiner as to the scope of review and the standard of review.

Chapter 20.78
TRANSPORTATION CONCURRENCY MANAGEMENT

20.78.090 Appeal.
(1) The results of an administrative reconsideration pursuant to WCC 20.78.080 may be appealed to the hearing examiner, as provided by Chapter 20.92 WCC in WCC 22.05.160.
Chapter 20.80
SUPPLEMENTARY REQUIREMENTS

20.80.738 Development moratoria – implementation, removal, and exceptions.

(2) Request for Removal of Development Moratorium. A development moratorium may be considered for removal by the hearing examiner when all of the following requirements are met:

(a) Public Hearing Required.

(i) The county shall set a date for public hearing before the examiner pursuant to WCC Chapter 22.05 2.33.060 and 2.33.070 after all the requests for additional information or plan corrections have been satisfied and the necessary components have been received as required for a complete application.

(ii) The public hearing shall follow the procedures set forth in WCC Chapter 22.05 20.92 WCC.

Chapter 20.84
VARIANCES, CONDITIONAL USES, ADMINISTRATIVE APPROVAL USES AND APPEALS

Sections:
20.84.100 Variances.
20.84.150 Reserved.
20.84.200 Conditional uses.
20.84.210 Application.
20.84.220 Criteria.
20.84.225 Revisions to conditional use permits.
20.84.230 Open-record-hearing-notice:Reserved.
20.84.235 Administrative approval uses.
20.84.236 Revisions to administrative approval use permits.
20.84.240 Appeals:Reserved.
20.84.250 Fees:Reserved.
20.84.260 Date of expiration:Reserved.

20.84.100 Variances.
.110 The hearing examiner shall have authority to grant a variance from the provisions of this ordinance and of WCC Title 22, the Guide Meridian Improvement Plan, when, in the opinion of the hearing examiner, the conditions set forth in WCC 20.84.120 herein have been found to exist. In such cases, a variance may be granted which is in harmony with the general purpose and intent of this ordinance so that the spirit of this ordinance shall be observed, public safety and welfare secured, and substantial justice done; provided, that no variance shall be granted which authorizes a use which is not permitted by the underlying zoning.

.120 Before any variance may be granted, it shall be shown that the following circumstances are found to apply:

(1) That any variance granted shall not constitute a grant of special privilege, be based upon reasons of hardship caused by previous actions of the property owner, nor be granted for pecuniary reasons alone;

(2) Because of special circumstances applicable to the subject property, including size, shape, topography, location or surrounding, the strict application of the zoning ordinance is found to cause a hardship and deprive the subject property of a use or improvement otherwise allowed in the identical zone classification. Aesthetic considerations or design preferences without reference to restrictions based upon the physical characteristics of the property do not constitute sufficient hardship under this section;

(3) The granting of the variance will not be materially detrimental to the public welfare, or injurious to the property or improvements in the vicinity and zone in which the subject is situated.

20.84.150 Reserved.
Repealed by Ord. 2016-011.

20.84.200 Conditional uses.

20.84.210 Application.
Conditional use permit applications shall be processed per the provisions of WCC Chapter 22.05. Upon application, the hearing examiner may grant conditional use permits for such uses as set forth in this ordinance. Conditional use permits shall be nontransferable unless said transfer is further approved by the hearing examiner.

20.84.220 Criteria.
Before approving an application, the hearing examiner or zoning administrator shall ensure that any specific standards of the use district defining the use are fulfilled, and shall find adequate evidence showing that the proposed use at the proposed location:

(1) Will be harmonious and in accordance with the general and specific objectives of Whatcom County’s Comprehensive Plan and zoning regulations.

(2) Will be designed, constructed, operated, and maintained so as to be harmonious and appropriate in appearance with the existing or intended character of the

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general vicinity, and that such use will not change the essential character of the same area.

(3) If located in a rural area (as designated in the Comprehensive Plan), will be consistent with rural land use policies as designated in the rural lands element of the Comprehensive Plan.

(4) Will not be hazardous or disturbing to existing or future neighboring uses.

(5) Will be serviced adequately by necessary public facilities such as highways, streets, police and fire protection, drainage structures, refuse disposal, water and sewers, and schools; or that the persons or agencies responsible for the establishment of the proposed use shall be able to provide adequately any such services.

(6) Will not create excessive additional requirements at public cost for public facilities and services, and will not be detrimental to the economic welfare of the community.

(7) Will not involve uses, activities, processes, materials, equipment and conditions of operation that will be detrimental to any persons, property, or the general welfare by reasons of excessive production of traffic, noise, smoke, fumes, glare or odors.

(8) Will have vehicular approaches to the property which shall be so designed as not to create an interference with traffic on surrounding public streets.

(9) Will not result in the destruction, loss or damage of any natural, scenic or historic feature of major importance.

**20.84.225 Revisions to conditional use permits.**

The hearing examiner may administratively approve revisions to conditional use permits; provided, that the proposed changes are within the scope and intent of the original permit. “Within the scope and intent of the original permit” shall mean the following:

(1) Lot coverage and height may be increased a maximum of 10 percent from the provisions of the original permit; provided, that revisions involving new structures not shown on the original site plan shall require a new permit; and provided further, that any revisions authorized under this paragraph shall not exceed height, lot coverage, setback or any other requirements of the regulations for the area in which the project is located; and provided further that any revisions authorized under this paragraph shall be reviewed for consistency with the relevant chapters and policies in the Comprehensive Plan.

(2) Landscaping may be added to a project without necessitating an application for a new permit; provided, that the landscaping is consistent with conditions (if any) attached to the original permit and is consistent with the regulations for the area in which the project is located;
(3) The use authorized pursuant to the original permit is not changed;

(4) No additional over-water construction will be involved for shoreline conditional use permits;

(5) No substantial increase in adverse environmental impact will be caused by the project revision.

20.84.230 **Reserved. Open record hearing notice:**

Notice of application and notice of open record hearing shall take place consistent with WCC 2.33.060 and 2.33.070. If a proposed project is within a city's urban growth area, notice shall also be sent to the applicable city staff and planning commission at least 15 days prior to the hearing.

20.84.235 **Administrative approval uses.**

(1) Administrative approval applications shall be processed per the provisions of WCC Chapter 22.05.

(1) The applicant shall submit an administrative approval-use application form to the planning and development services department together with all of the following:

(a) Documentation of compliance with approval requirements;

(b) The filing fee specified in the Unified Fee Schedule;

(c)(i) For sites within urban growth areas: Stamped envelopes with typed addresses for each property owner within 300 feet of the external boundaries of the subject property as shown by the records of the county assessor (1,000 feet for adult businesses);

(ii) For sites outside urban growth areas: Stamped envelopes with typed addresses for each property owner within 1,000 feet of the external boundaries of the subject property as shown by the records of the county assessor.

(d) Three copies of a site plan at a scale of one inch equals 20 feet for sites that are less than five acres, and one inch equals 40 feet for sites five acres or more (if requested by the applicant, a different scale may be approved by planning and development services). - The site plan shall show locations of property boundaries, locations and sizes of structures, vehicular access and parking areas, locations and types of water and sewer services, and locations and types of structures on adjacent properties.

(2) Upon receipt of application materials per subsection (1) of this section, the planning and development services department shall send a notice of the proposal to all owners of property within 300 feet of the external boundaries of the subject property for sites within urban growth areas and 1,000 feet for properties outside urban growth areas, and to the applicable city staff and planning commission if the property is within a city's urban growth area, at least 15 days prior to the decision date. The applicant shall also post public notices of the proposal on all road...
frontages of the subject property so as to be visible to adjacent property owners and to passing motorists. Said notices shall be provided to the applicant by the planning and development services department and shall remain in place for at least 15 days prior to the decision. A signed affidavit of posting shall be returned at least one week prior to the decision. Property owners who have been notified of the proposal shall have a period of 15 days from the date printed on the mailed notice or 15 days from the posting of notice on the property, whichever is later, within which to submit to the planning and development services department a written response in support of or in opposition to all or parts of the proposal.

(3)(2) Planning and development services shall approve or deny all administrative approval use applications. Decisions for all administrative approval use permits except adult businesses shall be based upon compliance with:

(a) The criteria established for the proposed use in the appropriate zone district;

(b) The Comprehensive Plan policies governing the associated land use designation;

(c) In rural areas, consideration will be given to the cumulative impacts of permitted uses in relation to the governing Comprehensive Plan policies and zoning district; and

(d) The requirement of this section and of WCC 20.84.220.

Decisions for administrative approval use permits for adult businesses shall be based solely upon the criteria in subsection (7)(3) of this section.

(4) Decisions on administrative approval use permits for adult businesses shall be issued within 20 days of receiving a complete application. An application for an adult business is complete if it contains all of the information specified in subsection (1) of this section.

(5) If the permit is denied, the applicant shall be notified in writing. The grounds for denial and the applicant’s right to appeal shall be set forth in this notification.

(6) Any party of record may appeal the decision. For purposes of administering this section, parties of record shall be defined as the applicant, the owner of the property, and any person who has submitted a written response to the proposal. Each application for appeal of an administrative approval shall be accompanied by a fee as specified in the Unified Fee Schedule.

(7)(3) Criteria for Adult Businesses. Prior to granting administrative approval for an adult business, planning and development services shall find that the proposed use at the proposed location satisfies or will satisfy all the following criteria:

(a) The adult business will be in accordance with Policies 2AAA-1 through 2AAA-4 of the Whatcom County Comprehensive Plan.

[Proposed for deletion because the provisions of adult businesses in the Comprehensive Plan are codified in 20.66 Light Impact Industrial, the only zone where these businesses are permitted.]
(ba) The adult business will be consistent with WCC 20.66.131.

(eb) The adult business shall be closed from 2:00 a.m. to 10:00 a.m. if it contains:

(i) An "adult eating or drinking establishment" as defined by WCC 20.97.008(2); or

(ii) An "adult theater" as defined by WCC 20.97.008(3); or

(iii) An "other adult commercial establishment" as defined by WCC 20.97.008(4); or

(iv) One or more viewing booths.

(dc) If the adult business includes one or more viewing booths, the interior of the adult business will incorporate all of the following measures:

(i) Each viewing booth shall have at least a three-foot wide opening where a customer enters and exits the booth that is without doors, physical barriers, or visual barriers; and

(ii) Each viewing booth shall have at least one 100-watt light bulb that is properly working and turned on when business is open. The light bulb shall not be covered or otherwise shielded except with a commercially available lighting fixture. A minimum of one 12-inch by 12-inch durable metal sign shall be located at the entrance to each viewing booth area stating that lights shall remain on; and

(iii) Aisles or hallways adjacent to viewing booths shall be a minimum of five feet wide; and

(iv) There shall be no holes or openings in common walls between viewing booths.

For adult businesses containing one or more viewing booths, a condition of administrative approval shall require an unannounced inspection every six months during business hours by Whatcom County to ensure that measures in subsections (7)(d)(i) through (iv) of this section are being implemented on an ongoing basis.

20.84.236 Revisions to administrative approval use permits.
Planning and development services may approve revisions to administrative approval use permits; provided, that the proposed changes are within the scope and intent of the original permit. "Within the scope and intent of the original permit" shall mean the following:

(1) Lot coverage and height may be increased a maximum of 10 percent from the provisions of the original permit; provided, that revisions involving new structures not shown on the original site plan shall require a new permit; and provided further, that any revisions authorized under this subsection shall not exceed height,
lot coverage, setback or any other requirements of the regulations for the area in which the project is located; and provided further, that any revisions authorized under this subsection shall be reviewed for consistency with the relevant chapters and policies in the Comprehensive Plan;

(2) Landscaping may be added to a project without necessitating an application for a new permit; provided, that the landscaping is consistent with conditions (if any) attached to the original permit and is consistent with the regulations for the area in which the project is located;

(3) The use authorized pursuant to the original permit is not changed;

(4) No additional over-water construction will be involved for shoreline conditional use permits;

(5) No substantial increase in adverse environmental impact will be caused by the project revision.

20.84.240 Reserved. Appeals.

The hearing examiner shall have the authority to hear and decide, in conformity with this chapter, appeals from any order, requirement, permit decision or determination made by an administrative official in the administration or enforcement of this chapter where more than one interpretation is possible; provided, that such appeal shall be filed in writing within 14 days of the action being appealed. If an appellant prevails in an appeal of an administrative approval decision, the appellant’s appeal fees shall be refunded. The appeal fee on a code violation will be refunded if the appellant can prove by clear and convincing evidence that a violation did not occur. Appeals of administrative approval use permit decisions for adult businesses shall be made directly to the county council pursuant to WCC 20.92.825, and shall not be subject to the provisions of this section.

20.84.250 Reserved. Fees.

Fees for variances, conditional uses, administrative approval uses and appeals shall be as set forth in the Whatcom County Unified Fee Schedule.

20.84.260 Reserved. Date of expiration.

Applications for conditional use permits, variances, expansions of nonconforming uses, administrative approvals, and any other permits provided for in this chapter shall expire one year after filing of the application if the applicant does not pursue completion of the appropriate process within that time by failing to take any action on the application.

The hearing examiner shall have the authority to fix a date of expiration of any or all approval, or conditions attached thereto, of conditional use permits, variances or expansions of nonconforming uses.
Chapter 20.85

PLANNED UNIT DEVELOPMENT

Sections:

20.85.118 Concept plan.
20.85.200 Information submittal.
20.85.201 General provisions. Reserved.
20.85.203 Site plan and supporting maps and graphics: Reserved.
20.85.204 Supplemental information: Reserved.

20.85.301 Planned unit development procedure and approximate processing time: Reserved.
20.85.305 Preapplication conference: Reserved.
20.85.310 SEPA review: Reserved.
20.85.315 Application submittal: Reserved.
20.85.320 Application distribution and review: Reserved.
20.85.325 Technical committee: Reserved.
20.85.330 Zoning administrator: Reserved.
20.85.335 Hearing examiner: Approval Criteria.
20.85.340 County council: Reserved.
20.85.345 Burden of proof: Reserved.
20.85.350 Scope of initial planned unit development approval.
20.85.355 Initial approval time limits.
20.85.360 Installation of improvements.
20.85.365 Final review and approval.
20.85.370 Control of the development after completion.
20.85.375 Enforcement.
20.85.400 Fees.

20.85.118 Concept plan.

Where a planned unit development application represents the first project of the development of a larger site, the applicant may at his/her option submit a concept plan indicating the general development of the remainder of the site. The purpose of the concept plan is to encourage master planning of a site by demonstrating the coordinated relationship of land use activities, roads, utilities and open space for the entire site, and in concert with existing and planned off-site land uses and facilities.

(1) Plan Contents. The concept plan should contain the following elements for the portion of the site not included in the first-phase PUD application: elements required in the department’s administrative manual.

(a) The approximate location of future generalized land use activities including but not necessarily limited to single-family and multifamily residential—(approximate
density specified); neighborhood, general, tourist and resort commercial; light and heavy industrial; and general manufacturing; and parks including recreational areas, school sites and open space.

(b) The approximate circulation network (both vehicular and pedestrian).

(c) The approximate location of utility corridors, and drainage channels (natural and manmade) and retention/detention areas.

(d) The approximate location of all existing or planned sewer and water mains, arterial and collector roads, and drainage channels and retention/detention areas located off-site which is within 300 feet of the site or anticipated to be used for the development of the site.

(2) Plan Status. Unless otherwise provided by agreement between the applicant and zoning administrator, the concept plan shall be nonbinding, and shall not be used as a basis for approving or denying the subject PUD application. However, the plan may be used as a basis to administratively review the arrangement and design of land uses, roads, bicycle and pedestrian pathways, and drainage facilities included in the subject application. (Ord. 2004-007 § 1, 2004).

20.85.200 Information submittal.

The information required on the application, identified in the following sections in the department’s administrative manual and contained within the notice of site-specific submittal requirements shall be submitted with planned unit development applications. (Ord. 2004-007 § 1, 2004; Ord. 96-056 Att. A § V2, 1996).

20.85.201 General provisions. Reserved.

(1) Information submitted for initial review is to be an approximate description indicating the general nature of the proposal. Data shall be based on the applicant’s best knowledge or intent of the proposal and shall be sufficiently clear to demonstrate how the project complies with the provisions of this chapter. Information required shall be limited to the area the application includes.

(2) The zoning administrator shall have the authority to waive any portion of the information requirements herein; provided, that the information has been included with a previous rezone request, approved permit or concept plan, and the present PUD application is consistent with the previous action to the extent that the subject data is applicable. (Ord. 2004-007 § 1, 2004; Ord. 96-056 Att. A § V2, 1996).

20.85.202 Textual information. Reserved.

It is anticipated that the level of detail available for individual PUD projects will vary depending on their size and the length of time anticipated for buildout. The applicant must respond to each of the items below but the response may include estimates or approximations where exact figures are not known at this time. All estimates should be based on the applicant’s best knowledge or intent of the proposal. When estimates or approximations are used they must be identified as such. The applicant should be aware that any estimates or approximations provided may be used to set development conditions or thresholds.
(1) General Data.

(a) The title and location of the proposed development, together with the names, addresses and telephone numbers of the record owner or owners of the land and the application, and, if applicable, the names, addresses and telephone numbers of any architect, planner, designer or engineer responsible for the preparation of the plan, and of any authorized representative of the applicant.

(b) The legal description of the subject property.

(c) Identify, if known, all special service districts, including fire, school (for residential projects only), drainage and flood control in which the site is located.

(d) Description of the proposed PUD including:

(i) Total area of the PUD;

(ii) Total area of open space and percentage it represents of the total project area;

(iii) Total area of impervious surfacing;

(iv) Number of parcels and/or lease areas, range of parcel size and the size of the smallest parcel;

(v) Proposed ownership of land areas within the PUD both during and after construction;

(vi) Method of achieving compatibility between the PUD and off-site uses and between potentially incompatible on-site uses;

(vii) How density bonus requirements are being met including, when applicable, description of recreation facilities and the proposed method to protect adequate access to sunlight for use by each of the proposed solar energy systems; and

(viii) Development schedule indicating the approximate date when construction of the PUD or stages of the PUD can be expected to begin and be completed.

(e) Copy of all existing deeds, and existing restrictive covenants or other existing legal restrictions which apply to the project site. The applicant may submit a copy of any proposed restrictive covenants that have been drafted.

(f) The names and addresses of all property owners within 300 feet of the site taken from the latest equalized tax roles.

(2) Data for Residential Development.

(a) Proposed number of dwelling units by type and the amount of site area devoted to each type.

(b) Gross density of the dwelling units.

(c) Deleted by Ord. 96-056.

(3) Data for Nonresidential Development.
(a) Description of each type of proposed commercial and industrial use and amount of site area devoted to each type of use.

(b) The proposed number of square feet in gross floor area for each type of commercial and industrial use. (Ord. 2004-007 § 1, 2004; Ord. 96-056 Att. A § V2, 1996);

20.85.203 Site plan and supporting maps and graphics. Reserved.

An initial site plan, at a minimum scale of one inch equals 100 feet or such other scale as may be convenient based on the area covered by the proposal with approval of the administrator, and any supporting graphics, narrative descriptions and maps, to show major details of the proposed PUD. If the initial plan is based on a survey or existing survey data of the subject site, the survey data shall be prepared by a registered land surveyor, registered civil engineer or other professional licensed to conduct surveys. The initial site plan and supporting graphics and maps in combination shall provide a level of detail appropriate to the scale and timing of the project and sufficient to demonstrate how the project complies with the provisions of this chapter.

(1) Proposed name of the development, northpoint, scale, date and address, and telephone number of the preparer of the site plan/supporting maps.

(2) Existing site conditions including water courses, wetland area, floodplains, unique natural features, native vegetation, forest cover and elevation contours of sufficient intervals to indicate the topography of the entire tract for a sufficient distance beyond the boundaries of the proposed development to depict any features within 300 feet which may affect site development. Unless otherwise approved by the administrator, contour information shall be as follows:

(a) Up to 10 percent slopes, two-foot contours.

(b) Over 10 percent to less than 20 percent slopes, five-foot contours.

(c) Twenty-percent or greater slopes, 10-foot contours.

(3) Location of all existing lot lines, lease areas and easements, and the location of all proposed lot lines, lease areas, and easements, if known.

(4) The locations and identification of all existing buildings, structures and other improvements. The location or approximate location of proposed buildings including maximum height and type of use.

(5) For residential structures, provide the types and number of residential units in each structure or the range of residential structures proposed together with the range of the type and number of units per structure.

(6) For nonresidential buildings, the gross floor area of each building.

(7) The location and square footage or approximate location and square footage or acreage of all areas to be conveyed, dedicated or reserved as common open spaces, public parks, recreational areas, school sites, and similar public and semi-public uses with notations of proposed ownership included where appropriate.
(8) Landscaping and open space improvements plan or concept.

(9) The existing and proposed circulation system of arterial, collector and/or local streets, including right-of-way street widths, off-street parking areas, service areas, loading areas and major points of access to public rights of way (including major point of ingress and egress to the development). Notations of proposed ownership, public or private, shall be included where appropriate.

(10) Location and width of existing and proposed sidewalks and trails.

(11) The proposed treatment of the perimeter of the PUD, including materials and techniques used such as screens, fences and walls.

(12) The location of adjacent utilities including sanitary sewers, water lines and storm drainage facilities intended to serve the development, and a layout of the existing and proposed utilities within the development, if utility plans have been completed. Otherwise indicate the general location of utilities, i.e., roadways, easements, etc.

(13) Existing zoning and Comprehensive Plan boundaries for the site and adjacent property.

(14) Information of contiguous properties within 300 feet of the proposed PUD including:

(a) Existing and, if known, proposed land use and streets; and

(b) Existing structures excluding accessory buildings, ownership tracts and unique natural features of the landscape, if readily accessible.

(15) A vicinity map showing the location of the site and its relationship to surrounding areas, including existing streets, major physiographic and cultural features such as railroads, lakes, streams, shorelines, schools, parks or other prominent features.

(16) If the applicant wishes to incorporate renewable energy features into the PUD, information shall be submitted which will describe the long-term usability of the energy source including:

(a) Solar:

(i) Solar site survey including solar sun chart;

(ii) Shadow diagrams including schematic elevations of pertinent vegetation and structures, and existing major topographical features;

(iii) General description of the solar system identifying type (passive or active); location and size (surface area);

(b) Wind:

(i) Wind data including direction, frequency and intensity;
(ii) Wind disruption information including potential on and off-site building construction, and major topographical features;

(iii) Wind machine location and visual description;

(e) Micro or small-scale hydro:

(i) Estimated annual energy output using flow duration curves;

(ii) Stream data including low and average flows;

(iii) Hydro site location and design;

(iv) Status of Federal Energy Regulatory Commission (FERC) approval;


20.85.204 Supplemental information. Reserved.

(1) A completed environmental checklist; provided, that if the applicant has agreed in writing to the preparation of an environmental impact statement, no checklist shall be required.

(2) Where water and/or sanitation service is to be obtained from an existing public system, including a water association, a letter from the service purveyor indicating the availability and requirements for the service shall be included.

(3) Where a new water system is proposed, include the source of the water, the estimated amount of water available from a ground water or surface water source; the status of water rights application; and the general location and size of the proposed pipe and other major appurtenances for development of community or public systems. The description shall also include improvements for fire protection.

(4) A description of the sanitation facilities which shall include the method of sanitation and, where applicable, the location of community on-site sewage waste disposal systems, location of soil log holes, percolation rate data; and the general location and size of proposed pipe and other major appurtenances. Where on-site sanitation systems are proposed, the applicant shall provide evidence demonstrating the suitability therefore of all lots or any single lot. Percolation tests shall be performed by a licensed percel tester.

(5) One copy of the water and sanitation information, particularly the soil log hole and percolation rate data, is recommended to be submitted directly to the health department prior to submittal of the planned unit development.

(6) A preliminary drainage study consistent with the requirements of the Whatcom County Development Standards. A traffic study if required by the department of public works at the preapplication conference. The traffic study does not need to be submitted with the application if an environmental impact statement is being prepared for the project and a traffic study will be completed for the EIS.
(7) The proposed method of providing long-term maintenance of improvements or facilities, including roads and sidewalks, drainage, on-site fire protection improvements, water and sanitation systems, and community or public open space. The purpose of this paragraph is to generally identify the method of maintenance and not to require detailed agreements.

(a) If to be maintained by a governmental jurisdiction or existing water association, a letter from the jurisdiction or association shall be submitted specifying acceptance of maintenance responsibility and indicating the conditions, if any, upon which the acceptance is contingent.

(b) If the maintenance is to be provided privately, the developer shall indicate the organization to provide the maintenance and the method and approximate amount of funding required therefor.

(8) Additional information, in the form of detailed studies or surveys, may be reasonably required by the county if any portion of the site of a proposed PUD is within an unsuitable land area as defined by WCC 20.97.413. This information should be identified to the applicant at a preapplication conference. (Ord. 2004-007 § 1, 2004; Ord. 96-056 Att. A § V2, 1996).

20.85.300 Planned unit development procedure.
 Planned unit development applications shall be processed in accordance with WCC 22.05.

20.85.301 Reserved. Planned unit development procedure and approximate processing time:

(1) Preapplication Conference
   • Technical Committee
   • SEPA Official

(2) Application Submittal
   • Written and Graphic

(3) SEPA Review

(4) Agency Referral

(5) Technical Committee

(6) Buildings & Code Administration Staff Report

(7) Hearing Examiner—Public Hearing

(8) Initial Approval by County Council

(9) Installation of Improvements

Optional
County Council
Review Items #1, #2 & #3
21 Days
14 Days +
30 Days
21—28 Days
14 Days
28 Days
21 Days
Up to 3 Years
Items #9—#10
(10) Final Review and Approval

(11) Project Development

20.85.305 Reserved. Preapplication conference:

(1) An applicant shall request a preapplication conference to be held prior to submission of an application and which should take place prior to any detail work. The developer or his representative shall be prepared to present to the technical committee and the SEPA official conceptual sketches which contain in rough and approximate manner adequate information to describe the proposal in relation to topics listed below. The conference shall be held 14 days after the land use division of planning and development services receives sufficient copies of information from the applicant to distribute to the technical committee and the SEPA official. All information presented by the developer shall be considered confidential.

The purpose of the conference is to enable the developer to consult with the technical committee and SEPA official as to the intent, standards and provisions of this title, other applicable land use controls, and SEPA as they apply to the proposed project.

It is also the purpose of this conference to identify as many potential problems and opportunities as possible in order for the application to be processed without undue delay or undue expense. Discussion will include the following topics:

(a) County Comprehensive Plan;
(b) Zoning;
(c) Shoreline Master Program;
(d) Any adopted street and road plan and/or program;
(e) Availability of water and sanitation;
(f) Storm drainage;
(g) Development and design concepts, including phasing and open space;
(h) Sidewalk requirements;
(i) Bike paths and internal pedestrian system;
(j) Public transportation requirements;
(k) Off-site requirements such as sidewalks, street lights, traffic signals, utilities or improvements of adjacent streets;
(l) Fire protection;
(m) Maintenance provisions;

(n) Known hazards and additional information as required by WCC 20.85.204(8) including any required approvals by Department of Ecology for projects located within flood control zones;

(o) Environmental impact to the development and other issues related to SEPA requirements;

(p) Other county requirements and permits;

(q) Identification of other local, state and federal agencies which may also have jurisdiction; and

(r) Identification of adjacent lands owned by the applicant and possible future development thereof.

(2) The applicant may request the zoning administrator to forward the information to the county council for review and discussion purposes. The council review shall take place within 21 days after the preapplication conference with staff. Upon receiving said request, the zoning administrator shall obtain from the applicant:

(a) Sufficient copies of the information submitted pursuant to subsection (1) of this section to distribute to all members of the county council; and

(b)(i) For sites within urban growth areas: Stamped envelopes with typed addresses for each property owner within 300 feet of the external boundaries of the subject property as shown by the records or the county assessor;

(ii) For sites outside urban growth areas: Stamped envelopes with typed addresses for each property owner within 1,000 feet of the external boundaries of the subject property as shown by the records of the county assessor.

The zoning administrator shall then forward the submitted information and summary of the comments and concerns made by staff to the clerk of the council. The clerk shall schedule an open meeting with the planning and development committee of the council, and mail a notification to the applicant and property owners no less than 10 days prior to the meeting’s occurrence. The meeting may address any of the issues identified in subsections (1)(a) to (r) of this section or any other pertinent issues. It is the purpose of this meeting to identify potential concerns in order to assist the applicant to ascertain the general feasibility of his/her proposal for the particular area the proposal would be located.

(3) Preapplication reviews as provided by this section shall not be construed to bind either the applicant or the county in any respect. Further, the information requested at the preapplication conference for application submittal shall not preclude the county from requiring additional information or clarification of materials after submittal.

20.85.310 Reserved. SEPA review.
The SEPA official shall process all planned unit developments consistent with the requirements of Chapter 43.21C RCW and Chapter 197-11 WAC as well as the Whatcom County SEPA Ordinance. The SEPA process shall be integrated as part of the project review process. The SEPA official shall make the threshold determination at the earliest time when the principal features of a proposal and its environmental impacts can be reasonably identified. (Ord. 2004-007 § 1, 2004).

20.85.315 Reserved. Application submittal. The applicant shall submit required fees, and sufficient copies of the maps, written data and supplemental information required by WCC 20.85.200 to the zoning administrator in order to distribute copies to pertinent agencies. No application shall be accepted unless it complies with the requirements of this chapter and the applicant attests by his signature to the correctness of the information submitted. Applications which are found to be seriously deficient shall be returned to the applicant within 10 days of submittal and the application fee refunded.

20.85.320 Reserved. Application distribution and review. The zoning administrator shall mail a notice to agencies potentially having interest, jurisdiction or expertise relevant to the application within five days after receipt of the application. Such agencies receiving applications for review shall be given up to 30 days to respond, or the zoning administrator, SEPA official, and the technical committee shall conclude that the reviewing agency has no interest in the application, and may make such findings, conclusions or requirements as deemed reasonable, consistent with the requirements of this title.

20.85.325 Reserved. Technical committee. Upon the issuance of a declaration of nonsignificance (DNS) or draft environmental impact statement (DEIS), or, if a DNS or DEIS is completed, after receipt of all agency comments pursuant to WCC 20.85.320, the technical committee shall convene in an open meeting to discuss with the applicant and any other interested persons each committee member's recommendation to the zoning administrator. Each member shall recommend either approval, approval with conditions, denial, or further modifications or corrections to the application. The recommendation from each member shall be written and submitted to the zoning administrator within seven days, and shall clearly address those factors to be considered by the hearing examiner as identified in WCC 20.85.335 which are within the expertise and responsibility of such member and, where appropriate, proposed conditions for approval or shall clearly indicate all deficiencies of the application requiring modification or correction.

20.85.330 Reserved. Zoning administrator. Within 14 days after receiving all written input from the technical committee and verifying its sufficiency, the administrator shall forward the application and staff report to the hearing examiner to schedule for public hearing, and shall assemble a recommendation based on the contributions of the technical committee, and other county and noncounty agencies. The recommendation shall be in writing and contain relevant data and proposed findings. Upon submission of the report to the examiner, copies shall be mailed to the applicant and made available to any interested party.
20.85.335 Hearing examiner. Approval Criteria.
The hearing examiner shall hold the public hearing on behalf of the county council in the manner required by WCC 20.92.300 and provide written public notice consistent with the requirements for major project permits as provided in WCC 20.88.215. Pursuant to WCC 22.120, the hearing examiner shall recommend to the county council project approval, approval with conditions, or denial, based upon written findings and conclusions supported by the evidence of record. The recommendation shall determine the adequacy of a planned unit development application based on the following criteria:

(1) Conservation of natural elements and features;

(2) Harmony of selected uses to each other;

(3) Grouping and design of buildings, service, parking areas, circulation and open space as an integrated unit such that a safe, efficient and convenient PUD is created;

(4) Harmony of the proposed PUD with the existing and proposed characteristics of its surroundings, with emphasis and due consideration given to air, water and soil pollution, flood protection, and aesthetics;

(5) Conformance with the policies, goals and objectives of the Comprehensive Plan;

(6) Adequate provision of utilities and circulation to serve the project and, where appropriate, contribute to the overall development of urban areas;

(7) The exceptions granted by this chapter are warranted by creative design utilizing good design principles and provision of amenities incorporated in the planned unit development and its program;

(8) That the system of ownership, and means of developing, preserving and maintaining open space and other common facilities is acceptable to the county; and

(9) Where expanded land uses as allowed by WCC 20.85.053 are requested for an application, the criteria of WCC 20.85.054 are met, and where a phasing plan is proposed, the criteria of WCC 20.85.117(3) are met; and

(10) Promotion of creativity and affordability in residential, commercial and industrial development.

20.85.340 Reserved. County council.
The county council shall meet to consider the hearing examiner’s recommendation within 21 days of receipt thereof, at which time it may:

(1) Approve or disapprove the recommendation, or remand the matter to the hearing examiner with instructions; or

(2) In the event the council wishes to consider enacting a significant change that does not arise from the record, the council may hold its own public hearing, after
giving notice thereof, and approve or deny the planned unit development based upon its own findings and conclusions. A public hearing before the county council may be limited in scope to particular issues or problems at the discretion of the council. The council’s decision shall be based upon the official record, WCC 20.85.335 and other applicable law.

20.85.345 Reserved. Burden of proof.
With respect to any finding of fact required for planned unit development approval by this title, the burden of proof for submitting to the public hearing record evidence, studies and plans sufficient to support an affirmative finding of fact lies with the applicant.

(1) Prior to public hearing, any deficiency within the application with regard to necessary data or compliance with design requirements shall be brought to the notice of the applicant, in writing, by the zoning administrator, who shall request that the required information be submitted within a reasonable period of time. Failure to make a timely response may result in a return of the application.

(2) If the hearing examiner determines after public hearing that the record established by the applicant does not support an affirmative finding of fact with respect to any element necessary for PUD approval, he shall do one of the following:

(a) Recommend denial of the planned unit development;
(b) Recommend partial approval of a phased planned unit development;
(c) Recommend PUD approval, subject to conditions sufficient to mitigate any problems created by the absence of a material finding; or
(d) With the consent of the applicant, remand the application to the technical committee for further review.

(3) If the county council concludes that the record before it is deficient with respect to any finding of fact necessary to support PUD approval, it may take final action in the manner provided in subsections (2)(a) through (c) of this section, remand the matter to the technical committee or the hearing examiner, or hold its own public hearing to receive new evidence, studies or plans.

20.85.350 Scope of initial planned unit development approval.
(1) Once the planned unit development receives initial approval pursuant to WCC 20.85.340 22.05, all persons and parties, their successors, heirs, or assigns, who own, have, or will have by virtue of purchase, inheritance or assignment, any interest in the real property within the proposed PUD, shall be bound by the conditions attending the approval of the development and the provisions of this chapter.

(2) Minor adjustments may be made and approved by the zoning administrator, upon consultation with the technical committee, and are those adjustments which may affect the dimensions, location and type of improvements of facilities;
provided, the amendment maintains the basic character of the PUD application approved by the county council including general type and location of dwellings and other land use activities, arrangement of buildings, density of the development, and provisions of the project to meet density bonus and open space requirements; and provided further, the standards of this chapter are met.

(3) Major adjustments are those which, in the opinion of the zoning administrator, upon consultation with the technical committee, substantially change the basic design, density, open space or other requirements of the planned unit development. When a change constitutes a major adjustment, no building or other permit shall be issued without prior review and approval by the county council of such adjustment.

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**20.85.400 Fees:**

Fees for planned unit developments shall be as set forth in the Whatcom County Unified Fee Schedule. (Ord. 2004-007 § 1, 2004; Ord. 96-056 Att. A § V5, 1996).

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**Chapter 20.88**

**MAJOR PROJECT PERMITS**

Sections:

- **20.88.010** Purpose.
- **20.88.100** Major project permits.
- **20.88.200** Procedure.

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**.130** The major project permit shall be issued by the county council when the applicant has established that the proposed major development: Pursuant to WCC 22.120 the hearing examiner shall recommend to the county council project approval, approval with conditions, or denial, based upon written findings and conclusions supported by the evidence of record. The recommendation shall determine the adequacy of a planned unit development application based on the following criteria:

(1) Will comply with the development standards and performance standards of the zone in which the proposed major development will be located; provided where a proposed major development has obtained a variance from the development and performance standards, standards as varied shall be applied to that project for the purposes of this act.
(2) Where the project is conditionally permitted in the zone in which it is located, the project must satisfy the standards for the issuance of a conditional use permit for the zone in which the project is located.

(3) Will be consistent with applicable laws and regulations.

(4) Will not substantially interfere with the operation of existing uses.

(5) Will be served by, or will be provided with essential utilities, facilities and services necessary to its operation, such as roads, drainage facilities, electricity, water supply, sewage disposal facilities, and police and fire protection. Standards for such utilities, facilities and services shall be those currently accepted by the state of Washington, Whatcom County, or the appropriate agency or division thereof.

(6) Will not impose uncompensated requirements for public expenditures for additional utilities, facilities and services, and will not impose uncompensated costs on other property owned.

(7) Will be appropriately responsive to any EIS prepared for the project.

.140 In addition, the hearing examiner may recommend or county council may impose any reasonable conditions precedent to the establishment of the major development as may be required to mitigate impacts of the proposal on the natural environment of the county, and to protect the health, safety and general welfare of the people of the county consistent with the policies for environmental protection set forth in the Comprehensive Plan.

.150 The hearing examiner may recommend or county council may also approve alternative mitigation plans for major project permits in accordance with WCC 16.16.260(E) which may be used to satisfy the requirements of Chapter 16.16 WCC and provide relief from the specific standards and requirements thereof. (Ord. 2005-068 § 2, 2005; Ord. 98-083 Exh. A § 66, 1998; Ord. 96-056 Att. A § A2, 1996; Ord. 91-075, 1991).

20.88.200 Procedure.

.205 If a major project permit is determined to be required, an application shall be completed and filed along with the appropriate fees, with the land use division of planning and development services and the application shall be processed in accordance with WCC 22.05. A master plan is required as part of the application for a major project permit. The master plan document shall include all elements required per the department's administrative manual.

...at a minimum the following elements:

(1) General statement—a narrative description that in general terms identifies the purpose and intended use(s) for the site.
(2) Conceptual site development plan—showing to the appropriate level-of-detail, buildings and other structures, existing mature trees and landscaping, the pedestrian-and-vehicle circulation system, parking areas, open-space and critical areas, buffers, and other required items. This information must cover the following:

   (a) All existing improvements that will remain after the development of the proposed site;

   (b) All improvements planned in conjunction with the proposed use;

   (c) Conceptual plans for possible future uses, and

   (d) General locations of usable open space, any land proposed to be dedicated for open space, pedestrian and transit connection between the site and public or private streets serving the development and connecting to off-site open space, internal circulation (both auto and pedestrian), location of proposed gates and fencing.

(3) Land Use. The master plan must include proposed functions, uses and boundaries of uses by phase. The description must include information as to the general amount and type of functions of the use, hours of operation and the approximate number of members, employees, visitors and special events. For projects which include residential units, proposed minimum and maximum floor area densities, number of units and building heights must be indicated. For office/commercial and light-impact industrial projects, minimum and maximum floor area ratios must be indicated.

(4) Phasing Plan. The master plan must include the proposed development phases, probable sequence for proposed developments, estimated dates, and interim uses of the property awaiting development. In addition, the plan should address any proposed temporary uses or location of uses during construction periods.

(5) Circulation, Transportation and Parking. The master plan must include but is not limited to projections by phase of traffic impacts, probable safety concerns, internal circulation layout, parking requirements, ingress/egress locations and proposed road standards for each phase. Specific requirements for transportation and parking include:

   (a) The expected number of trips (peak daily), an analysis of the impact of those trips on the adjacent street system, and proposed mitigation measures to limit any projected negative impacts. Mitigation measures may include improvements to the street system or specific programs to reduce traffic impacts such as encouraging the use of public transit, carpools, vanpools, and other alternatives to single-occupancy vehicles.

   (b) Projected peak parking demand, an analysis of this demand compared to proposed on-site and off-site supply, potential impacts to the no-street parking system and adjacent land uses, and mitigation measures.
Utilities. The master plan must include evidence of service availability from primary service providers (water, sewer, power, cable, natural gas, telephone) and address stormwater drainage management both on and off-site.

Environment. The master plan must identify critical areas as defined in Chapter 16.16 WCC and areas of special concern as defined by WCC 24.05.230. Mitigating measures for all environmental impacts identified by the applicant through a SEPA checklist, or EIS process and/or identified by agency staff, including but not limited to special development standards, modification of site layout, dedicated open-space and mitigation replacement areas must be identified. Identification of any hazardous wastes anticipated, special handling techniques and/or site designs required for containment must also be addressed. If an EIS is required, the EIS and master plan may, upon approval by the director, be combined into a joint document.

Development Standards. The master plan may propose standards that will control development of the possible future uses that are in addition to, or substitute for, requirements of this chapter. These may be such things as height limits, setbacks, frontage, landscaping requirements, parking requirements, signage, view corridors or facade treatments. Proposed standards that do not meet the minimum county standards must obtain the appropriate variance prior to county approval of the proposed standards. If the proposed design standards will apply to property located partially or totally within an urban growth area, concurrence of the affected city will be required.

Procedures. Master plan review shall be conducted under current review procedures. Other land use reviews may be conducted concurrently with the master plan review.

(a) Any modifications, additions or changes to an approved master plan are subject to the following:

(i) Minor changes shall be reviewed for compliance and compatibility with the approved master plan. A determination is made by the director.

(ii) Major changes shall be subject to the original procedural application type, subject to the fees as contained in the unified fee schedule.

(iii) Master plans may include, as a condition of their approval, a requirement for periodic progress reports and mandatory updates on a predetermined interval.

The hearing examiner shall hold one public hearing in accordance with Chapter 20.92 WCC and the requirements set below. This shall be an open record hearing and, per RCW 36.70B.050(2), the county shall hold no subsequent open record hearings. [the 'no more than one hearing' provision is covered in the proposed 22.05.110]
.215-.220 through .265 Reserved. [moved to 22.05.145] A written notice of the scheduled public hearing shall be mailed not less than 10 working days prior to the hearing as follows:

(1) For sites within urban growth areas: Notice shall be mailed to each property owner within 300 feet of the external boundaries of the subject property as shown by the records of the county assessor;

(2) For sites outside urban growth areas: Notice shall be mailed to each property owner within 1,000 feet of the external boundaries of the subject property as shown by the records of the county assessor.

Also notice of the hearing shall be published in a newspaper of general circulation in the area of the proposed project at least 10 working days prior to the public hearing. Notice shall consist of time and date of hearing, and brief description of the property and the proposed project. Further, signs meeting the approval of the zoning administrator shall be erected on each frontage of the project site by the applicant not less than 10 working days prior to the hearing.

.220 The recommendation of the hearing examiner shall be based upon the criteria set forth in WCC 20.88.130(1) through (7).

.225 Within 45 calendar days after the hearing examiner's recommended decision has been filed, the county council shall do one of the following:

(1) Refer the project to the planning commission for a recommendation.

(2) Hold a public meeting to deliberate on the project application and, within 20 calendar days of the meeting, issue a final written decision.

.230 If the project is referred to the planning commission, that body shall within 45 calendar days hold all necessary public meetings and file with the county council a written recommendation for approval or denial and may include conditions of approval, together with the findings upon which the recommendation is based. The applicant may waive the 45 calendar day time limitation.

.235 A written notice of the public meeting before the planning commission or the county council shall be mailed to all parties of record, on file with the clerk of the county council not less than five calendar days prior to the hearing.

.240 The deliberation and recommendation of the planning commission shall be based solely upon consideration of the record, the hearing examiner's recommendation and the criteria set forth in WCC 20.88.130(1) through (7).

.245 Upon receipt of the planning commission recommendation, the county council shall within 45 calendar days hold a public meeting to deliberate on the application and within 20 calendar days of the meeting issue a final written decision on the application considering the recommended decisions of the hearing examiner and planning commission.

.250 Reserved.
.255 The county council’s final written decision may include conditions when the project is approved and shall state the findings of fact upon which the decision is based.

.260 Deliberation at any public meeting before the county council or planning commission may be limited in scope to particular issues or problems at the discretion of either body.

.265 The deliberation and decision of the county council shall be based solely upon consideration of the record, the recommendations of the hearing examiner and the planning commission (when applicable), and the criteria set forth in WCC 20.88.130(1) through (7).

.270 Where a project requires a major project permit, that project shall be exempt from the requirement of obtaining a conditional use permit.

.275 Major project permits: Where an applicant has applied for a planned unit development, that project shall be exempt from the requirement to obtain a major project permit.

Chapter 20.90
AMENDMENTS

[Note: Chapter 20.90 is proposed to be deleted in its entirety. Amendment procedures are proposed to be moved to new Chapter 22.10]

Sections:
20.90.010 Purpose.
20.90.020 Types of zoning amendments defined.
20.90.030 Initiation of amendments.
20.90.040 Application, excluding site-specific rezones.
20.90.041 The docket.
20.90.045 Notice for quasi-judicial rezones.
20.90.050 Processing of initiated amendments.
20.90.060 Special provisions.
20.90.070 Transmittal of amendments to the state.
20.90.080 Repealed.

20.90.010 Purpose.
The purpose of this chapter is to define the types of zoning amendments and establish timelines and procedures to be followed when proposals are made for amending or revising the county zoning ordinance.

20.90.020 Types of zoning amendments defined.
(1) “Standard map amendment” means a proposed change or revision to the official county zoning map that affects a single parcel or a number of properties under a single or various ownerships.
(a) Rezone agreements may be required if, from the facts presented, and the findings, report and recommendations of the planning commission as required by this chapter, the council determines that the public health, safety and general welfare will be best served by a proposed change of zone. The council may indicate its general approval, in principle, of the proposed rezing by the adoption of a "resolution of intent to rezone" for the area involved. This resolution shall include any conditions, stipulations or limitations which the council may feel necessary to require in the public interest as a prerequisite to final action. The fulfillment of all conditions, stipulations and limitations contained in said resolution, on the part of the applicant(s), shall make such a resolution a binding commitment on the council. Such a resolution shall not be used to justify spot zoning, to create unauthorized zoning categories by excluding uses otherwise permitted in the proposed zoning, or by imposing setback, area coverage restrictions not specified in the code for the zoning classification, or as a substitute for a variance. Upon completion of compliance action by the applicant, the council shall, by ordinance, adopt such rezing. The failure of the applicant to meet any or all conditions, stipulations or limitations contained in the resolution, including the time limit placed in the resolution, shall render the resolution of intent to rezone null and void, unless an extension is granted by the council upon recommendation of the planning commission. The time limitations shall be one year. The council may grant up to five one-year extensions, based on demonstration of hardship or significant progress toward completion, after which the resolution becomes null and void if all conditions, stipulations and limitations have not been met by the applicant.

(2) "Site-specific rezone" means a proposed change or revision to the official county zoning map affecting a limited number of acres and must be composed of a single parcel or contiguous parcels that are under one or a limited number of ownerships and are requested to allow a specific project not allowed under the current zoning designation. A rezone that requires a Comprehensive Plan amendment does not qualify as a site-specific rezone.

(3) "Concomitant rezone" is a standard map amendment or a site-specific rezone which uses a concomitant agreement to impose conditions on, or limitations on uses and may also require performance by the applicant(s) which is/are directly related to mitigation of probable on- and off-site impacts to adjacent uses, public services and the environment. The agreement may be in the form of a covenant running with the land. The provisions of the agreement will be in addition to all other pertinent Whatcom County Code requirements.

(4) "Text amendments" means a proposed change or revision in the text of WCC Title 20, the zoning ordinance.

20.90.030 Initiation of amendments.
Amendments to this title and/or to the official Whatcom County zoning map may be initiated as follows:

(1) The department of planning and development services may initiate an amendment(s) by placing the proposed amendment(s) on the docket.
(2) The Whatcom County planning commission may initiate an amendment(s) by majority vote of its members to place an amendment proposal on the docket.

(3) The county council may initiate an amendment by approving a resolution to place a proposed amendment(s) on the docket. Amendments by the county council may be initiated at any time, subject to county council review of ongoing staff resources and legislative priorities.

(4) A citizen may initiate an amendment(s) to this title and/or to the official Whatcom County zoning map by making application on forms provided by the department of planning and development services and paying a processing fee. A complete application and payment of the fee places the amendment on the docket, except as provided in subsection (5) of this section.

(5) Amendments to this title or the official county zoning map that also require an amendment to the Comprehensive Plan shall be initiated only if the accompanying Comprehensive Plan amendment is initiated as provided in Chapter 2.160 WCC. The payment of the processing fee for the zoning amendment as required by this section shall occur within 15 days of the approval of the resolution initiating the Comprehensive Plan amendment or the zoning amendment will be withdrawn.

20.90.040 Application, excluding site-specific rezones.
(1) Applications for WCC Title 20 map and text amendments, excluding site-specific rezones, shall include at least the following information:

   (a) A description of the amendment being proposed including proposed map or text changes;

   (b) A complete State Environmental Policy Act (SEPA) environmental checklist; and

   (c) Name, address, phone number of the applicant, and, if applicable, assessor's parcel number, section, township, and range.

(2) The department of planning and development services may prescribe additional information requirements and provide forms for the proposed amendments.

(3) Completed applications for WCC Title 20 amendments must be received by planning and development services by December 31st to be considered during the next calendar year. Applications submitted by planning and development services or the county council are not subject to the December 31st deadline.

(4) Interested persons may suggest revisions to WCC Title 20 or the official Whatcom County zoning map by completing and submitting a suggestion form provided for that purpose by the department of planning and development services. These suggestions require no payment of a fee, are not initiated amendments, and will not be processed as an amendment unless they have first been initiated in the manner provided under WCC 20.90.030. None of the parties with authority to initiate amendments under WCC 20.90.030 are under any obligation to initiate
suggested revisions as amendments. All suggested revisions shall be forwarded to the county council for review.

20.90.041 The docket:
(1) The docket shall consist of initiated Comprehensive Plan amendments and initiated WCC Title 20 and official zoning map amendments. Together with their supporting application files, the docket shall be maintained by the department of planning and development services and made available for public review during normal business hours.

(2) The county council may remove a proposed amendment from the approved docket by motion, unless the proposed amendment was: (a) initiated by a citizen per WCC 20.90.030(4), (b) the amendment is consistent with state and federal regulations, and (c) the applicant has provided all information required by the planning and development services department. The department shall notify the applicant not less than 30 calendar days prior to consideration of removal from the docket. If the county council has not acted upon a docketed proposed amendment during the year for which it has been docketed, the county council may place the amendment on the following year’s docket.

20.90.045 Notice for quasi-judicial rezones:
Notice of quasi-judicial hearings conducted by the planning commission for zoning map amendments shall be issued in accordance with all of the following provisions:

(1) Notice shall be published once in the official county newspaper at least 10 days prior to the hearing. The county shall prepare the notice and the applicant shall pay for the notice.

(2) Notice shall be mailed to property owners as follows:

(a) For zoning map amendments within existing urban growth areas: At least 10 days prior to the scheduled hearing date, hearing notice shall be mailed to all property owners within 300 feet of the external boundaries of the subject property as shown by the records of the county assessor. The applicant shall submit a stamped envelope with a typed address for each of the above-referenced property owners.

(b) For zoning map amendments outside existing urban growth areas: At least 10 days prior to the scheduled hearing date, hearing notice shall be mailed to all property owners within 1,000 feet of the external boundaries of the subject property as shown by the records of the county assessor. The applicant shall submit a stamped envelope with a typed address for each of the above-referenced property owners.

(c) For zoning map amendments that involve rezoning property to an Airport Operations District: At least 10 days prior to the scheduled hearing date, hearing notice shall be mailed to all property owners within 1,500 feet of the external boundaries of the subject property as shown by the records of the county assessor. The applicant shall submit a stamped envelope with a typed address for each of the above-referenced property owners.
(d) For zoning map amendments that involve rezoning property to a Mineral Resource Land designation: At least 10 days prior to the scheduled hearing date, hearing notice shall be mailed to all property owners within 2,000 feet of the external boundaries of the subject property as shown by the records of the county assessor. The applicant shall submit a stamped envelope with a typed address for each of the above referenced property owners.

(3) The county shall prepare and the applicant shall post signs giving notice of the hearing in conspicuous locations on the property at least 10 days prior to the hearing.

(4) The county shall send notice to the appropriate city, when the proposed rezone is within or would expand the urban growth area, and to agencies, school districts, and tribes that will potentially be affected by the proposed rezone at least 10 days prior to the hearing.

(5) For sites within 4,500 feet of the runway of Lynden Airport or Floathaven-Sea Plane Base: At least 10 days prior to the scheduled hearing date, application notice shall be sent to the city manager (if applicable), airport board or commission (if applicable), and an official representative of the airport.

(6) For sites within 10,000 feet of the runway of Bellingham International Airport: At least 10 days prior to the scheduled hearing date, application notice shall be sent to the Port of Bellingham.

(7) All notices shall specify the date, time, location, and purpose of the hearing and provide a description and the location of the proposed rezone. The public shall be invited to submit written comments and attend the hearing to provide oral comments.

20.90.050 Processing of initiated amendments.
Initiated amendments are reviewed by the department of planning and development services as listed below:

(1) For citizen-initiated amendments, the department of planning and development services will evaluate each application for completeness and may request additional information of the applicant prior to requesting the appropriate hearing body to schedule a public hearing.

(2) The department of planning and development services shall conduct environmental review under SEPA and prepare a staff report including recommendations and/or options for each initiated amendment to this title and/or the official zoning map. Both the report and the result of the environmental review shall be forwarded to the appropriate hearing body, to the applicable city staff and planning commission if the proposed amendment applies to land within a city's urban growth area.

(a) The staff report shall evaluate the initiated amendment(s) in relationship to the goals, objectives and policies of the Whatcom County Comprehensive Plan, consider environmental implications as identified by the Whatcom County
SEPA official and evaluate the proposal's compliance with any other special provision as provided by WCC 20.90.060. If the proposed amendment includes land within a city's urban growth area, the staff report shall also address consistency with the applicable city comprehensive plan and the ability of the city to provide needed utility services.

(3) The appropriate hearing body (planning commission or hearing examiner) shall receive the staff's findings and recommendations for the initiated amendment and shall establish a public comment period during which a public hearing(s) on the amendment shall be scheduled. If the proposed amendment includes land within a city's urban growth area, it shall be processed in accordance with the adopted interlocal agreement with that city.

(4) At the conclusion of the public comment period, the appropriate hearing body shall evaluate the merits of each amendment in relationship to the goals, policies and objectives of the Comprehensive Plan for compliance with any other special provisions as provided by WCC 20.90.060 and shall make a recommendation as to whether the amendment should be approved, approved with modifications or denied. The appropriate hearing body shall then cause written findings and a recommendation to the county council to be prepared for each amendment. The written findings and recommendation shall be forwarded to the county council in the form of an agency report which shall include a draft ordinance to implement the appropriate hearing body's recommendation, if applicable. No draft ordinance is required if the recommendation is to not approve the initiated amendment proposal.

(5)—(a) The county council shall receive the appropriate hearing body's findings, recommendations and copy of the proposed amendment of the initiated amendment within 14 days of formal hearing body decision.

(b) Upon receipt of the findings, recommendation and a copy of the proposed amendment, the county council shall, at its next regular public meeting, set the date for a public meeting where it shall consider the appropriate hearing body's findings and recommendations, and may:

(i) By ordinance, adopt; or

(ii) By motion, reject; or

(iii) By resolution, remand the recommendation back, with instructions, to the appropriate hearing body for reconsideration of the official control or amendment; or

(iv) If, after deliberating, the council believes the public interest may be better served by departing from the recommendation of the appropriate hearing body on an initiated amendment, the council shall conduct their own public hearing.

20.90.060 Special provisions.
.061 Deleted by Ord. 2008-060.
.062 Deleted by Ord. 2008-060.

.063 Site-Specific Rezones. Site-specific rezones are processed as “development applications” as prescribed by Chapter 2.33 WCC, Permit Review Procedures, and are reviewed by the hearing examiner in accordance with WCC 20.92.205. The final decisions regarding a site-specific rezone is made by the county council. All site-specific rezones are processed within the timelines as required by Chapter 2.33 WCC except for projects that are exempted by WCC 2.33.020(B) through (D).

(1) Site-specific rezones are initiated by making application on forms provided by the department of planning and development services. Site-specific rezone applications must satisfy the following criteria to be accepted for review:

(a) Does not require a Comprehensive Plan amendment;

(b) Requires a discretionary-development permit or building permit;

(c) Includes concurrent submittal of the discretionary-development permit or, if a discretionary-development permit is not required, a narrative statement shall be included with the conceptual site plan which provides a detailed description of the project proposal and includes a project completion date;

(d) Includes evidence that all property owners included within the proposed rezone boundary concur with the rezone and project proposal as submitted for county review;

(e) Includes a completed environmental checklist;

(f) Includes payment of all permit and zoning-related fees;

(g) If required as a conditional approval, includes evidence that transfer of development rights can be transferred pursuant to the procedures and requirements in Chapter 20.82 WCC, Density Transfer Procedure, and WCC 20.90.064.

(2) Approval of site-specific rezone proposals must be supported by written findings and conclusions showing specifically that all of the following conditions exist:

(a) That the proposed amendment to the zoning map is consistent with the Comprehensive Plan;

(b) That the proposed amendment to the zoning bears a substantial relationship to public health, safety, morals, general welfare or community needs, and will not adversely affect the surrounding neighborhood as a whole;

(c) That there are changed conditions since the previous zoning became effective to warrant the proposed amendment to the zoning map;

(d) That the proposed amendment is consistent and compatible with the current uses and zoning of the surrounding land. Proposed uses shall:
(i) Be serviced adequately by necessary public facilities such as highways, streets, public and fire protection, drainage structures, refuse disposal, water and sewers, and schools; or that the persons or agencies responsible for the establishment of the proposed use shall be able to provide adequately any such services;

(ii) Not create excessive additional requirements at public cost for public facilities and services, and will not be detrimental to the economic welfare of the community; or

(iii) If located within a nonindustrial urban growth area, the site shall:

(A) Be serviced by full urban services or be capable of receiving urban services in time to serve the development;

(B) Shall be done in a manner which will not preclude development at urban levels of density when the area is annexed into the city; and

(C) Must be five acres or more in size.

(3) The proposed project is provisionally approved, and will revert to the original zoning designation if project completion is not in compliance with schedules as included with the discretionary development permit, or if no discretionary development permit is needed, within a reasonable time to be set by the hearing examiner. Bonds may be required as a condition of approval if deemed appropriate by the hearing examiner.

(4) Notwithstanding other language to the contrary, irregular boundaries that would result from a site-specific rezone proposal would not preclude the adoption of an otherwise satisfactory site-specific rezone.

(5) Site-specific rezones may be processed as concomitant rezones and may be processed concurrent with other land-use approvals.

(6) Concomitant rezone shall not be used for a rezone to agriculture, commercial forestry, and rural forestry zoning districts. It may, however, be used for any situation where extraordinary potential adverse impacts from a proposed rezone may be mitigated by the agreement. The concomitant rezone process may be employed for rezones in sensitive geographic areas such as critical transportation corridors. Concomitant rezones shall generally be used when normal review and approval procedures are not adequate to resolve the specific issues involved in the rezone proposal.

(7) The concomitant rezone agreement may include mitigation measures such as access control, landscaping, screening, buffering, improvements to public services including drainage, sewer, water and roads, lot coverage restrictions and phasing of development.
(8) A conceptual site plan shall be required. The conceptual site plan shall be drawn at not less than one inch to 100 feet (unless mutually agreed to be the proponent and administrative official) and shall also include, but not be limited to:

(a) General location of the structures;

(b) Location and number of access points;

(c) Approximate gross floor area of structures;

(d) Name of the proposal;

(e) Identification of areas requiring special treatment due to their sensitive nature;

(f) North directional arrow;

(g) Names and locations of all public streets or roads boarding the site;

(h) General legal description(s) for the site.

.064 Transfer of Development Rights (TDRs):

(1) Designated Receiving Areas. Such additional areas may be approved through the process established for amendments to the official Whatcom County zoning map and pursuant to the procedures and requirements in this chapter.

(2) Rezone requests to increase residential density that have been submitted pursuant to this chapter shall be required to transfer development from a designated TDR sending area to obtain the requested density as a condition of approval.

(a) In order to obtain the requested density, one development right shall be transferred for every three additional dwelling units obtained through rezones within a designated urban growth area. The county council may modify this requirement if a development agreement has been entered into that specifies the elements of development within the rezone area. The development agreement should include, but not be limited to, affordable housing, density, allowed uses, bulk and setback standards, open space, parks, landscaping, buffers, critical areas, transportation and circulation, streetscapes, design standards and mitigation measures.

(b) Exceptions from requiring TDRs: rezones initiated by a government agency, correction of map errors, establishing one zoning district on a property with two or more zoning districts, zoning revisions that intended to make a nonconforming use a conforming use or rezones where the public interest is served.

(3) Rezones initiated by the county, cities or other agencies shall be subject to review by county and city planning staff, and the appropriate administrative bodies,
to determine whether the subject site is appropriate for designated as a TDR receiving area.

20.90.070 Transmittal of amendments to the state. Pursuant to RCW 36.70A.106(3), the department of planning and development services shall notify and transmit copies of initiated amendments to this title and the official Whatcom County zoning map to the Washington State Department of Commerce at least 60 days prior to final adoption. The department of planning and development services shall also transmit a complete and accurate copy of zoning amendments to Commerce within 10 days after the enacting ordinance is signed by the county executive.


Chapter 20.92
HEARING EXAMINER RESERVED

[Note: Chapter 20.92 is proposed to be deleted in its entirety. Hearing Examiner authority and duties provisions are proposed to be moved to new Chapter 22.11, and hearing procedures are to be moved to a new Chapter 22.05]

Sections:

20.92.010 Purpose.
20.92.100 Hearing examiner office.
20.92.110 Creation and purpose.
20.92.120 Pro tempore hearing examiner.
20.92.130 No interference with the hearing examiner.
20.92.140 Qualifications.
20.92.150 Appointment and removal.
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20.92.205 Recommended decisions.
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20.92.211 Administrative appeals—Appeal period.
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20.92.220 Open record hearing.
20.92.221 Combined county and agency hearing.
20.92.225 Rules and regulations.
20.92.230 Department reports.
20.92.235 Changes in legislation.
20.92.240 Additional powers.
20.92.245 Limited jurisdiction.
20.92.250 Permit revocation procedure.
20.92.255 Permit revocation hearing.
20.92.260 Permit revocation or grace period.
20.92.300 Recommended decisions to county council.
20.92.010 Purpose.

The purpose of this chapter is to provide a system of considering and applying regulatory devices which will best satisfy these three basic needs:

(1) The need to separate the application of regulatory controls to the land from planning.

(2) The need to better protect and promote the interest of the public and private elements of the community.

(3) The need to expand the principles of fairness and due process in open-record hearings.

20.92.100 Hearing examiner office.
20.92.110 Creation and purpose:
The office of hearing examiner is hereby created. The hearing examiner shall act on behalf of the county council in considering the application of regulatory enactments to particular situations as provided herein.

20.92.120 Pro-tempore hearing examiner:
The pro-tempore hearing examiner shall assist the hearing examiner in the performance of the duties conferred upon them by this chapter, and shall have all of the duties and powers of the hearing examiner.

20.92.130 No interference with the hearing examiner:
No county official or any other person shall interfere with the hearing examiner or pro-tempore hearing examiner in the performance of his or her designated duties.

20.92.140 Qualifications:
The hearing examiner and his pro-tempore shall be appointed solely with regard to their qualifications for the duties of their office, and shall have such training or experience as will qualify them to conduct administration of quasi-judicial hearings on the application of regulatory enactments and to discharge other functions conferred upon them, and shall hold no other appointed or elected public office or position in the county government, except as provided in this chapter.

20.92.150 Appointment and removal:
The hearing examiner shall be appointed by a majority vote of the county council. The hearing examiner may be removed from office at any time by an affirmative vote of not less than two-thirds of the members of the county council.

20.92.200 Hearing examiner—Duties and powers:

20.92.205 Recommended decisions:
The hearing examiner shall conduct an open record hearing and prepare a record thereof, and make recommendations to the county council for approval or disapproval:

(1) Major project permits, including major project permit applications for mitigation banks proposed in accordance with the provisions of Chapter 16.16 WCC;

(2) Planned unit developments;

(3) Site-specific rezones, including those processed as major project permits, PUDs and/or concomitant rezones;

(4) Such other permits as may be required from the county along with subsection (1) or (2) of this section for a given project. Applications where a major project permit is required shall be processed as set forth in Chapter 20.88 WCC. Where the hearing examiner would normally make a final decision to approve or deny an accompanying permit, the decision shall instead be in the form of a
recommendation and accompany the hearing examiner's recommendation on the major project permit or planned unit development to the county council for final approval;

(5) Proposed rates and charges or special assessments for lake management districts.

20.92.210 Final decisions.

The hearing examiner shall conduct open record hearings and prepare a record thereof, and make a final decision upon the following matters:

(1) Appeals from any orders, requirements, permits, decisions or determinations made by an administrative official or committee in the administration of this title, WCC Title 16, Environment, WCC Title 21, Land Division Regulations, or WCC Title 24, Health Regulations.

(2) Appeals from a decision of the administrator of the Shoreline Management Program.

(3) Applications for zoning ordinance conditional use permits.

(4) Applications for variances from the terms of the zoning ordinance.

(5) Applications for shoreline management substantial development permits not accompanied by a major project permit when an open record hearing is required.

(6) Applications for variances from the terms of the Whatcom County Shoreline Management Program.

(7) Applications for variances from the terms of Chapter 16.16 WCC, Critical Areas.

(8) Applications for reasonable use permits under the terms of Chapter 16.16 WCC when an open record hearing is required.

(9) Applications for Shoreline Management Program conditional use permits.

(10) Applications for flood damage prevention variances.

(11) Appeals from SEPA determinations of significance, determinations of nonsignificance, and mitigated determinations of nonsignificance.

(12) Preliminary subdivisions and subdivision variances.

(13) Preliminary binding site plan proposals.

(14) Application for variances from the provisions of WCC Title 22.

(15) Revocation proceedings involving previously approved zoning conditional use permits, shoreline management substantial project permits and shoreline conditional use permits.

(16) Applications to continue operations of nonconforming adult businesses pursuant to WCC 20.83.015.
(17) Appeals of decisions relating to water service issues under Section 9.2 of the Coordinated Water System Plan.

(18) Appeals from any orders, requirements, permits, decisions or determinations made by an administrative official relating to essential public facilities.

20.92.211 Administrative appeals—Appeal period.

Appeals to the hearing examiner on the subjects listed in WCC 20.92.210(1) and (2) must be filed within 14 calendar days of the date of administrative determination.


Notice of the time and place of the open-record hearing shall be given pursuant to WCC 2.33.060 and 2.33.070.

20.92.220 Open-record hearing.

A project proposal subject to Chapter 2.33 WCC shall be provided with no more than one open-record hearing and one closed-record hearing pursuant to Chapter 36.70B RCW. This restriction does not apply to an appeal of a determination of significance as provided in RCW 43.21C.075.

20.92.221 Combined county and agency hearing.

When requested by an applicant, the county shall allow an open-record hearing to be combined with a hearing that may be necessary by another local, state, regional, federal or other agency for the same project if the joint hearing can be held within the time periods specified in Chapter 2.33 WCC, or if the applicant agrees to waive such time periods in the event additional time is needed in order to combine the hearings. The combined hearing shall be conducted in Whatcom County pursuant to Chapter 36.70B RCW.

20.92.225 Rules and regulations.

The hearing examiner shall have the power to prescribe rules and regulations for the conduct of hearings before him, subject to approval by the county council; and also to issue summons for and compel the appearance of witnesses, to administer oath and preserve order. The opportunity of cross-examination of witnesses shall be afforded all interested parties or their counsel in accordance with the rules of the hearing examiner.

20.92.230 Department reports.

The hearing examiner may request reports from appropriate staff. See WCC 2.33.080 for details.

20.92.235 Changes in legislation.

The hearing examiner may recommend changes in legislation to the planning department or county council.
20.92.240 Additional powers.

The hearing examiner may also exercise administrative powers and such other quasi-judicial powers as may be granted by county ordinance.

20.92.245 Limited jurisdiction.

The hearing examiner shall, with the exception of site-specific rezones as provided for in WCC 20.90.063, have no jurisdiction over any project that requires a legislative action, such as but not limited to a standard map amendment, a Comprehensive Plan map change or a Shoreline Management Program amendment. All such projects shall be considered and processed concurrent with and in the same manner as applications for legislative action. The approval or denial of such projects shall be solely within the discretion of the county council.

20.92.250 Permit revocation procedure.

Upon notification by the zoning administrator or his deputy that a substantial violation of the terms and conditions of any previously granted zoning conditional use, shoreline substantial development or shoreline conditional use permit exists, the hearing examiner shall issue a summons as per WCC 20.92.225 to the permit holder requiring said permit holder to appear and show cause why revocation of the permit should not be ordered. Failure of the permit holder to respond may be deemed good cause for revocation.

20.92.255 Permit revocation hearing.

Upon issuance of a summons as set forth in WCC 20.92.250, the hearing examiner shall schedule an open record hearing to review the alleged violations. The summons shall include notice of the hearing and shall be sent to the permit holder and the land use division of planning and development services no less than 12 days prior to the date of the hearing. At the hearing the hearing examiner shall receive evidence of the alleged violations and the responses of the permit holder, as per the business rules of the hearing examiner’s office. Testimony shall be limited to that of the division and the permit holder except where additional evidence would be of substantial value in determining if revocation should be ordered. The land use division’s evidence may include the testimony of witnesses.

20.92.260 Permit revocation or grace period.

Upon a showing of violation by a preponderance of the evidence as alleged, the hearing examiner may revoke the permit or allow the permit holder a reasonable period of time to cure the violation. If the violation is not cured within the time set by the hearing examiner, the permit shall be revoked. Where a time to cure the violation has been set out, no further hearing shall be necessary prior to the revocation. The permit holder shall have the burden of proving that the violation has been cured within the time limit previously set. Such evidence as is necessary to demonstrate that the violation has been cured may be submitted to the hearing examiner by either the permit holder or the land use division of planning and development services. Any revocation shall be accompanied by written findings of fact and conclusions of law. The permit holder shall be notified of any revocation within 10 working days of the revocation.
20.92.300 Recommended decisions to county council.

20.92.310 Recommended conditions.

The hearing examiner’s recommendations may be to grant or deny any subdivision, major development or site-specific rezone application, or the hearing examiner may recommend that the county council approve the application with such conditions, modifications or restrictions as the hearing examiner finds necessary to make the application compatible with its environment and carry out the objectives and goals of the Comprehensive Plan, the zoning code, the subdivision code, or any other official policies and objectives of Whatcom County.

20.92.320 Recommended decision—Findings and conclusions.

Each recommended decision of the hearing examiner, for major developments, site-specific rezones and subdivisions, shall be in writing and shall include findings and conclusions, based upon the record, to support the decision. Such findings and conclusions shall also set forth the manner in which the decision carries out and conforms to the county’s Comprehensive Plan and complies with the applicable statutes, ordinances or regulations.

20.92.330 Filing recommended decision.

Each recommended decision of the hearing examiner, for major developments, site-specific rezones and subdivisions, shall be filed with the clerk of the county council. For major project permits, a list of the parties of record as determined by the hearing examiner should be filed with the recommended decision.

20.92.400 Final decisions.

20.92.410 Final decision conditions—Applications and appeals.

The hearing examiner’s final decision on all applications or appeals shall either grant or deny the application or appeal. The hearing examiner may grant the application or appeal subject to conditions, modifications or restrictions that the hearing examiner finds necessary to make the application compatible with its environment, and carry out the objectives and goals of the Comprehensive Plan, the zoning code, the subdivision code, the critical areas ordinance, or other official policies and objectives of Whatcom County. Performance bonds or other security, acceptable to the prosecuting attorney, may be required to ensure compliance with the conditions, modifications and restrictions.

20.92.420 Final decision—Findings and conclusions.

Each final decision of the hearing examiner shall be in writing and shall include findings and conclusions, based on the record, to support the decision.

20.92.430 Time limitation on decision.

Except for major project permits, each final decision and recommended decision of the hearing examiner shall be rendered within 10 calendar days following the conclusion of all testimony and hearings. For major project permits, the hearing
examiner shall render recommendations within 45 calendar days following the conclusion of the open-record hearing.

20.92.440 Review limited.

No final decision of the hearing examiner shall be subject to administrative or quasi-judicial review, except as provided herein.

20.92.500 Process for subdivision-application and major project-permits.

20.92.510 Subdivisions.

The county council shall process each recommended decision for subdivisions, consistent with the procedure set forth in WCC Title 21.

20.92.520 Major project-permits.

The county council shall, upon receipt of the recommended decision on a major project-permit, process that recommendation in the manner set forth in the major project-permit chapter of this title (Chapter 20.88 WCC).

20.92.530 Site-specific rezones.

The county council shall, upon receipt of the recommended decision on a site-specific rezone, process that recommendation in the manner set forth in Chapter 20.90 WCC, Amendments.

20.92.600 Appeal to county council.

20.92.610 Applicant appeal.

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. Any parties of record from the hearing examiner’s proceedings who wish to continue to be considered parties of record must register with the county council in writing no later than 10 days after the date of the notification of appeal letter which is sent from the hearing examiner’s office. The notification of appeal letter will be sent from the hearing examiner’s office within three working days of receiving written notification from the county council office that an appeal has been filed.

20.92.620 Fee:

A fee, as established in the Unified Fee Schedule, shall be paid to the county council office upon filing of any appeal. This fee shall not apply to appeals initiated by a county department.

20.92.630 Transcript:

(1) The appellant shall obtain a copy of the electronic recording of the hearing examiner’s hearing from the hearing examiner’s office. The appellant shall make arrangements for the preparation of the verbatim transcript of the hearing
examiner's hearing by a professional transcriptionist who will include a signed transcriber's certification with the verbatim transcript. The appellant shall forward the transcript to the county council office within 30 days of filing the appeal. Upon request of the council office, the hearing examiner's office shall prepare and transmit to the council office the hearing examiner's file, together with exhibits.

(2) A copy of the record shall be made available by the county council office to parties upon request submitted to the county council office.

20.92.640 Written argument.

(1) Within two working days after receipt of the transcript of the hearing conducted by the hearing examiner, the county council office shall send a letter of notification to the appellant that a statement containing the appellant's basis for appeal and argument is due. The statement and argument, and a proof of service (affidavit of mailing) upon those parties who have registered with the county council, must be filed in writing, along with 10 copies, with the clerk of the county council within 15 calendar days after the postmark date of the letter of notification.

(2) Any argument or response by any registered party of record opposing the appeal must be filed in writing along with 10 copies, within 14 calendar days after the date of filing the appellant's argument with the council office.

20.92.642 Time limits.

The county council shall dismiss an appeal for failure of the appellant to abide by any of the time limits contained in WCC 20.92.600 through 20.92.640, unless an extension has been granted pursuant to WCC 20.92.645.

20.92.645 Time extension.

Extensions of timelines established hereinabove may be granted by the council chair upon demonstration of good cause. Requests for extensions and proof of service (affidavit of mailing) upon those parties who have registered with the county council shall be presented to the clerk of the council in writing prior to the expiration of the pertinent time limit. Any registered party who wishes to object to the requested extension shall file a written objection with the council office no later than two weeks following the council's receipt of the request.

20.92.650 Time limitation on county council.

Within 35 days after the filing of the opponents' written arguments, the county council shall render a decision. Thereafter the county council will issue findings of fact and conclusions of law no later than 30 days following the decision. This time limitation shall not apply when a remand procedure is initiated.

20.92.660 Appeal on record.

The decision of the county council shall be based solely upon the record and the written argument that has been submitted by the parties.

20.92.700 Remand to hearing examiner.
20.92.710 Findings.

The county council may, within its discretion, remand the case back to the hearing examiner, if the council finds:

(1) That new evidence is available that could affect the outcome of the case and was not available at the first hearing.

(2) That the record, in whole or in part, is not sufficient for the council to make a reasoned decision on the appeal.

(3) That the decision of the hearing examiner should be reversed and that additional information is necessary before a final decision can be made.

20.92.720 Remand order.

The remand shall be in the form of a written order and shall state the specific areas to be considered by the hearing examiner at the remand hearing. The remand hearing shall be limited to the specific areas of concern stated in the remand order from the county council.

20.92.730 Notice of remand hearing.

Notice of the remand hearing shall take place in accordance with WCC 2.33.070.

20.92.740 Filing of information.

The hearing examiner shall file the information requested in the remand order with the clerk of the county council as soon as possible but not to exceed 15 business days from the date of the hearing.

20.92.750 Final decision of county council.

The county council shall, within 30 days of filing of the information from the remand hearing, issue their final written decision together with findings of fact and conclusions of law.

20.92.800 County council—Function in hearing examiner process.

20.92.810 Reversal of hearing examiner decisions.

The county council shall affirm the decision of the hearing examiner unless a majority of the entire county council finds that the decision of the hearing examiner is:

(1) Based upon an error of law; or

(2) Clearly erroneous on the entire record.

20.92.820 Conditions.

The county council may, where their decision results in project approval, impose, modify or delete conditions upon the license, permit approval, variances or appeal, consistent with WCC 20.92.310, and may exercise the powers granted therein.
20.92.825 Adult business appeals:

Appeals of administrative approval-use permits for adult businesses shall be made directly to the county council and shall be subject to the following procedures:

1. The applicant or any party of record may appeal an administrative approval-use permit decision relating to an adult business to the county council.

2. The appellant shall file a written notice of appeal at the county council office within 10 calendar days of the administrative approval-use permit decision. A fee, as established in the Unified Fee Schedule for appeals to the county council, shall be paid to the county council office upon filing of any appeal.

3. The county council office shall mail written notice to the administrative approval-use permit applicant within five calendar days of receiving the appeal, if the appeal was not submitted by the applicant.

4. The council office shall request the written record from planning and development services within five calendar days of receiving the appeal. The written record shall be forwarded by planning and development services within five calendar days of the request from the county council office.

5. Within five calendar days after receipt of the appeal, the county council office shall send a letter of notification to the appellant that a statement containing the appellant’s basis for appeal and argument is due. The statement and argument, and a proof of service (affidavit of mailing) upon the administrative approval-use permit applicant (if different from the appellant), must be filed in writing, along with 10 copies, with the clerk of the county council within 10 calendar days after the postmark date of the letter of notification.

6. An argument or response from the administrative approval-use applicant (if different than the appellant) shall be filed in writing along with 10 copies, within 10 calendar days after the date of filing the appellant’s argument with the council office.

7. The county council shall decide the appeal and issue written findings of fact and conclusions of law within 40 calendar days of the date the appeal was filed.

8. The county council shall affirm the decision of planning and development services unless a majority of the entire county council finds that the decision is:

   (a) Based upon an error of law; or

   (b) Clearly erroneous on the entire record.

9. The county council may, where their decision results in project approval, impose, modify or delete conditions based solely on the criteria of WCC 20.84.235(7).


20.92.830 No interference with the county council.
No individual or county official shall interfere with or attempt to interfere with the individual councilmembers of the county council in the execution of the quasi-judicial duties they have assumed pursuant to this chapter.

20.92.840 Appeal of county council decision.

The decision of the county council shall be final unless appealed within 21 days of the issuance of the written decision, in the same manner as provided in RCW 36.70C.040.

20.92.850 Public hearing process for development agreements under the Growth Management Act.

(1) The Whatcom County hearing examiner is designated to conduct the open record public hearing for development agreements as defined in the Growth Management Act, Chapter 36.70B RCW.

(2) The Whatcom County hearing examiner shall conduct an open record public hearing and prepare a record thereof, and make recommendation to the county council for approval or disapproval of development agreements as defined in the Growth Management Act, Chapter 36.70B RCW.

Chapter 20.94
ENFORCEMENT AND PENALTIES

20.94.070 Permit revocation.
The zoning administrator, and/or designee, is authorized to suspend or revoke a permit issued under the provisions of this code in instances where the hearing examiner does not otherwise have authority pursuant to WCC 22.05.15020.92.250. The county may suspend or revoke a permit whenever the permit is issued in error or on the basis of incorrect, inaccurate or incomplete information, and/or when a substantial or a continued violation of the terms and/or conditions of a permit have not been met.

WCC 20.94.060 Appeals.
The hearing examiner shall have the authority to hear and decide, in conformity with this title, appeals pursuant to WCC 20.84.240, unless as specifically noted differently under this chapter. Any party of record may appeal any order, final permit decision, or final administrative determination in the administration or enforcement of this title. The hearing examiner shall have the authority to hear and decide appeals pursuant to WCC 22.05.160. The appeal fee on a code violation will be refunded if the appellant can prove by clear and convincing evidence that a violation did not occur.
Chapter 20.97
DEFINITIONS

20.97.175 Hearing examiner.
"Hearing examiner" means the hearing examiner of Whatcom County (refer to WCC Chapter 20.922.11 WCC).

20.97.293 Party of record.
"Party of record" means the applicant, the owner of the property and any person who has testified at a required hearing. (Ord. 96-031 § 2, 1996). Any person, agency or entity entitled to receive notice of application or decision under this title, or any person, agency or entity providing written comments on any application received under this title or notified local government of their desire to receive a copy of the final decision on a permit and who have provided an address for delivery of such notice by mail or email.

20.97.321 Project permit – Project permit application.
"Project permit" or "project permit application" means any land use or environmental permit or license required from Whatcom County for a project action, including but not limited to building permits, subdivisions, binding site plans, planned unit developments, conditional uses, shoreline substantial project development permits, variance, lots consolidation relief, site plan reviews, permits or approvals required by critical area ordinances, site specific rezones authorized by a Comprehensive Plan or subarea plan, but excluding the adoption or amendment of a comprehensive plan, subarea plan, or development regulations except as otherwise specifically included in this subsection.

[Proposed amendment aligns with RCW 36.70B.020(4) definition.]
EXHIBIT E
Whatcom County Code Title 21
Land Division Regulations

AMENDMENT

Title 21
LAND DIVISION REGULATIONS

Chapters:

Chapter 21.01
GENERAL PROVISIONS

Sections:
21.01.010  Title.
21.01.020  Purpose.
21.01.030  Authority.
21.01.040  Applicability and exemptions.
21.01.050  Interpretation, conflict and severability.
21.01.060  Enforcement and penalties.
21.01.070  Fees.
21.01.080  Administrative responsibilities.
21.01.090  Pre-application meeting. Reserved.
21.01.100  Applications required. Reserved.
21.01.105  Consolidated application process. Reserved.
21.01.110  Complete application.
21.01.120  Time frames. Reserved.
21.01.130  Underground utilities.
21.01.140  Regulatory authority for development standards.
21.01.150  Repealed.
21.01.160  City urban growth areas.
21.01.010 Title.
This title shall be known and may be cited as the Whatcom County land division regulations.

21.01.020 Purpose.
The purpose of this title is:

(1) To promote the public health, safety, and general welfare, and to protect the natural resources and the environment.

(2) To provide for proper application of Chapter 58.17 RCW.

(3) To facilitate efficient and cost-effective land division and to ensure orderly growth and development consistent with the Whatcom County Comprehensive Plan and the Whatcom County Code.

(4) To establish an orderly transition from existing land uses to urban development patterns in designated urban growth areas.

21.01.030 Authority.
This title is authorized pursuant to the authority delegated to Whatcom County under Chapter 58.17 RCW, Plats – Subdivisions – Dedications.

21.01.040 Applicability and exemptions.
(1) This title shall apply to property boundary actions as defined in this title.

(2) The subdivision and short subdivision provisions of this title shall not apply to:

(a) Cemeteries and other burial plots while used for that purpose;

(b) Divisions of land into lots or tracts none of which are smaller than 20 acres or 1/32 of a section of land and not containing a dedication; provided, that a certificate of exempt land division is obtained from Whatcom County in accordance with this title;

(c) Divisions made by testamentary provisions, or the laws of descent;

(d) Divisions of land into lots or tracts classified for industrial or commercial use when Whatcom County has approved a binding site plan for the use of the land in accordance with this title;

(e) A division for the purpose of lease when no residential structure other than mobile homes or travel trailers are permitted to be placed upon the land when Whatcom County has approved a binding site plan for the use of the land;

(f) A division made for the purpose of alteration by adjusting boundary lines, between platted or unplatted lots or both, which does not create any
additional lot, tract, parcel, site, or division nor create any lot, tract, parcel, site, or division which contains insufficient area and dimension to meet minimum requirements for width and area for a building site in accordance with the provisions of this title;

(g) Divisions of land into lots or tracts pursuant to RCW 58.17.040(7); condominiums when Whatcom County has approved a binding site plan in accordance with the provisions of this title;

(h) A division for the purpose of leasing land for facilities providing personal wireless services while used for that purpose. “Personal wireless services” means any federally licensed personal wireless service. “Facilities” means unstaffed facilities that are used for the transmission or reception, or both, of wireless communication services including, but not necessarily limited to, antenna arrays, transmission cables, equipment shelters, and support structures;

(i) A division of land into lots or tracts of less than three acres that is recorded in accordance with Chapter 58.09 RCW and is used or to be used for the purpose of establishing a site for construction and operation of consumer-owned or investor-owned electric utility facilities. For purposes of this subsection, “electric utility facilities” means unstaffed facilities, except for the presence of security personnel, that are used for or in connection with or to facilitate the transmission, distribution, sale, or furnishing of electricity including, but not limited to, electric power substations. This subsection does not exempt a division of land from the zoning and permitting laws and regulations of cities, towns, counties, and municipal corporations. Furthermore, this subsection only applies to electric utility facilities that will be placed into service to meet the electrical needs of a utility’s existing and new customers. “New customers” are defined as electric service locations not already in existence as of the date that electric utility facilities subject to the provisions of this subsection are planned and constructed;

(j) Agricultural Lease. Divisions made for the purpose of lease for agricultural uses; provided, that each such leased parcel is a minimum of five acres or 1/128 of a section of land. The remaining portion of the parcel shall also be a minimum of five acres or 1/128 of a section of land. This exemption authorizes leasing the parcel but shall not authorize the sale of the parcel;

(k) Environmental Mitigation. Divisions of land for environmental mitigation, conservation or restoration; provided, that all of the following conditions are met:

(i) All lots are a minimum of five acres or 1/128 of a section of land.

(ii) Except as provided in subsection (k)(iii) of this section, all lots shall be used exclusively for:

(A) Environmental mitigation required under local, state or federal law; or
(B) Environmental conservation or restoration when a nonprofit nature conservancy corporation or association as defined by RCW 84.34.250 or public agency will own the lots.

(iii) If residential, commercial, or industrial buildings already exist, then one lot containing these buildings shall be created. This one lot shall not be subject to the requirements of subsection (k)(iv) of this section.

(iv) A permanent covenant acceptable to the director of planning and development services shall be recorded against each lot, except as provided in subsection (k)(iii) of this section. This covenant shall state the following:

(A) The lot shall be used exclusively for environmental mitigation, conservation or restoration.

(B) The lot shall not be further divided.

(C) New structures not necessary for environmental mitigation, conservation or restoration including residential, commercial and industrial development shall be prohibited.

(D) After recording, if the original purposes underlying the covenant can no longer be fulfilled and changed conditions warrant, the covenant may be revised with the consent of the county council, consistent with then-applicable policies and regulations.

(v) A legal description of the parcels created for environmental mitigation, conservation or restoration, prepared by a surveyor, shall be submitted to the planning and development services department for final approval and recordation.

(vi) Legal ingress and egress access of record is provided to the lots created by the exemption and verified by Whatcom County engineering. All access points to public roads shall be approved by the Whatcom County engineer or designee;

(I) Divisions of land into parcels of less than 40 acres but greater than 10 acres within the area zoned and designated as Agriculture in the Comprehensive Plan for Whatcom County proceeding in accordance with WCC 20.40.254(5).

(3) The following rules shall govern questions of precise applicability of these regulations to land divisions:

(a) Contiguous Parcels. All contiguous parcels of land in the same ownership shall be included within the boundaries of any proposed long or short subdivision of any of the properties. For the purpose of this section, the lots so situated shall be considered as one parcel; provided, that any of the contiguous parcels that are within a recorded long or short plat that was filed with the county auditor at least five years prior to the new land division shall
not be required to be included if the lot or lots are in conformance with the applicable zoning standards.

(b) Pre-1972 Parcels. Parcels of land legally divided prior to the effective date of the ordinance codified in this title (as originally adopted February 3, 1972) shall be considered in accordance with land division laws and resolutions applicable at the time of plat recording per RCW 58.17.170 or other division.

21.01.050 Interpretation, conflict and severability.
(1) Minimal Interpretation. In their interpretation and application, the provisions of this title shall be held to be the minimum requirements.

(2) Interpret to Protect Public Welfare. In the event of any discrepancies between the requirements established herein and those contained in any other applicable regulation, code or program, the regulations which are more protective of the public health, safety and welfare shall apply.

(3) Severability. The provisions of this title are severable. If a section, sentence, clause, or phrase of this title is adjudged by a court of competent jurisdiction to be invalid, the decision shall not affect the remaining portions of this title.

21.01.060 Enforcement and penalties.
Enforcement and penalties shall be applied pursuant to Chapter 21.11 WCC.

21.01.070 Fees.
All application, appeal, or other fees associated with this title shall be as set forth in the Whatcom County Unified Fee Schedule.

21.01.080 Administrative responsibilities.
(1) The director of the planning and development services department or designee (hereinafter referred to as "director" or "subdivision administrator") is designated as the official responsible for administering the provisions of these land division regulations.

(2) The Whatcom County planning and development services department shall act as a coordinating agent to ensure that the regulatory process is expeditious and shall recognize input provided by other officials, departments and divisions having appropriate expertise, including but not limited to the:

(a) Whatcom County SEPA official for environmental analysis;

(b) Whatcom County engineering for survey, monumentation, engineering design, road, stormwater management, drainage and utility improvements, and the form of plats and binding site plans;

(c) Whatcom County fire marshal for fire-related issues; and

(d) Whatcom County health and human services department for water supply and waste disposal.

21.01.090 Pre-application meeting. Reserved.
(1) Meeting Required When: For the purpose of expediting applications and reducing land-division and site-plan design and development costs, a pre-application meeting in accordance with the requirements of Chapter 2.33 WCC is required for all applications under this title except for boundary line adjustments and exempt land divisions covered by Chapter 21.03 WCC.

(2) City Participation: Whatcom County planning and development services staff shall invite the appropriate city to the pre-application meeting if the proposed land division is located within that city’s urban growth area. Invitation to the pre-application meeting for a short plat or preliminary plat adjacent to or within one mile of the municipal boundaries of a city, or which contemplates the use of any city utilities, shall also be given. [Moved to note in 22.05.020 table]

21.01.100 Applications required: Reserved.
The applicant is encouraged to seek assistance from the subdivision administrator as to which approvals are required for a particular proposal. One or more of the following applications may be required for a particular proposal:

(1) Exempt land division;

(2) Boundary line (lot line) adjustment;

(3) Short subdivision;

(4) Preliminary long subdivision;

(5) Final long subdivision;

(6) Subdivision vacations and alterations;

(7) Preliminary binding site plan;

(8) General binding site plan;

(9) Specific binding site plan;

(10) Agricultural short plat.

21.01.105 Consolidated application process:
The applicant may request consolidated permit review in accordance with the requirements of Chapter 2.33 WCC. [covered in 22.05.030]

21.01.110 Complete a Application processing.
All applications for subdivisions, binding site plans, short subdivisions, boundary line adjustments and other boundary actions covered by this title shall be reviewed and processed for completeness in accordance with Chapter 2.33 WCC 22.05 WCC, except as otherwise stated within this title.

21.01.120 Time frames: Reserved.
Applications shall be processed within the time frames stipulated in Chapter 2.33 WCC.
21.01.130 Underground utilities.
All on-site utilities that serve individual lots within a short subdivision, long subdivision or binding site plan shall be placed underground, unless the supplier of the service provides written documentation that underground installation is determined to be infeasible by development of specific findings, or the county requests above-ground utilities because of environmental constraints.

21.01.140 Regulatory authority for development standards
construction standards.
Administrative and technical requirements for implementing these regulations shall be contained in the Whatcom County development standards adopted pursuant to Chapter 12.08 WCC.

21.01.150 Boundary discrepancies.
Repealed by Ord. 2009-007.

21.01.160 City urban growth areas.
City development standards shall be addressed, in accordance with adopted ordinances, for land divisions located within a city’s urban growth area.

21.01.170 Hearing examiner consultation with technical advisory committee. Reserved. [Moved to note in 22.05.020 table]
The hearing examiner may choose to consult with the technical advisory committee concerning technical matters relating to land division applications.

Chapter 21.02

VARIANCES, APPEALS AND AMENDMENTS

Sections:
21.02.010 Variances.
21.02.020 Notification of cities.
21.02.030 Appeals.
21.02.040 Amendments – Advance notice.

21.02.010 Variances.
The hearing examiner, or in the case of short subdivisions, the technical review committee, shall have authority to grant a variance from the provisions of this title when they have found the conditions set forth below to exist. In such cases, a variance may be granted which is in harmony with the general purpose and intent of this title so that the intent of this title shall be observed, and public health, safety and welfare secured.
A variance may be granted only when all of the following circumstances listed in either subsection (1) or (2) of this section are found to apply. Applicants shall specify which criteria set they are proposing to qualify for a variance under and shall provide information to the county demonstrating compliance with that criteria set before a variance may be granted.

(1) Variance to Alleviate Unnecessary Hardship.

(a) Any variance granted shall not constitute a grant of special privilege, be based upon reasons of hardship caused by previous actions of the property owner, nor be granted for financial reasons alone.

(b) The strict application of these regulations would cause a hardship because of special circumstances applicable to the subject property, including size, shape, topography, environmental constraints or location. Aesthetic considerations or design preferences without reference to restrictions based upon the physical characteristics of the property do not constitute sufficient hardship under this section.

(c) The granting of the variance will not be detrimental to the public health, safety, or welfare or injurious to other property.

(2) Variance to Achieve Better Design.

(a) Any variance granted shall not constitute a grant of special privilege or be based upon reasons of hardship caused by previous actions of the property owner, nor be granted for financial reasons alone.

(b) The granting of the variance results in better lot design than would be permitted under the standard regulations. "Better lot design" is defined as meaning such items as more practical site design because of topography, wetland or other environmental constraints, or the lot design will result in lots nearer to conformance to required development standards or applicable Comprehensive Plan goals and policies, including those relating to urban growth areas.

(c) The granting of any variance will not be unduly detrimental to the public welfare nor injurious to the property or improvements in the vicinity and subarea in which the subject property is located.

(d) In granting variances and modifications, the hearing examiner or technical review committee, as appropriate, may require such conditions as will in its judgement secure substantially the objectives of the requirements so varied.

(3) A decision on a variance application by the technical review committee or by the hearing examiner shall be accompanied by specific written findings addressing each of the applicable criteria.

21.02.020 Notification of cities.
Notice of a hearing or technical review committee meeting for variances shall be provided to the appropriate city, if the land division is located within that city’s urban growth area.

21.02.030 Appeals.
(1) Any final order, requirement, permit decision or determination issued by Whatcom County shall include a notice to the applicant of his or her appeal rights. [added to 22.05.160(1)]

(21) Any party of record may appeal any order, final permit decision, final administrative determination including pre-approval or preliminary approval in the administration or enforcement of this title. The hearing examiner shall have the authority to hear and decide appeals pursuant to WCC 22.05.160. The hearing examiner shall have the authority to create a record, hear and decide, in conformity with this title. A party of record may file an appeal of any order, requirement, permit decision or determination made by an administrative official or committee in the administration or enforcement of this title. Such appeal shall be filed in writing within 14 calendar days of the action being appealed at the planning and development services department. The appeal shall follow all rules and procedures for appeals to the hearing examiner as set forth in Chapter 20.92 WCC.

(3) Within 10 calendar days of its issuance, any party of record may appeal a decision of the hearing examiner to the county council. The examiner’s decision may be overturned by a simple majority of the council if it is found that the examiner’s decision is based upon an error of law or is clearly erroneous based on the entire record. The appeal shall follow all rules and procedures for appeals to the county council as set forth in Chapter 20.92 WCC.

(42) Appeals related to the Whatcom County Development Standards shall be made to the technical advisory committee as required by WCC 12.08.035(I).

21.02.040 Amendments – Advance notice.
Notice of the time, place and purpose of any public hearing regarding the amendment, adoption or repeal of an ordinance adopted pursuant to Chapter 58.17 RCW shall be given by at least one publication in a newspaper of general circulation in Whatcom County at least 10 calendar days before the hearing in accordance with the provisions of WCC Chapter 22. Advance notification shall also be provided by mail to individuals or organizations that have submitted requests for notice at least 10 calendar days prior to the hearing.

Chapter 21.03

EXEMPT LAND DIVISIONS AND BOUNDARY LINE ADJUSTMENTS

Sections:
21.03.010 Purpose.
21.03.020 Repealed.
21.03.030 Pre-approval.
21.03.010 Purpose.
The purpose of this chapter is to establish or reference the procedure and
requirements for the application, review and approval of exempt land divisions,
pursuant to WCC 21.01.040, and boundary line adjustments. The procedure is
intended to provide orderly and expeditious processing of such applications.

21.03.020 Exemptions.
Repealed by Ord. 2009-007.

21.03.030 Pre-approval.
Applicants may request that their proposed exempt land division be reviewed by
the subdivision administrator and pre-approved using forms supplied by the
planning and development services department.

21.03.040 Certificate of exemption.
(1) A certificate of exempt land division shall be obtained from the planning and
development services department for exempt land divisions under WCC
21.01.040(2)(b) and (k). A certificate of exempt land division shall consist of a
suitably inscribed stamp on the instrument conveying land title and shall be
certified prior to the recording of the instrument with the county auditor. County
review and/or a county certificate of exemption stamp shall not be required for
WCC 21.01.040(2)(a) and (c) through (j).

(2) A certificate of exempt land division shall be approved, approved with
conditions, or denied as follows:

(a) Applications shall include information required by WCC 21.03.085 the
department’s administrative manual.

(b) The exempt land division results in a lot(s) that qualifies as a valid land
use pursuant to the Whatcom County Code, including but not limited to lot
area, lot width, building setbacks, critical areas protection or shorelines
protection.

(c) The exempt land division will not detrimentally affect access, access
design, sight distance, grade, road geometry or other public safety and
welfare concerns.
(3) An exempt land division is not considered approved until said instrument has been duly stamped as exempt and is filed for record concurrently with all applicable disclosures of WCC 21.03.045 within 12 months of pre-approval. **Pre-approval shall be considered a final determination.** Failure to record within 12 months of pre-approval means the exempt land division application is expired and must be resubmitted for review and approval. The time periods of this section do not include the time during which the exempt land division was not actually pursued due to the pendency of administrative appeals or legal actions or due to the need to obtain any other government permits and approvals for the development that authorize the development to proceed, including all reasonably related administrative or legal actions on any such permits or approvals.

**21.03.045 Required disclosures.**
The following disclosures, if applicable, shall be recorded in the county auditor’s office and shall be filed concurrently with all conveyances of property subject to this title:

(1) Right to farm, right to practice forestry, or mineral resource disclosures.

(2) Boundary discrepancies.

(3) Protective covenants, conditions and restrictions.

(4) Latecomers’ agreements.

(5) Significant pipeline in vicinity disclosure when the subject property is within 500 feet of a pipeline shown on Map 5.2, Chapter 5 of the Whatcom County Comprehensive Plan.

**21.03.050 Access on state highways.**
For parcels that will access onto a state highway, the applicant shall provide evidence of an approved access from the State Department of Transportation prior to approval of the exempt land division.

**21.03.060 Boundary line adjustments.**
The purpose of this section is to provide procedures **and criteria** for the review **and approval** of applications for adjustments or alterations to boundary lines of existing lots of record which do not create any additional lot, tract, parcel, site or division nor create any lot, tract, parcel, site or division which contains insufficient area and dimension to meet minimum requirements for width and area for a building site.

**(b)** Any adjustment of boundary lines must be approved by the subdivision administrator prior to the transfer of property ownership between adjacent lots.

(1) Procedures. Boundary line adjustments shall be approved, approved with conditions, or denied **as follows** according to the procedures in Chapter WCC 22.05 **WCC and the following:**

(a) Applications shall include information required by WCC 21.03.085 **the department’s administrative manual.**
(eb) The subdivision administrator shall make a preliminary decision on boundary line applications within 45 days following submittal of a complete application or revision, unless the applicant consents to an extension of such time period.

(db) A title insurance certificate updated not more than 60 days prior to application, which includes all parcels within the adjustment, must be submitted to the subdivision administrator with boundary line adjustment applications.

(ec) All persons having an ownership interest within the boundary line adjustment shall sign the final recording document in the presence of a notary public.

(2) Decision Criteria. In reviewing a proposed boundary line adjustment, the subdivision administrator or hearing examiner shall use the following criteria for approval:

(a) The boundary line adjustment shall not result in the creation of an additional lot.

(b) With the exception of those boundary line adjustments located within the agricultural zone, the boundary line adjustment shall result in lots which contain sufficient area and dimensions to meet minimum requirements for width and area for a building site pursuant to this title.

(c) The boundary line adjustment shall be consistent with any restrictions, depictions or conditions regarding the overall area in a plat or short plat devoted to open space, environmental mitigation or conservation.

(d) The boundary line adjustment shall be consistent with any restrictions or conditions of approval for a recorded plat, short plat, zoning permit, or development permit.

(e) The boundary line adjustment shall not cause boundary lines to cross on-site sewage disposal systems or their reserve areas, prevent suitable area for on-site sewage disposal systems, or prevent adequate access to water supplies unless suitable mitigation including, but not limited to, the granting of utility easements is provided to the satisfaction of Whatcom County; provided, however, in the agricultural zone only those lots with existing on-site sewage disposal systems or potable water supplies are subject to this provision.

(f) The boundary line adjustment will not create a new access which is unsafe or detrimental to the existing road system because of sight distance, grade, road geometry or other safety concerns, as specified in adopted Whatcom County road development standards.

(g) The boundary line adjustment on lots without an existing farmstead home site shall demonstrate adequate septic and potable water suitability.
Applicants shall demonstrate adequate potable water availability per Chapter 24.11 WCC. Applicants shall demonstrate septic suitability approval pursuant to Chapter 24.05 WCC.

(3) Final Approval and Recording Required. To finalize an approved boundary line adjustment, the applicant must submit to the subdivision administrator within one year of preliminary approval final review documents meeting the requirements of approval.

(a) All persons having an ownership interest within the boundary line adjustment shall sign the final recording document in the presence of a notary public.

(b) Certified legal descriptions of the lots after the boundary line adjustment, together with conveyance document(s) and language clearly binding the property which is conveyed to the remainder portion of the property, shall be prepared by a title company or licensed surveyor for all lots affected by the boundary line adjustment.

(c) A title insurance certificate updated not more than 60 days prior to recording of the adjustment, which includes all parcels within the adjustment, submitted to the subdivision administrator with boundary line adjustment final review documents.

(d) A final boundary line map, prepared by a licensed surveyor, along with legal descriptions, shall be prepared and submitted for review and approval. Two map copies shall be provided for review demonstrating compliance with the preliminary boundary line adjustment approval.

(e) A boundary line adjustment is not considered approved until the conveyance documents have been duly stamped as exempt and is filed for record concurrently with all applicable disclosures of WCC 21.03.045 within 12 months of preliminary approval of final documents. Preliminary approval is considered a final determination. Failure to record within 12 months of preliminary approval means the boundary line adjustment application is expired and must be resubmitted for review and approval.

21.03.070 Inactive applications:
An applicant may place an exempt land division or boundary line adjustment application, which has not yet received preliminary approval, on hold for a cumulative maximum of 180 days. This 180-day period shall not include time the applicant is performing studies required by the county when the study is provided within the time frame agreed to by the county and the applicant. Applications which fail to meet these time limits will be considered expired and void. The time periods of this chapter do not include the time during which the exempt land division was not actually pursued due to the pendency of administrative appeals or legal actions or due to the need to obtain any other government permits and approvals for the development that authorize the development to proceed, including all reasonably related administrative or legal actions on any such permits or approvals.
21.03.080 Requirements for a fully-completed exempt land division application. [Reserved. [proposition to be moved to administrative manual]

The following, and any other information on a form prescribed by the subdivision administrator, is required for a complete application for exempt land divisions under WCC 21.01.040(2)(b) and (k):

(1) Written Data and Fees:
(a) Name, address, and phone number of land owner, applicant, and contact person.
(b) Intended uses.
(c) A current title report or update of title report issued no more than 60 calendar days prior to application.
(d) Assessor’s parcel number (of the parent parcel).
(e) Fees as specified in the Unified Fee Schedule.
(f) Signature of all owners as shown on title report, and authorization for any agent to act on behalf of owners.
(2) Map Data:
(a) Name of land owner.
(b) Name of proposed land division (if an original drawing is prepared).
(c) General layout of proposed land division.
(d) Common language description of the general location of the land division.
(e) Approximate location and names of existing roads identified as either public or private.
(f) Vicinity map.
(g) Common engineering map scale/north arrow/sheet numbers (on each sheet containing a map).
(h) Section, township, range, and municipal and county lines in the vicinity.
(i) General boundaries of the site with general dimensions shown.
(j) Legal description of the land.

21.03.085 Requirements for a fully-completed boundary line adjustment application. [Reserved.]

The following, and any other information on a form prescribed by the subdivision administrator, is required for a complete application:

(1) Written Data and Fees:
(a) Name, address and phone number of land owner, applicant, and contact person.
(b) Intended uses.
(c) A current title report or update of title report issued no more than 60 calendar days prior to application.
(d) Assessor’s parcel numbers of existing parcels.
(e) Fees as specified in the Unified Fee Schedule.
(f) Signature of all owners as shown on title report, and authorization for any agent to act on behalf of owners.
(2) Map Data:
(a) Names of land owners.
(b) Name of proposed boundary adjustment.
(c) Common language description of the general location of the land division.
(d) Map at a common engineering scale of boundaries of existing parcels that are contributing to or receiving land from the proposed adjustment.
(e) Approximate location and labeling of any disputed or undetermined property lines proposing to be resolved by the adjustment.
(f) Clear depiction of property lines proposed for adjustment which identifies existing property lines and proposed property lines.
(g) Legal description and area of original parcels.
(h) Legal description and area of proposed adjusted parcels.
(i) Approximate location and names of existing roads identified as either public or private.
(j) Approximate location of existing buildings and existing on-site septic systems.
(k) Approximate locations of existing utilities and infrastructure.
(l) Vicinity map.
(m) Common engineering map scale/north arrow/sheet numbers (on each sheet containing a map).
(n) Section, township, range, and municipal and county lines in the vicinity.
(o) General boundaries of the site with general dimensions shown.

21.03.090 Original Drawing Reserved.
Repealed by Ord. 2009-007.

Chapter 21.04
SHORT SUBDIVISIONS

Sections:

21.04.010 Purpose.
21.04.031 Pre-application meeting.
21.04.032 Short subdivision application submittal.
21.04.033 Determination of completeness and vesting; Reserved.
21.04.034 Application procedures; Preliminary approval decision criteria.
21.04.035 Final short subdivision review process.
21.04.038 Applications subject to time limits; Reserved.
21.04.040 Restriction of further division.
21.04.050 Development requirements.
21.04.060 Roads.
21.04.070 Public dedications.
21.04.080 Easements.
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21.04.100 Sewage disposal.
21.04.110 Fire protection.
21.04.120 Short subdivision vacation and alteration.
21.04.130 Land survey.
21.04.150 Requirements for a fully completed application for short subdivisions; Reserved.
21.04.160 Final review and submittal; Reserved.
21.04.010 Purpose.
The purpose of this chapter is to establish or reference the procedure and requirements for the application, review and approval of short subdivisions.

21.04.031 Pre-application meeting.
(1) Pre-Application Meeting Required pursuant to WCC 22.05. Any person contemplating preparation of a preliminary short subdivision application shall submit information required for a pre-application meeting as provided in WCC 22.05 21.01.090 and Chapter 2.3322.05 WCC and in the department’s administrative manual. A pre-application meeting shall also be required for any alteration of an existing short subdivision unless waived by the subdivision administrator.
(2) Pre-Application Submittal Information. An applicant shall provide the following information in order to assist the applicant and Whatcom County in review of the proposed short subdivision. [proposed to be moved to administrative manual]

(a) Written and Other Data and Fees:
(i) Name, address and phone number of owner(s), applicant, and contact person.
(ii) Intended uses.
(iii) List of variances and waivers requested.
(iv) General written proposal of water supply and sewage disposal method.
(v) Proposed means of stormwater control.
(vi) Assessor’s parcel number of the parent parcel.
(vii) Fees as specified in the Unified Fee Schedule.
(viii) Net and gross lot size to determine minimum lot size and density requirements as required by the Zoning Ordinance.
(b) Map Data.
(i) Name of owner(s).
(ii) Name of proposed land division.
(iii) General layout of proposed land division.
(iv) Common language description of the general location of the land division.
(v) Approximate locations of existing roads, utilities, and infrastructure.
(vi) Vicinity map.
(vii) Short plat map with a common engineering scale with north arrow and sheet numbers (on each sheet containing a map).
(viii) Section, township, range and municipal and county lines in the vicinity.
(ix) General boundaries of the site with general dimensions shown.
(x) General direction and gradient of slope.
(xi) Legal description of the land.
(xii) Means of proposed water service and sewage disposal.
(xiii) Means of proposed access (including proposed improvements to on-site and off-site roadways).
(xiv) Approximate location of proposed on-site and off-site utilities and facilities.
(xv) Approximate location of existing roads, rights-of-way, buildings, parking, and drainage on-site.
(xvi) Where appropriate, approximate location of natural features, including bodies of water, regulated watershed boundaries, natural drainage areas, critical areas, shorelines and base flood elevation and buffers.
(xvii) Approximate location of existing facilities, sanitation and water facilities, easements (where appropriate).

(3) Applicant Presentation. At the pre-application meeting, the applicant shall, to the greatest extent possible, provide the technical review committee with a conceptual understanding of the potential application, including the location and the anticipated uses as provided in Chapter 2.33 WCC.

(4) Technical Review Committee Responsibilities. The technical review committee shall, to the greatest extent possible during the meeting, provide the applicant with consultation and input on the allowed uses, development standards, and process applicable to the proposal as provided in Chapter 2.33 WCC. Within 10 days of the pre-application meeting, staff shall communicate in writing the general findings and basis upon which an appropriate application may be submitted.

21.04.032 Short subdivision application submittal.
(1) An applicant requesting approval of a proposed short subdivision shall submit to the planning and development services department an application with all items required all the items identified in WCC 21.04.150 pursuant to WCC 22.05.050 and the department’s administrative manual.

(2) An application will only be accepted for review if it contains all components required in WCC 21.04.150 and is accompanied by fees as set forth in the Unified Fee Schedule.

(3) Accepting an application for review does not mean that the application has been determined complete. The determination of completeness is made as provided in WCC 21.04.033.

(4) If an application does not contain all of the required components of a complete application, it will not be accepted for review, fees will not be collected, and the application will be returned to the applicant for completion of the required components of a complete application.

21.04.033 Determination of completeness and vesting: Reserved.

[Determination of completeness and vesting provisions are proposed to be located in 22.05.050 and .060.]

(1) The county shall review an application for determination of completeness and mail or provide in person a written determination to the applicant within 28 days of the date that the application has been accepted for review.

(2) An application shall be determined complete if the application includes all the requirements for a fully completed application set forth in WCC 21.04.150.

(3) Applications having received a determination of completeness shall be processed as described below and as provided in Chapter 2.33 WCC.
(4) Applications having received a determination of incompleteness shall be handled as provided in Chapter 2.33 WCC.

(5) If the application is granted a determination of completeness as provided in subsection (2) of this section on its first acceptance for review, the vesting date will be the date that the application was submitted for review. If an application is submitted within 30 days of receiving pre-application meeting findings from the technical review committee and granted a determination of completeness, then the date that the project is considered vested will be the date of pre-application submittal.

(6) Applications that have been re-submitted for review for determination of completeness will again be handled as described in WCC 21.04.032. A new date of acceptance for review will be placed on the application.


(1) Notice and Distribution:

(a) The subdivision administrator shall distribute application materials to appropriate county and city staff within 10 working days of the determination of completeness.

(b) Whenever a short subdivision is located adjacent to the right-of-way of a state highway or will depend on access from a state highway, the subdivision administrator shall give written notice of the application, including a legal description of the short subdivision and a location map, to the Washington State Department of Transportation (WSDOT). WSDOT shall, within 14 days after receiving the notice, submit to the subdivision administrator a statement with any information that the department deems to be relevant about the effect of the proposed short subdivision upon the legal access to the state highway, the traffic carrying capacity of the state highway and the safety of the users of the state highway.

(c) The subdivision administrator shall notify and provide copies of project plans to a city when the subdivision is within that city’s urban growth area, agencies potentially having jurisdiction relevant to the application, and public utilities if within 660 feet (one-eighth mile) of the area submitted in the application. Such cities, agencies, and utility organizations shall be given 14 days to respond. If they do not respond within 14 days, the administrator; SEPA official and technical review committee may conclude their review of the application without such comments.

(2) Decision on Application. The subdivision administrator shall, within 90 calendar days of the date of determination of completeness, issue a notice of preliminary approval, issue a notice of additional requirements to obtain preliminary approval, or deny the application. Preliminary short subdivision approval or denial is considered a final administrative determination. An applicant may have up to 180 days in which to submit additional requirements unless a longer time period is authorized by the subdivision administrator for circumstances beyond the control of
the applicant. Preliminary approval of a short subdivision determination shall be accompanied by written findings by the county that:

(a1) Appropriate provisions have been made for the public health, safety, and general welfare and for such drainage ways, stormwater management, streets or roads, potable water supplies, sanitary wastes, and sidewalks and other planning features that assure safe walking conditions for students who only walk to and from school, and the public use and interest will be served by the platting of such short subdivision and dedication; and

(b2) The short subdivision is in conformity with applicable land division, zoning, critical areas, shoreline management, and other land use regulations.

21.04.035 Final short subdivision review process.
(1) Submittal. The final short subdivision submittal packet shall include responses to all items called for in the notice of preliminary approval, and shall be in conformance with WCC 21.04.160 the department's administrative manual.

(2) Time Allowed for Final Short Subdivision Approval.

(a) The applicant shall submit the final review packet pursuant with items required by WCC 21.04.160(1) the department's administrative manual within two years of receiving the notice of preliminary approval.

(b) The applicant shall record the short subdivision original drawing pursuant to WCC 21.04.160(2) the department's administrative manual within three years of receiving the notice of preliminary approval.

(c) If the applicant fails to submit the final short subdivision within these time frames, the short subdivision shall be considered expired and a new application meeting the requirements of this title and other Whatcom County codes will be required.

(3) The applicant, or their representative, shall submit such drawings and other information as required by the county engineer or utility provider for the construction of required improvements.

(4) The applicant shall submit paper prints of the proposed final short subdivision for review prior to preparation of final original drawings.

(5) Execution and Acceptance of Final Short Subdivision.

(a) When all requirements of the notice of preliminary approval, applicable laws, applicable regulations, and applicable development standards are satisfied and an original drawing for recording has been submitted, the subdivision administrator shall sign the original drawing of the short plat within 20 working days.

(b) If a right-of-way is dedicated, the county engineer shall also sign the original drawing, accepting the dedication.
(c) The surveyor of record shall file said original drawing with the county auditor, at which point it shall be deemed approved.

21.04.038 Applications subject to time limits. Reserved.

All short subdivision applications submitted prior to December 15, 2000, which have not yet received preliminary or final approval, shall be recorded within two years of the effective date of the ordinance codified in this chapter. Whatcom County shall endeavor to provide notice to applicants affected by this provision using the most recent contact information or property records.

[Two-year expiration time frames are proposed to be located in 22.05.140.]

21.04.040 Restriction of further division.

Land in short subdivisions may not be further divided in any manner within a period of five years except through the long subdivision process which requires the filing of a final plat or through the binding site plan process which requires the filing of a general and specific binding site plan. However, if the short subdivision contains fewer than four parcels, nothing in this section shall prevent the owner who filed the short plat from filing an alteration within the five-year period to create up to a total of four lots within the original short subdivision boundaries.

21.04.050 Development requirements.

(1) All short subdivisions shall comply with the applicable standards, requirements and procedures of the Whatcom County Development Standards and local, state, and federal laws and regulations. The county, to the extent practicable, will require new land divisions located within city urban growth areas to conform to city development standards, in accordance with adopted ordinances.

(2) Improvements are required to be installed and completed by the subdivider prior to final short plat approval, unless security is provided under WCC 21.04.140, except on-site septic systems do not have to be installed unless required by the health officer.

21.04.060 Roads.

Roads shall be designed with appropriate consideration for existing and projected roads, anticipated traffic patterns, topographic and drainage conditions, public convenience and safety, and the proposed uses of the land served.

(1) Dedications for the realignment and widening of the rights-of-way, in accordance with county standards, shall take place whenever a short subdivision abuts a county road. Frontage roads or parallel access roads may be required to eliminate direct access to arterial and collector roads.

(2) Frontage improvements to the public roadway(s) adjacent to the subject property shall be completed to the current functional classification prior to recording the short plat, unless security is provided under WCC 21.04.140.

(3) Roads and access easements that serve a short plat shall be constructed in compliance with the Whatcom County Development Standards.
21.04.070 Public dedications.
The dedication of sites for schools, parks, and other public or community purposes may be required to the extent that such dedication is suitable to and reasonable for the needs anticipated by full development of the subdivision. Dedicated school sites must meet the requirements of Chapter 246-366 WAC.

21.04.080 Easements.
(1) Easements shall be provided where applicable for development-related facilities.

(2) All easements shown on short plats shall include:

(a) The beneficiary of the easement;

(b) The purpose of the easement; and

(c) A clear depiction of the easement (including dimensions) on the face of the short plat.

(3) The owner may specify the burdening of the easement. Examples of burdening may include the average daily trips for ingress and egress easements, the equivalent single-family units for water, sewer, and on-site sewage disposal systems and the maximum peak flow rate expressed in accepted units for drainage easements. The owners of the subservient estates are not entitled to rely upon the county to enforce the limitations of the easements so granted, and no cause of action shall lie against the county for errors or omissions occurring in connection with the administration of, or issuance of, permits for development of properties that burden the easements referred to herein.

21.04.090 Water supply.
(1) Water from a public water system(s) shall be provided to serve each lot in a short plat, except as specified in subsection (2) of this section.

(2) For a residential short subdivision, private water supplies may be utilized under the following circumstances:

(a) All lots served by the private water supplies are five acres or larger, unless smaller because of clustering. If the lots are smaller because of clustering, the gross density of the short subdivision shall not exceed one dwelling per five acres; and

(b) The withdrawal is not from a defined portion of an aquifer of known regional ground water contamination that exceeds state standards and that has been identified by the director of the health department and confirmed by the board of health; and

(c) The water source is ground water and not surface water; and

(d) If the short subdivision is within the designated water service area of a public water purveyor that is shown on the coordinated water system plan map or within one-half mile of an existing water purveyor's water lines:
(i) The water cannot be provided to the applicant within 120 calendar days of submitting a written request and applicable fees to the purveyor unless specified otherwise by the hearing examiner or county council; or

(ii) The purveyor states in writing that it is unable or unwilling to provide the service; or

(iii) The purveyor and applicant are unable to achieve an agreement on the schedule and terms of provision of service within 120 calendar days.

(3) If a public water supply is required, all the requirements of Chapter 246-290 WAC, Group A Public Water Systems, or Chapter 246-291 WAC, Group B Public Water Systems, must be met prior to final plat approval.

21.04.100 Sewage disposal.
(1) Within urban growth areas, public sewer shall be required in short subdivisions unless the on-site sewage disposal requirements of WCC 24.05.210, Developments, subdivisions, and minimum land area requirements, can be met.

(2) Outside of the urban growth area and small town Comprehensive Plan designations, short subdivisions shall not be approved that require extension or expansion of public sewer except when:

   (a) Public sewer is necessary to protect the public health, safety or environment; and

   (b) Public sewer is financially supportable at rural densities and does not permit urban development.

(3) On-site sewage disposal systems shall meet the requirements of WCC 24.05.210, Developments, subdivisions, and minimum land area requirements.

(4) All portions of a community on-site sewage system that are held in common ownership shall be constructed and approved prior to final short plat approval.

21.04.110 Fire protection.
Short subdivisions shall incorporate adequate capability for fire protection in accordance with sound engineering practices and locally adopted codes and development standards and shall be approved by the county fire marshal.

21.04.120 Short subdivision vacation and alteration.
Applications to vacate or alter short plats that have been filed with the county auditor shall be processed as follows:

(1) Affidavit of Minor Correction of Survey. A professional land surveyor may file an “affidavit of minor correction of survey” pursuant to WAC 332-130-050 to correct minor survey, spelling, mathematical or drafting errors or omitted signatures. The surveyor shall file the affidavit of minor correction of survey with the county auditor and provide one copy to the division of engineering and one copy to planning and development services.
(2) Boundary Line Adjustments. Boundary line adjustments are processed under WCC 21.03.060 and are not subject to the provisions of this section, except for such adjustments that alter the boundaries of a reserve tract in the short plat.

(3) Alterations. The subdivision administrator shall approve, deny or issue a notice of requirements to continue processing an issue a notice of preliminary approval, issue a notice of additional requirements to obtain preliminary approval, or deny the application alteration provided that the alteration does not propose to eliminate or reduce the width or length of a public dedication within 30 calendar days of submittal of a complete application. Preliminary short subdivision alteration approval is considered a final determination.

(a) Alterations are modifications to text, maps or other information shown on the short plat that:

(i) May adversely impact public health, public safety, shorelines or critical areas;

(ii) Change the density, modify the uses, or alter the basic design of the short plat;

(iii) Create an additional lot(s) to a maximum of four within the short plat pursuant to WCC 21.04.040;

(iv) Modify reserve tract boundaries;

(v) Modify reserve tract or cluster notes; or

(vi) Modify or extinguish an easement shown on the face of the short plat.

(b) The application shall include a written description of the alteration, the reasons for the alteration, and a map showing the alteration. The map shall be prepared in accordance with the requirements of WCC 21.04.150 the department’s administrative manual.

(c) The county shall distribute application materials to appropriate county and city staff within 10 working days of the determination of completeness.

(d) The technical review committee shall meet to consider the proposed alteration and make a recommendation to the subdivision administrator. The subdivision administrator may waive the requirement for the technical review committee meeting if all issues can adequately be addressed without such a meeting.

(ec) The subdivision administrator shall approve the alteration if the alteration:

(i) Shall result in a lot(s) that qualifies as a valid land use pursuant to Whatcom County Code, including but not limited to lot area, lot width, building setbacks, critical areas protection or shorelines protection;
(ii) Shall not cause boundary lines to cross zoning or UGA boundaries, cross on-site sewage disposal systems or their reserve areas, prevent suitable area for on-site sewage disposal systems, prevent adequate access to water supplies, or not meet fire protection standards;

(iii) Will not detrimentally affect access, access design, sight distance, grade, road geometry or other public safety and welfare concerns. The alteration shall be reviewed by the department of health, public works, and any other agency or department with expertise;

(iv) Complies with zoning, land division regulations and development regulations applicable to the alteration that are in effect at the time the application for the alteration was submitted; and

(v) Complies with development standards applicable to the alteration that are in effect at the time the application for the alteration was submitted.

(fd) A new original drawing is submitted. The original drawing shall be prepared in accordance with the requirements of WCC 21.04.160 the department’s administrative manual and filed for record with the county auditor.

(4) Vacations – Not Involving Public Dedications. The subdivision administrator shall approve, deny or issue a notice of requirements to continue processing a vacation of a short plat that does not eliminate or reduce the width or length of a public dedication within 30 calendar days of submittal of a complete application.

(a) The application shall include a written description of the vacation, the reasons for the vacation, and a map showing the vacation.

(b) The subdivision administrator shall approve the vacation if the vacation does not conflict with the public interest.

(c) An order of vacation containing the signatures of all parties having an ownership interest in the short plat or the portion of the short plat being vacated shall be filed for record with the county auditor. The order shall state that the vacation is with the free consent and in accordance with the desires of the owners.

(d) Title to the vacated property shall vest with the rightful owner(s) as shown in the county records.

(5) Vacations – Involving Public Dedications. The vacation and alteration of a short subdivision shall be processed in accordance with RCW 58.17.212 and 58.17.215, respectively, when the alteration or vacation eliminates or reduces the width or length of a public dedication.

21.04.130 Land survey.
The applicant shall submit a short plat prepared and certified by a professional land surveyor in accordance with WCC 21.09.010 the department's administrative manual. (Ord. 2009-007 § 1).

As an alternate to complete installation of required improvements, the subdivider may elect to post securities, with the approval of the appropriate county authority, as set forth in the Whatcom County Development Standards guaranteeing completion of the work. No occupancy permit, final inspection, or use of the lot(s) created by a short subdivision shall be issued or allowed until all necessary infrastructure improvements as specified by this title have been met.

21.04.150 Requirements for a fully-completed application for short subdivisions: Reserved.
Upon completion of the pre-application review, and in response to the pre-application review letter, the applicant is authorized to prepare the short subdivision application materials. The following requirements for a fully-completed application, and any other information on a form prescribed by the subdivision administrator, must be provided in order to initiate a review for a determination of completeness:

(1) Written and Other Data and Fees: [proposed to be moved to administrative manual]

(a) Name, address and phone number of owner(s), applicant, and contact person;
(b) Intended uses;
(c) List of variances and waivers requested;
(d) General written proposal of water supply and sewage disposal method, including letter from public water or sanitary sewer providers stating their willingness and ability to serve the proposed land division;
(e) Preliminary stormwater proposal;
(f) Preliminary traffic proposal and transportation concurrency analysis, as required by Chapter 20.78 WCC;
(g) Assessor's parcel number (of the parent parcel);
(h) Fees as specified in the Unified Fee Schedule;
(i) Critical areas assessment report pursuant to WCC 16.16.255 when the written findings of the pre-application review identify the need for this report;
(j) Preliminary title report issued no more than 60 calendar days prior to application;
(k) Net and gross lot size to determine minimum lot size and density requirements as required by the Zoning Ordinance;
(l) Signature of property owners or applicant attesting by written oath to the accuracy of all information submitted for the application.

(2) Map Data:

(a) Name of owner(s);
(b) Name of proposed land division.
(e) General layout of proposed land division.
(d) Common language description of the general location of the land division.
(e) Approximate locations of existing roads, utilities, and infrastructure.
(f) Vicinity map.
(g) Short plat map with a common engineering scale with north arrow and sheet numbers (on each sheet containing a map).
(h) Section, township, range, and municipal and county lines in the vicinity.
(i) Boundaries of the site with general dimensions shown that are prepared by a licensed surveyor.
(j) General direction and gradient of slope.
(k) Legal description of the land.
(l) Proposed location and means of proposed water service and sewage disposal.
(m) Proposed location and means of proposed access (including proposed improvements to on-site and off-site roadways, and site distance).
(n) Other proposed on-site and off-site utilities and facilities.
(o) Location of existing roads, rights-of-way, buildings, parking, and drainage on-site.
(p) Where appropriate, location of natural features, including bodies of water, natural drainage areas, native vegetation, critical areas, and buffers.
(q) Location of existing sanitation and water facilities and easements (where appropriate).
(r) Existing and proposed street names.
(s) Names or numbers of any adjacent divisions.
(t) Sequential numbers or letters to all lots within the short subdivision.
(u) Topographic map of sufficient contour interval, acceptable to the county engineer or director of planning and development services or their designee, to show the topography of the land to be divided.
(v) Location of critical areas, shorelines and base flood elevation, where applicable.

(3) Seven sets of the above required information shall be submitted. The subdivision administrator may require the applicant to submit the information in an electronic format, and may reduce the number of required sets if provided in an alternative format.

21.04.160 Final review and submittal. Reserved.

(1) Review Submittal. [proposed to be moved to administrative manual]

(a) Seven copies of the original drawing of acceptable sizes (18 inches by 24 inches).
(b) Name of short subdivision.
(c) Legal description of the land.
(d) Common engineering scale, north arrow, and sheet numbers.
(e) Date of original and significant revisions.
(f) The length of each lot line, together with bearings and other data necessary for the location of any lot line in the field.
(g) The location, width, centerline, and name of all roads within and adjoining the land division.
(h) Final survey of boundary of the land division with complete bearings and linear dimensions.
(i) The location of all monuments or other evidence used as ties to establish the land division's boundaries.
(j) The location of all permanent control monuments found and established at the controlling corners of the parcel being divided and within the land division.
(k) The length and bearing of all straight lines, the radii, arcs and semitangents of all curves.
(l) The location and width of all easements, shown with broken lines, and a description of the purpose of the easement (including beneficiary).
(m) Existing and proposed road names.
(n) The location of all permanent wells and associated protective zones, municipal boundaries, section lines, township lines, and meander lines.
(o) A reference to any covenants or restrictions (two copies for county review).
(p) Signature block for persons with ownership interest (declaration) and dedication block, if appropriate.
(q) Land surveyor's certificate.
(r) County engineer certificate (if a right-of-way dedication is made).
(s) Director of planning and development services' certificate.
(t) County auditor's certificate.
(u) Letter from the health department approving water supply and sewage disposal method.
(v) Lot closures.
(w) A separate map scaled at one inch equals 400 feet for the assignment of addresses.
(x) Preliminary title report issued no more than 60 calendar days prior to submittal of the final short plat for review.
(y) Net and gross lot size to determine minimum lot size and density requirements as required by the Zoning Ordinance.

(2) Final Submittal:

(a) Original drawing (in reproducible format) with executed signature block of persons with ownership interest.

(b) A current title report or update of title report issued no more than 60 calendar days prior to the director signing the original drawing.

(c) Addresses as assigned by the county.

(d) The owner of record and the surveyor of record shall sign the original drawing of the short plat prior to filing it for record with the county auditor. The original drawing shall include a statement that the short subdivision has been made with the free consent of and in accordance with the desire of the land owner(s).

21.04.170 Disclosures and notes.
The following disclosures and notes, if applicable, shall be recorded in the county auditor’s office and a statement identifying the subject and the auditor’s file number, if applicable, for each such instrument shall be on the final short plat map prior to final approval by the county:

(1) Right to farm, right to practice forestry, mineral resource disclosures.

(2) Critical area notes and protective easement as required.

(3) Boundary discrepancies.

(4) Drainage maintenance agreement block.

(5) Road maintenance agreement block (private roads only).

(6) Significant pipeline in vicinity disclosure when the subject property is within 500 feet of a pipeline shown on Map 5-2, Chapter 5 of the Whatcom County Comprehensive Plan.

The provisions of WCC 20.40.253 and 20.40.254 provide for the segregation of a farmstead parcel with an existing residence(s) from a remainder parcel used for farming in the Agriculture Zone. The remainder parcel is restricted to agricultural use only. Because no further residential development can occur on the remainder parcel and an existing residential structure is already on the farmstead parcel, many of the standard short plat requirements are unnecessary. Therefore, a shortened review process has been established.

Agricultural short plats that qualify under WCC 20.40.253 and 20.40.254 shall be subject to the following:

(1) Agricultural short plats that recognize an existing farmstead home site shall be processed pursuant to all the requirements of this chapter except that the short plat will not be reviewed for compliance with:

   (a) WCC 21.04.060 (Roads);

   (b) WCC 21.04.090 (Water supply), when the remainder parcel will not require potable water;

   (c) WCC 21.04.100 (Sewage disposal);

   (d) WCC 21.04.130 (Land survey);

   (e) Chapter 16.16 WCC (Critical Areas); and

   (f) Shoreline master program.

(2) Any subsequent development must comply with all applicable codes.
(3) Survey Requirements – Partial. A survey, prepared by a professional land surveyor in accordance with WCC 21.09.010 and 21.09.020 the department's administrative manual, which provides the location of at least two corners of the farmstead parcel shall be submitted. A survey is not required for the remainder parcel that cannot have further residential development.

Chapter 21.05
PRELIMINARY LONG SUBDIVISIONS

Sections:
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21.05.100 Fire protection.
21.05.110 Modifications to approved preliminary long plats.
21.05.120 Requirements for a fully completed application for preliminary long subdivisions. Reserved.

21.05.010 Purpose.
The purpose of this chapter is to establish or reference the procedure and requirements for the application, review and approval of subdivisions, also referred to as long subdivisions. The procedure is intended to provide orderly and expeditious processing of such applications.

21.05.020 Requirement to obtain long subdivision approval.
All divisions of land into five or more parcels shall require long subdivision approval from Whatcom County unless:
(1) The division is specifically classified as an exemption under Chapter 21.01 WCC; or

(2) The division has received binding site plan approval.

21.05.030 Summary of preliminary long subdivision procedure.
Review of a preliminary long subdivision involves:

(1) Pre-application meeting.

(2) Submittal of a preliminary application.

(3) Determination of completeness.

(4) Notice of application.

(5) Hearing examiner review and decision. Long subdivision applications shall be processed in accordance with WCC 22.05, except as otherwise stated in this chapter.

21.05.031 Pre-application meeting.

(1) Pre-Application Meeting Required pursuant to WCC 22.05. Any person contemplating preparation of a preliminary long subdivision application shall submit information required for a pre-application meeting as provided in WCC 21.01.090 and Chapter 2.33 WCC in the department’s administrative manual. A pre-application meeting shall also be required for any alteration of an existing subdivision unless waived by the subdivision administrator.

(2) Pre-Application Submittal Information. An applicant shall provide the following information in order to assist the applicant and Whatcom County in review of the proposed subdivision: [proposed to be moved to administrative manual]

(a) Written and Other Data and Fees.
   (i) Name, address and phone number of owner(s), applicant, and contact person.
   (ii) Intended uses.
   (iii) List of variances and waivers requested.
   (iv) General written proposal of water supply and sewage disposal method.
   (v) Proposed means of stormwater control.
   (vi) Assessor’s parcel number (of the parent parcel).
   (vii) Fees as specified in the Unified Fee Schedule.
   (viii) Net and gross lot size to determine minimum lot size and density requirements as required by the Zoning Ordinance.

(b) Map Data.
   (i) Name of owner(s).
   (ii) Name of proposed land division.
   (iii) General layout of proposed land division.
   (iv) Common language description of the general location of the land division.
   (v) Approximate locations of existing roads, utilities, and infrastructure.
   (vi) Vicinity map.
(vii) Plat map with a common engineering scale with north arrow and sheet numbers (on each sheet containing a map).
(viii) Section, township, range and municipal and county lines in the vicinity.
(ix) General boundaries of the site with general dimensions shown.
(x) General direction and gradient of slope.
(xi) Legal description of the land.
(xii) Proposed means and location of water service and sewage disposal.
(xiii) Proposed means and location of access (including proposed improvements to on-site and off-site roadways).
(xiv) Other proposed on-site and off-site utilities and facilities.
(xv) Location of existing roads, rights-of-way, buildings, parking, and drainage on-site.
(xvi) Where appropriate, location of natural features, including bodies of water, regulated watershed boundaries, natural drainage areas, critical areas, shorelines and base flood elevation and buffers.
(xvii) Location of existing facilities, sanitation and water facilities, easements (where appropriate).

(32) Applicant Presentation. At the pre-application meeting, the applicant shall, to the greatest extent possible, provide the technical review committee with a conceptual understanding of the potential application, including the location and the anticipated uses as provided in Chapter 2.33 WCC.

(43) Technical Review Committee Responsibilities. The technical review committee shall, to the greatest extent possible during the meeting, provide the applicant with consultation and input on the allowed uses, development standards, and process applicable to the proposal as provided in Chapter 2.3322.05 WCC. Within 10 days of the pre-application meeting, staff shall communicate in writing the general findings and basis upon which an appropriate application may be submitted.

21.05.032 Preliminary long subdivision application submittal.

(1) An applicant requesting approval based on the pre-application meeting response of a proposed preliminary subdivision shall submit to the planning and development services department all of the items required in WCC 22.05, the notice of site-specific submittal requirements and the department’s administrative manual, WCC 21.05.120.

(2) An application will only be accepted for review if it contains all components required in the department’s administrative manual, WCC 21.05.120 and is accompanied by fees as set forth in the Unified Fee Schedule.

(3) Accepting an application for review does not mean that the application has been determined complete. The determination of completeness is made as provided in WCC 21.05.03322.05.050.

(4) If an application does not contain all of the required components of a complete application, it will not be accepted for review, fees will not be collected, and the application will be returned to the applicant for completion of the required components of a complete application.
21.05.033 Determination of completeness and vesting Reserved.

[Determination of completeness and vesting provisions are proposed to be located in 22.05.050 and .060.]

(1) The county shall review an application for determination of completeness and mail or provide in person a written determination to the applicant within 28 days of the date that the application has been accepted for review.

(2) An application shall be determined complete if the application includes all the requirements for a fully completed application set forth in WCC 21.05.120.

(3) Applications having received a determination of completeness shall be processed as described below and as provided in Chapter 2.33 WCC.

(4) Applications having received a determination of incompleteness shall be handled as provided in Chapter 2.33 WCC.

(5) If the application is granted a determination of completeness as provided in subsection (2) of this section on its first acceptance for review, the vesting date will be the date that the application was submitted for review. If an application is submitted within 30 days of receiving pre-application meeting findings from the technical review committee and granted a determination of completeness, then the date that the project is considered vested will be the date of pre-application submittal.

(6) Applications that have been re-submitted for review for determination of completeness will again be handled as described in WCC 21.05.032. A new date of acceptance for review will be placed on the application.

21.05.035 Preliminary application procedures. Reserved.

(1) Notice and Distribution. Upon receipt of a complete application and the payment of fees, the department of planning and development services shall:

   (a) Provide notification in accordance with Chapter 2.33 WCC;

   (b) Notify those agencies required by RCW 58.17.080;

   (c) Notify and provide copies of project plans to a city when the subdivision is within that city’s urban growth area, agencies potentially having jurisdiction relevant to the application, and public utilities if within 660 feet (one-eighth mile) of the area submitted in the application. Such cities, agencies, and utility organizations shall be given 15 calendar days to respond. If they do not respond within 15 days, the administrator, SEPA official and technical review committee may conclude their review of the application without such comments.

(2) Within 60 calendar days after the application has been determined to be complete, the subdivision administrator shall receive comments and notify the applicant regarding whether modifications or corrections to the preliminary plat application would be required in order to receive a recommendation of approval.
from the subdivision administrator prior to consideration of the application by the hearing examiner.

(3) Preliminary plats of any proposed subdivision and dedication shall be approved, disapproved, or returned to the applicant for modification or correction within 90 days from date of filing thereof unless the applicant consents to an extension of such time; provided, that if an environmental impact statement is required as provided in RCW 43.21C.030, the 90-day period shall not include the time spent preparing and circulating the environmental impact statement by the local government agency.

21.05.036 Report to hearing examiner. Preliminary Approval Decision Criteria.
The subdivision administrator shall prepare a final staff report (including all recommendations and all proposed conditions of approval) and submit it in written form to both the applicant and the Whatcom County hearing examiner. The report shall evaluate the application in terms of the following standards and criteria:

21.05.037 Hearing-examiner notice; hearing and decision.
The hearing examiner shall schedule and hold an open record hearing, review the application and make a decision or recommendation, as appropriate, in accordance with the provisions of Chapter 20.92 WCC. Notice of the open record hearing shall be as set forth in Chapter 2.33 WCC.

(1) Review of a preliminary long-subdivision shall be accompanied by written findings of fact and conclusions regarding the proposed development's provisions for the following standards and criteria: [criteria are proposed to be moved from .037 to .036]

1. (a) Open spaces;
2. (b) Drainage ways and stormwater management;
3. (c) Streets or roads, pedestrian and bicycle paths, alleys, other public ways, transit stops, and other transportation facilities as required by concurrency standards;
4. (d) Potable water supplies;
5. (e) Sanitary wastes;
6. (f) Parks and recreation facilities and playgrounds;
7. (g) Schools and schoolgrounds, including sidewalks and other planning features that assure safe walking conditions for students who walk to and from school;
8. (h) Conformity with the Whatcom County Comprehensive Plan;
9. (i) Conformity with applicable land division, zoning and development standards;
10. (j) Conformity with critical areas, shoreline management, other land use regulations;
11. (k) Conformity with Chapter 58.17 RCW; and
12. (l) A summary finding that the public health, safety, general welfare, use and public interest will be served by the platting of such subdivision and dedication.
21.05.037 Hearing examiner notice, hearing and decision of preliminary approval.
The hearing examiner shall schedule and hold an open record hearing, review the application and make a decision or recommendation, as appropriate, in accordance with the provisions of Chapter WCC 22.05 WCC.

(2) If the hearing examiner finds that all of the above standards and criteria in WCC 21.05.036 have been met, the hearing examiner may issue an approval of the proposed preliminary long plat application.
(3) If the hearing examiner finds that the above criteria are not met, the hearing examiner may take one of the following actions:
   — (a) Specify the issues that require additional information and give the applicant a period of time up to three months to address those issues and return to the hearing examiner for further consideration.
   — (b) Issue a conditional approval specifying the actions needing to be taken to resolve minor nonconformance with the standards and criteria, and granting a specific limited time, typically 30 days, within which the applicant is to return to the hearing examiner for review.
   — (c) Deny the application.

21.05.038 Approved preliminary long subdivision process: Reserved.

[This subsection is proposed for deletion because it is unclear and not used]

(1) Submittal of Approved Preliminary Long Subdivision. Upon issuance of preliminary long subdivision approval by the hearing examiner, the applicant shall, within 30 calendar days of preliminary long subdivision approval, submit four copies of a revised preliminary plat depicting modifications to the layout of lots, roads, open space, or any other geometrical changes to the plat that were required by conditions of approval of the preliminary plat by the hearing examiner.
(2) Review and Execution of Preliminary Long Subdivision. The hearing examiner shall review the preliminary plat and, if it complies with the terms of preliminary approval, the hearing examiner, property owner and surveyor shall sign the four copies of the preliminary long subdivision.
(3) Distribution of Executed Preliminary Long Subdivision. Once signed, one copy of the revised preliminary plat shall be given to the applicant, one copy shall be retained in the file of the hearing examiner, one copy shall be retained in the file of planning and development services, and one copy shall be retained in the file of the division of engineering.

21.05.039 Phasing, expiration and time extension for preliminary long subdivision approval.
(1) Except as provided by subsection (1)(a) of this section, a final plat shall be submitted to the subdivision administrator in proper form for final plat approval within seven years of the date of preliminary plat approval if the date of preliminary plat approval is on or before December 31, 2014, and within five years of the date
of preliminary plat approval if the date of preliminary plat approval is on or after January 1, 2015.

(a) A final plat shall be submitted in proper form for final plat approval within 10 years of the date of preliminary plat approval if this project is not subject to requirements adopted under Chapter 90.58 RCW and the date of preliminary plat approval is on or before December 31, 2007.

(2) Extension of Time for Submittal of Final Long Subdivision. The expiration of a preliminary long subdivision approval may be extended under the following provisions:

(a) An applicant files a written request with the subdivision administrator prior to expiration of the five-year expiration period. The request shall state the specific work items, standards, and criteria which have not been completed and the reasons therefor. The request shall also indicate when the work will be completed within the requested period. The subdivision administrator shall review the request and provide a recommendation to the hearing examiner.

(b) The hearing examiner shall have authority to grant one one-year extension subsequent to the original preliminary plat approval.

(c) The one-year extension may be granted if, after taking into consideration technical, economic and other matters beyond the control of the applicant, the hearing examiner finds that there is reasonable justification for the granting of an extension.

(d) In granting the one-year extension the hearing examiner shall take into consideration such changes in rules, regulations, ordinances, or development standards, or portions thereof, that have occurred since the time the original approval was granted.

(e) The hearing examiner may condition the extension so as to require compliance with any such subsequently adopted rules, regulations, ordinances, or development standards, or portion thereof, that are deemed necessary to protect the public health, safety and welfare.

(3) Phased Subdivision. An applicant may seek approval of a phasing plan at the time of preliminary subdivision approval. If phasing is approved as part of a preliminary subdivision, the phasing plan shall expire 10 years from the date of preliminary approval. Each phase submitted after five years from the date of preliminary approval shall comply with the rules, regulations and ordinances in effect as of the date construction plans are submitted for each phase.

21.05.040 Development requirements.
(1) All subdivisions shall comply with the applicable standards, requirements and procedures of the Whatcom County Development Standards and local, state, and federal laws and regulations. The county, to the extent practicable, will require new
land divisions located within city urban growth areas to conform to city
development standards, in accordance with adopted ordinances.

(2) Improvements are required to be installed and completed by the subdivider
prior to final subdivision approval, unless security is provided under WCC
21.06.040.

(3) Improvements and other requirements shall be provided to the extent that each
phased subdivision will be adequately served by all roads, utilities, drainage
facilities, easements and other amenities necessary to its existence in the event
that subsequent phases are not completed, except on-site septic systems do not
have to be installed unless required by the health officer.

21.05.050 Roads.
Roads shall be designed with appropriate consideration for existing and projected
roads, anticipated traffic patterns, topographic and drainage conditions, public
convenience and safety, and the proposed uses of the land served.

(1) Dedications for the realignment and widening of the adjacent rights-of-way, in
accordance with county standards, shall take place whenever a subdivision abuts a
county road. Frontage roads or parallel access roads may be required to eliminate
direct access to arterial and collector roads.

(2) Frontage improvements to the public roadway(s) adjacent to the subject
property shall be completed to the current functional classification prior to recording
the final plat, unless security is provided under WCC 21.06.040.

(3) Minor and local access roads should discourage through traffic.

(4) All subdivisions and phased subdivisions shall abut and be accessed by a
constructed and maintained public road or a private road as allowed under the
Whatcom County Development Standards. The number of access points shall create
efficient on- and off-site circulation patterns and facilitate emergency response. A
traffic analysis may be required by the county engineer in order to analyze present
and future traffic circulation patterns to determine the appropriate location and
number of access points to the site and to ascertain the appropriate classification
and character of the proposed roads.

(5) Where reasonably necessary to join with existing roads or needed for future
circulation, road rights-of-way and/or easements shall be extended to the outside
boundaries of the subdivision.

(6) Public road rights-of-way and/or easements shall be extended to the boundaries
of subdivisions that abut public lands and public bodies of water, if requested by the
administrator of said public lands. Such access roads need not be provided at an
interval more frequent than one-half mile.

(7) Private roads may be permitted in a subdivision when in compliance with the
Whatcom County Development Standards.
21.05.060 Public and community sites.
The dedication of sites for schools, parks, and other public or community purposes may be required to the extent that such dedication is suitable to and reasonable for the needs anticipated by full development of the subdivision. Dedicated school sites must meet the requirements of Chapter 246-366 WAC.

21.05.070 Easements.
(1) Easements shall be provided where applicable for development-related facilities.

(2) All easements shown on long plats shall include:

(a) The beneficiary of the easement;

(b) The purpose of the easement; and

(c) A clear depiction of the easement (including dimensions) on the face of the long plat.

(3) The owner may specify the burdening of the easement. Examples of burdening may include the average daily trips for ingress and egress easements, the equivalent single-family units for water, sewer, and on-site sewage disposal systems and the maximum peak flow rate expressed in accepted units for drainage easements. The owners of the subservient estates are not entitled to rely upon the county to enforce the limitations of the easements so granted, and no cause of action shall lie against the county for errors or omissions occurring in connection with the administration of or issuance of permits for development of properties that burden the easements referred to herein.

21.05.080 Water supply.
(1) Water from a public water system(s) shall be provided to serve each lot in a subdivision, except as specified in subsection (2) of this section.

(2) For a residential subdivision with six or fewer residences, private water supplies may be utilized under the following circumstances:

(a) All lots served by the private water supplies are five acres or larger, unless smaller because of clustering. If the lots are smaller because of clustering, the gross density of the subdivision shall not exceed one dwelling per five acres and the number of clustered lots shall not exceed four; and

(b) The withdrawal is not from a defined portion of an aquifer of known regional ground water contamination that exceeds state standards and that has been identified by the director of the health department and confirmed by the board of health; and

(c) The water source is ground water and not surface water; and

(d) If the subdivision is within the designated water service area of a public water purveyor that is shown on the coordinated water system plan map or within one-half mile of an existing water purveyor’s water lines:
(i) The water cannot be provided to the applicant within 120 calendar days of submitting a written request and applicable fees to the purveyor unless specified otherwise by the hearing examiner or county council; or

(ii) The purveyor states in writing that it is unable or unwilling to provide the service; or

(iii) The purveyor and applicant are unable to achieve an agreement on the schedule and terms of provision of service within 120 calendar days.

(3) The applicant shall demonstrate that adequate water right(s) exist to serve the subdivision, except when water withdrawal is exempt from obtaining a water right permit under RCW 90.44.050.

(4) If a Group B public water system is created to serve the subdivision, the number of wells shall be limited to the minimum needed to serve the water needs of the subdivision as determined by the health department.

(5) If a public water supply is required, all the requirements of Chapter 246-290 WAC, Group A Public Water Systems, or Chapter 246-291 WAC, Group B Public Water Systems, must be met prior to final plat approval.

21.05.090 Sewage disposal.
(1) Within urban growth areas, public sewer shall be required in subdivisions unless the on-site sewage disposal requirements of WCC 24.05.210, Developments, subdivisions, and minimum land area requirements, can be met.

(2) Outside of the urban growth area and small town Comprehensive Plan designations, subdivisions shall not be approved that require extension or expansion of public sewer except when:

    (a) Public sewer is necessary to protect the public health, safety or environment; and

    (b) Public sewer is financially supportable at rural densities and does not permit urban development.

(3) On-site sewage disposal systems shall meet the requirements of WCC 24.05.210, Developments, subdivisions, and minimum land area requirements.

(4) All portions of a community on-site sewage system that are held in common ownership shall be constructed and approved prior to final plat approval.

21.05.100 Fire protection.
Long subdivisions shall incorporate adequate capability for fire protection in accordance with sound engineering practices and locally adopted codes and development standards and shall be approved by the county fire marshal.

21.05.110 Modifications to approved preliminary long plats.
(1) The technical review committee may approve minor changes to a preliminary long plat. In order to qualify as a minor change, the proposal must not adversely
impact neighbors or the environment, and the density, uses and basic design of the approved preliminary long plat must be maintained.

(2) The hearing examiner or county council, whichever approved the original preliminary long plat, may approve major changes to the plat. Major changes are those that, in the opinion of the technical review committee, would adversely impact neighbors or the environment, alter the density, alter the uses, or alter the basic design of the preliminary long plat. The SEPA official shall review major changes and determine whether the original SEPA determination is still valid or a new determination required. The hearing examiner or county council shall hold a public hearing prior to issuing the decision. The appropriate city shall be notified of the request and given the opportunity to comment on major changes, if the land division is located within that city's urban growth area.

21.05.120 Requirements for a fully completed application for preliminary long-subdivisions: Reserved. [proposed to be moved to administrative manual]

Upon completion of the pre-application review, and in response to the pre-application review letter, the applicant is authorized to prepare the subdivision application materials. The following requirements for a fully completed application, and any other information on a form prescribed by the subdivision administrator, must be provided in order to initiate a review for a determination of completeness.

(1) Written and Other Data and Fees:

(a) Completed application form;
(b) Name, address and phone number of owner(s), applicant, and contact person;
(c) Names, addresses and telephone numbers of the involved engineers, surveyors, and consultants;
(d) Intended uses;
(e) List of variances and waivers requested;
(f) Names and addresses of all persons, firms, and corporations holding legal interests in the land, such as easements, of which the applicant has knowledge;
(g) Assessor’s parcel number (of the parent parcel);
(h) List of names and addresses of owners of property within 300 feet of site’s boundaries (based on the latest assessor’s equalized tax roll) when within an urban growth area, or within 1,000 feet of site’s boundaries when outside an urban growth area, together with corresponding parcel numbers and assessor’s parcel map;
(i) Proposed covenants, conditions, and restrictions (CC&Rs);
(j) SEPA checklist;
(k) Preliminary stormwater proposal;
(l) Preliminary traffic analysis;
(m) Proposed utilities;
(n) Critical area and soils reports, as specified in the applicable development standards. All reports shall be certified by qualified professionals experienced in the applicable field of science;
(o) Net and gross lot size to determine minimum lot size and density requirements as required by the Zoning Ordinance;
(p) Fees as specified in the Unified Fee Schedule.
(2) Map Data.
   (a) Acceptable map size is 24 inches by 24 inches to 24 inches by 36 inches.
   (b) Date of revisions, if any.
   (c) Name of owner.
   (d) Name, address, and telephone number of the surveyor or consultant preparing the map proposal.
   (e) Name of proposed land division.
   (f) Names or numbers of any adjacent divisions.
   (g) General layout of proposed land division.
   (h) Approximate locations of existing utilities, infrastructure, roads, drainage and rights-of-way within 300 feet of the boundary of the proposed land division.
   (i) Vicinity map at a scale not less than one inch equals 2,000 feet.
   (j) Common engineering scale (one inch equals 100 feet or larger), sheet numbers, and north arrow.
   (k) Section, township, range, municipal and county lines in the vicinity.
   (l) Location of monuments and fences located by any boundary survey and the date of the survey.
   (m) General boundaries of the site with general dimensions shown, perimeter boundary marked with a bold line.
   (n) Legal description of the land being subdivided.
   (o) Proposed access (including proposed improvements to on-site and off-site roadways).
   (p) Other proposed on-site or off-site utilities and facilities.
   (q) The location and widths of all proposed roads, rights-of-way, and easements.
   (r) When appropriate, location of natural features, including bodies of water, natural drainage areas, regulated watershed boundaries, critical areas, and buffers.
   (s) Location of buildings, and parking on-site or contiguous to the site.
   (t) General location of existing and proposed facilities, sanitation and water facilities, easements (where appropriate), landscaping, common areas, and phasing boundaries.
   (u) General plans of proposed water distribution systems, sewage disposal systems, and drainage systems. The plans shall include system location and sizes, sources of water supply, location and size of storage reservoirs, location of drainage outlet, and other major features and shall be certified by a professional engineer.
   (v) Layout of proposed alleys, walkways, bicycle paths, and parcels to be dedicated or reserved for school, park, playground, well site or other use.
   (w) Sequential numbers to all lots within subdivision and identify proposed phases.
   (x) Location of critical areas, shorelines and base flood elevation, where applicable.

(3) Additional Information:
   (a) Title report.
(b) Written narrative of how the proposed preliminary plat will meet development and/or level of service standards for:
(i) Water supply.
(ii) Sewage disposal.
(iii) Fire protection service.
(iv) Public school system.
(c) Project area.
(d) Area in lots, square feet, and percentage of total.
(e) Zoning designation and zone density.
(f) Number of lots.
(g) Average lot size, area, and maximum lot size.
(h) Area of streets, area in rights of way, and percentage of total.
(i) Area of parks, open space, and percentage of total.
(j) Area of impervious surface proposed.
(k) Soil types and classifications.
(l) Utility service types and name of provider.
(m) School and fire district.
(n) Boundary survey, prepared and certified by a professional land surveyor.
(o) Additional reports as required at the pre-application meeting, prepared by qualified professionals, including but not limited to:
(i) Traffic impact analysis and concurrency study.
(ii) Stormwater design report.
(iii) Soil and/or geological report.
(iv) Wetlands delineation and/or critical areas assessment report.
(v) Soil testing results for pesticides for subdivisions on land historically used for raising row crops.
(p) Topographic map of sufficient contour interval, acceptable to the county engineer or subdivision administrator, to show the topography of the land to be subdivided.

(4) Eleven sets of the above required information shall be submitted. The subdivision administrator may require the applicant to submit the information in an electronic format, and may reduce the number of required sets if provided in an alternative format.

Chapter 21.06

FINAL LONG SUBDIVISIONS

Sections:

21.06.010 Purpose.
21.06.015 Council-chair-Director authorized.
21.06.020 Final approval of subdivisions.
21.06.030 Subdivision vacation and alteration.
21.06.040 Security.
21.06.050 Requirements for a fully completed application for final long subdivisions. Reserved.
21.06.010 Purpose.
The purpose of this chapter is to establish or reference the procedure and requirements for the application, review and approval of final long subdivisions. The procedure is intended to provide orderly and expeditious processing of such applications.

21.06.015 Director Council-chair authorized.
The planning and development services director (director) chair of the Whatcom County council is authorized to act on behalf of the legislative authority or county council in the signing of final subdivision plats pursuant to the requirements set forth in this chapter. [Changes to RCW 58.17.100 and .170 authorize the legislative body to delegate final signature of the mylar to a department official.]

21.06.020 Final approval of subdivisions.
(1) An applicant requesting final approval of a subdivision shall submit to the subdivision administrator copies of the materials specified in WCC 21.06.050 the department’s administrative manual.

(2) The applicant shall submit a current title report issued no more than 60 days prior to the county council chair director signing the final plat original drawing. The owner of record and the surveyor of record shall sign the final plat original drawing prior to filing it for record with the county auditor. In addition, the applicant shall submit one paper copy to the county assessor.

(3) Each final plat submitted to the county council chair director for approval shall be accompanied by a recommendation for approval or disapproval from the subdivision administrator as to compliance with the terms of preliminary plat approval. Prior to making his or her recommendation, the subdivision administrator should consult with the appropriate city, if the proposed land division is located within that city’s urban growth area.

(4) Final plats shall contain a statement of approval from the following:

(a) The county engineer as to the layout of streets, alleys, and other rights-of-way, and the design of bridges, sanitary sewer and water systems, drainage and surface water management facilities, and other physical improvements required by the conditions of preliminary plat approval;

(b) The county treasurer stating that all taxes and delinquent assessments for which the property may be liable as of the date of certification have been duly paid, satisfied, or discharged;

(c) The county health and human services department as to the adequacy of potable water supply and sewage disposal; and
(d) The county council chair or director stating that the final plat conforms to all terms of the preliminary subdivision approval, meets the requirements of Chapter 58.17 RCW and other applicable state laws, and meets the requirements of this title that were in effect at the time of vesting of the preliminary plat application.

(5) Final plats shall be approved, disapproved, or returned to the applicant for modification or correction within 30 calendar days of submittal to the planning and development services department.

(6) The Whatcom County auditor shall not accept a final plat for filing until it has been accepted by the approving authorities as indicated on the instrument by the appropriate signature. The signature of the approving authorities shall not be affixed until the developer has posted the guarantees as stipulated in the appropriate standards.

(7) After approval by the council chair or director, two the original drawings of the subdivision shall immediately be filed by the professional land surveyor of record with the county auditor. After filing, the county auditor shall retain one original drawing and the county engineer shall retain one original drawing.

21.06.030 Subdivision vacation and alteration.

(1) The vacation and alteration of subdivisions shall be in accordance with RCW 58.17.212 and 58.17.215, respectively.

(2) Alteration of subdivisions shall meet the following requirements:

   (a) The alteration shall result in a lot(s) that qualifies as a valid land use pursuant to Whatcom County Code, including but not limited to lot area, lot width, building setbacks, critical areas protection or shorelines protection;

   (b) The alteration shall not cause boundary lines to cross zoning or UGA boundaries, cross on-site sewage disposal systems or their reserve areas, prevent suitable area for on-site sewage disposal systems, prevent adequate access to water supplies, or not meet fire protection standards;

   (c) The alteration will not detrimentally affect access, access design, sight distance, grade, road geometry or other public safety and welfare concerns. The alteration shall be reviewed by the department of health, public works, and any other agency or department with expertise;

   (d) Complies with zoning, land division regulations and development regulations applicable to the alteration that are in effect at the time the application for the alteration was submitted; and

   (e) Complies with development standards applicable to the alteration that are in effect at the time the application for the alteration was submitted.

(3) Vacation of subdivisions shall meet the following requirements:
(a) The application shall include a written description of the vacation, the reasons for the vacation, and a map showing the vacation.

(b) The vacation shall be approved if the vacation does not conflict with the public interest.

(c) An order of vacation containing the signatures of all parties having an ownership interest in the plat or the portion of the plat being vacated shall be filed for record with the county auditor. The order shall state that the vacation is with the free consent and in accordance with the desires of the owners.

(d) Title to the vacated property shall vest with the rightful owner(s) as shown in the county records.

(e) Vacations – Involving Public Dedications. The vacation and alteration of a subdivision shall be processed in accordance with RCW 58.17.212 and 58.17.215, respectively, when the alteration or vacation eliminates or reduces the width or length of a public dedication.

(4) A new original drawing shall be submitted for approved alterations or vacations. The original drawing shall be prepared in accordance with the requirements of WCC 21.06.060 the department’s administrative manual and filed for record with the county auditor.

21.06.040 Security.
As an alternate to complete installation of required improvements, the subdivider applicant may elect to post securities, with the approval of the appropriate county authority, as set forth in the Whatcom County development standards and WCC Title 20, guaranteeing completion of the work. No occupancy permit, final inspection, or use of the lot(s) created by a subdivision shall be issued or allowed until all necessary infrastructure improvements as specified by this title have been met.

21.06.050 Requirements for a fully completed application for final long subdivisions: Reserved.

(1) Written and Other Data and Fees. [proposed to be moved to administrative manual]

(a) Name, address, and phone number of owner, applicant, and contact person.
(b) A separate map scaled at one inch equals 400 feet for assignment of addresses.
(c) Lot closures for the parcel being subdivided, each lot, and any dedicated right-of-way.
(d) Title report issued no more than 60 days prior to final signature by the county council chair.
(e) Copies of covenants, conditions and restrictions.
(f) As-built drawings for road and drainage improvements.
(g) Fees as specified in the Unified Fee Schedule.

(2) Map Data:

(a) Final plat size is 24 inches by 24 inches.
(b) Name of owner(s).
(c) Name of proposed long subdivision.
(d) Section, township, range, and municipal and county lines within the vicinity.
(e) Common engineering map bar scale (one inch equals 100 feet or larger), north arrow, legend, and sheet numbers.
(f) Perimeter of the subdivision shall be depicted with heavier lines.
(g) File number of the preliminary plat.
(h) Existing and proposed street names.
(i) Legal description of the land being subdivided.
(j) All lot and tract areas.
(k) Vicinity map.
(l) Names and numbers of any adjacent subdivisions, short subdivisions, and binding site plans.
(m) Complete bearings, lineal dimensions, radii, arcs, and central angle of all lines and curves of any lot or boundary lines within the subdivision.
(n) Location of permanent control monuments used as ties to establish boundary of subdivision, basis of bearing, and line held.
(o) Type and location of monuments and the date set.
(p) Sequential numbers of all lots in the subdivision, including all of its phases.
(q) Location and width of all easements shown as dashed lines, and a description of the purpose of the easement (including beneficiary).
(r) Location and description of all fence and building encroachments and other matters which, in the judgment of a professional land surveyor, give rise to alternate boundary locations resulting from occupational evidence or prescriptive rights.
(s) Location, width, geometry, centerline, and names of all roads within and adjoining the subdivision.
(t) Roads not dedicated to the public must be clearly marked.
(u) A reference to any covenants, conditions and restrictions.
(v) Dedication and declaration signature block.
(w) Acknowledgement blocks.
(x) Land surveyor’s certificate, signature block and seal.
(y) County engineer’s certificate.
(z) County health and human services department certificate.
(aa) County treasurer’s certificate.
(bb) County council’s certificate.
(cc) County auditor’s certificate.
(dd) Land surveyor notes.
(ee) Addresses as assigned by the county.

(3) Eleven sets of the above required information shall be submitted. The subdivision administrator may require the applicant to submit the information in an electronic format, and may reduce the number of required sets if provided in an alternative format.
21.06.060 Final original drawing submittal. Reserved. [proposed to be moved to administrative manual]

(1) One original drawing.

(2) Two sets of covenants, conditions and restrictions.

(3) Maintenance bond for road and drainage improvements.

21.06.070 Disclosures and notes.
The following disclosures and notes, if applicable, shall be recorded in the county auditor’s office and a statement identifying the subject and the auditor’s file number for each such instrument shall be on the final plat map under surveyor’s notes prior to final approval by the county:

(1) Right to farm, right to practice forestry, or mineral resource disclosures.

(2) Critical area notes and protective easements as required.

(3) Boundary discrepancies.

(4) Drainage maintenance agreement block.

(5) Road maintenance agreement block (private roads only).

(6) Significant pipeline in vicinity disclosure when the subject property is within 500 feet of a pipeline shown on Map 5-2, Chapter 5 of the Whatcom County Comprehensive Plan.

Chapter 21.07

PRELIMINARY BINDING SITE PLANS

Sections:

21.07.010 Purpose.
21.07.020 Binding site plan alternative.
21.07.030 Binding site plan procedure.
21.07.031 Pre-application meeting.
21.07.032 Preliminary approval decision criteria.
21.07.033 Phasing, expiration and time extensions for preliminary binding site plan approval.
21.07.040 Development requirements.
21.07.050 Roads.
21.07.060 Public and community sites.
21.07.070 Easements.
21.07.080 Water supply – Health requirement.
21.07.090 Sewage disposal.
21.07.100 Fire protection.
21.07.010 Purpose.
The purpose of this chapter is to establish or reference the procedure and requirements for the application, review and approval of preliminary binding site plans. The procedure is intended to provide orderly and expeditious processing of such applications.

21.07.020 Binding site plan alternative.
As an alternative to applying for short subdivision or long subdivision approval, an application for binding site plan approval may be submitted for the following:

1. Land divisions into lots zoned for industrial or commercial use;

2. Land divisions for the purpose of creating lease spaces in a mobile home park or RV park when no other residential structures are permitted; and

3. Land divisions that result from subjecting a portion of a lot to condominium ownership as provided in Chapter 64.32 or 64.34 RCW.

21.07.030 Binding site plan procedure.
Binding Site Plan applications shall be processed in accordance with WCC 22.05, except as otherwise stated in this chapter.

21.07.031 Pre-application meeting.
Pre-application meeting required pursuant to WCC 22.05. Any person contemplating preparation of a preliminary binding site plan application shall submit information required in the department’s administrative manual.

1. Preliminary Approval of Binding Site Plans:
(a) The applicant seeking preliminary binding site plan approval shall submit to the administrative official copies of the materials stipulated in WCC 21.07.120: the department’s administrative manual.

(b) Upon receipt of a complete application and the payment of fees, the department of planning and development services shall:

(i) Provide notification in accordance with WCC 2.33.06022.05.060.

(ii) Notify and provide copies of project plans to a city when the binding site plan is within that city’s urban growth area, agencies potentially having jurisdiction relevant to the application, and public or private utility organizations if within one-eighth mile (660 feet) from the area submitted in the application. Such cities, agencies, and utility organizations shall be given 15 calendar days to respond. If they do not respond within 15 days, the
administrator, SEPA official and technical review committee may conclude their review of the application without such comments:

(c) Upon review of the application the county shall schedule and immediately notify the applicant and the appropriate city, if the proposed land division is located within that city’s urban growth area, of the time and place of the technical review committee meeting at which the application will be considered:

(d) Before the technical review committee meeting, the county shall review the application and prepare preliminary recommendations for:

(i) Staff recommendation and proposed county conditions of approval for the project if applicable;

(ii) Any additional data required to complete the review of the application; and

(iii) Appropriate time extensions required allowing the applicant to provide additional information.

(e) At the technical review committee meeting, members of the technical review committee shall present and discuss the county’s preliminary findings with the applicant. These findings shall include county recommendations and proposed county conditions of approval.

The technical review committee shall also provide the applicant with a written request detailing (i) any additional data or information required, (ii) why such data is required, and (iii) proposed time extensions to allow the applicant to revise the application or collect additional data.

Should the applicant object to either the substance or timing of requirements for additional information, the applicant may appeal these requests to the Whatcom County hearing examiner. This appeal must be made within 14 calendar days of the technical review committee meeting or all information requests shall be binding.

(f) Within 14 calendar days after the technical review committee meeting (or within 14 calendar days of receiving requested information from the applicant), the technical review committee shall prepare a final staff report (including all recommendations and all proposed conditions of approval) and submit it in written form to both the applicant and the Whatcom County hearing examiner.

(g) The hearing examiner shall schedule and hold an open record hearing, review the application and make a decision or recommendation, as appropriate, in accordance with the provisions of Chapter 20.9222.05 WCC.

(h) **21.07.032 Preliminary Approval Decision Criteria.**
Approval of a preliminary binding site plan shall be accompanied by written findings that:

(i) Appropriate provisions have been made for the public health, safety, and general welfare and for such open spaces, drainage ways, stormwater management, streets or roads, pedestrian and bicycle paths, alleys, other public ways, transit stops, potable water supplies, sanitary wastes, parks and recreation, playgrounds, schools and schoolgrounds and all other relevant facts, including sidewalks and other planning features that assure safe walking conditions for students who only walk to and from school, and the public use and interest will be served by the platting of such binding site plan and dedication; and

(ii) The proposal is in conformity with applicable land division, zoning, critical areas, shoreline management, and other land use regulations.

(2) Within 30 calendar days of preliminary binding site plan approval, the applicant shall submit four copies of a revised preliminary binding site plan. These revised drawings shall depict modifications to the layout of lots, roads, open space, or any other geometrical changes to the plat that were required by conditions of approval of the preliminary binding site plan. The hearing examiner shall review the revised preliminary binding site plan and, if it complies with the terms of preliminary binding site plan approval, the hearing examiner, property owner and surveyor shall sign the four copies of the revised preliminary binding site plan. Once signed, one copy of the revised preliminary binding site plan shall be given to the applicant, one copy shall be retained in the file of the hearing examiner, one copy shall be retained in the file of planning and development services, and one copy shall be retained in the file of the division of engineering.

(3) Unless an applicant for preliminary binding site plan approval requests otherwise, a preliminary binding site plan shall be processed simultaneously with applications for rezones, variances, planned-unit developments, and similar quasi-judicial or administrative actions to the extent that procedural requirements applicable to these actions permit simultaneous processing. All preliminary binding site plan proposals accompanied by a major project permit or planned-unit development application will be processed in a procedure consistent with and subordinate to the major project permit or planned-unit development requirements.

(4) An applicant may place a preliminary binding site plan application, which has not yet been approved, on hold for a cumulative maximum of two years. After the two years, the county shall continue processing the application and either approve or deny the application. This two-year period shall not include time the applicant is performing studies required by the county when the study is provided within the time frame agreed to by the county and the applicant.

(5) 21.07.033 Phasing, Expiration and Time Extensions for preliminary binding site plan approval.

(a) Approval of a preliminary binding site plan shall become invalid unless a general binding site plan and all specific binding site plans are submitted in proper form for approval, within five years of the date of preliminary binding site plan approval. This expiration date may be extended as follows:
(a) An applicant files a written request with the subdivision administrator prior to expiration of the five-year expiration period. The request shall state the specific work items, standards, and criteria which have not been completed and the reasons therefor. The request shall also indicate when the work will be completed within the requested period. The subdivision administrator shall review the request and provide a recommendation to the hearing examiner.

(b) The hearing examiner shall have authority to grant one one-year extension subsequent to the original preliminary plat approval.

(c) The one-year extension may be granted if, after taking into consideration technical, economic and other matters beyond the control of the applicant, the hearing examiner finds that there is reasonable justification for the granting of an extension.

(d) In granting the one-year extension the hearing examiner shall take into consideration such changes in rules, regulations, ordinances, or development standards, or portions thereof, that have occurred since the time the original approval was granted.

(e) The hearing examiner may condition the extension so as to require compliance with any such subsequently adopted rules, regulations, ordinances, or development standards, or portion thereof, that are deemed necessary to protect the public health, safety and welfare.

(f) An applicant files a written request with the Whatcom County Council prior to expiration of the five-year expiration period.

(ii) The Whatcom County council shall have authority to grant three one-year extensions subsequent to the original preliminary plat approval. Each one-year extension may be granted if after taking into consideration technical, economic and other matters beyond the control of the applicant the council finds that there is reasonable justification for the granting of an extension. In granting each one-year extension, the council may take into consideration such changes in rules, regulations, ordinances, or development standards, or portions thereof, that have occurred since the time the original approval was granted. The council may condition the extension so as to require compliance with any such subsequently adopted rules, regulations, ordinances, development standards, or portion thereof, that the council deems necessary to protect the public health, safety and welfare. Requests for extension shall be made in writing to the Whatcom County council prior to expiration of preliminary binding site plan approval.

(b2) As an alternative to being subject to the expiration and time extension rules in subsection (5)(a1) of this section, an applicant may seek approval of a phasing plan at the time of preliminary binding site plan approval. A preliminary binding site plan that has been approved with a phasing plan shall expire 10 years from the date of preliminary approval unless Whatcom County establishes a different expiration
period at the time of preliminary approval. Each phase submitted after five years from the date of preliminary approval shall comply with the Whatcom County Development Standards rules, regulations and ordinances in effect as of the date construction plans are submitted for each phase.

**21.07.040 Development requirements.**
(1) All binding site plans shall comply with the applicable standards, requirements and procedures of the Whatcom County Development Standards and local, state, and federal laws and regulations. The county, to the extent practicable, will require new land divisions located within city urban growth areas to conform to city development standards, in accordance with adopted interlocal agreements.

(2) Improvements are required to be installed and completed by the subdivider prior to general or specific binding site plan approval, unless security is provided under WCC 21.08.030.

(3) Improvements and other requirements shall be provided to the extent that each specific binding site plan will be adequately served by all roads, utilities, drainage facilities, easements and other amenities necessary to its existence in the event that subsequent phases are not completed.

**21.07.050 Roads.**
Roads shall be designed with appropriate consideration for existing and projected roads, anticipated traffic patterns, topographic and drainage conditions, public convenience and safety, and the proposed uses of the land served.

(1) Dedications for the realignment and widening of the adjacent rights-of-way, in accordance with county standards, shall take place whenever a binding site plan abuts a county road. Frontage roads or parallel access roads may be required to eliminate direct access to arterial and collector roads.

(2) Frontage improvements to the public roadway(s) adjacent to the subject property shall be completed to the current functional classification prior to recording the general or specific binding site plan, unless security is provided under WCC 21.08.030.

(3) Minor and local access roads should discourage through traffic.

(4) All binding site plans shall abut and be accessed by a constructed and maintained public road or a private road as allowed under the Whatcom County Development Standards. The number of access points shall create efficient on- and off-site circulation patterns and facilitate emergency response. A traffic analysis may be required by the county engineer in order to analyze present and future traffic circulation patterns to determine the appropriate location and number of access points to the site, and to ascertain the appropriate classification and character of the proposed roads.

(5) Where reasonably necessary to join with existing roads or needed for future circulation, road rights-of-way and/or easements shall be extended to the outside boundaries of the binding site plan.
(6) Public road rights-of-way and/or easements shall be extended to the boundaries of binding site plans that abut public lands and public bodies of water, if requested by the administrator of said public lands. Such access roads need not be provided at an interval more frequent than one-half mile.

(7) Private roads may be permitted in a binding site plan when in compliance with the Whatcom County Development Standards.

21.07.060 Public and community sites.
The dedication of sites for schools, parks, and other public or community purposes may be required to the extent that such dedication is suitable to and reasonable for the needs anticipated by full development of the binding site plan. Dedicated school sites must meet the requirements of Chapter 246-366 WAC.

21.07.070 Easements.
(1) Easements shall be provided where applicable for development related facilities.

(2) All easements shown on binding site plans shall include:
   
   (a) The beneficiary of the easement;

   (b) The purpose of the easement; and

   (c) A clear depiction of the easement (including dimensions) on the face of the binding site plan.

(3) The owner may specify the burdening of the easement. Examples of burdening may include the average daily trips for ingress and egress easements, the equivalent single-family units for water, sewer, and on-site sewage disposal systems, and the maximum peak flow rate expressed in accepted units for drainage easements. The owners of the subservient estates are not entitled to rely upon the county to enforce the limitations of the easements so granted, and no cause of action shall lie against the county for errors or omissions occurring in connection with the administration of, or issuance of, permits for development of properties that burden the easements referred to herein.

21.07.080 Water supply – Health requirement.
(1) Water from a public water system(s) shall be provided to serve each lot or lease space in a binding site plan.

(2) The applicant shall demonstrate that adequate water right(s) exist to serve the binding site plan, except when water withdrawal is exempt from obtaining a water right permit under RCW 90.44.050.

(3) If a group B public water system is created to serve the binding site plan, the number of wells shall be limited to the minimum needed to serve the water needs of the binding site plan as determined by the health department.

(4) All requirements of Chapter 246-290 WAC, Group A Public Water Systems, or Chapter 246-291 WAC, Group B Public Water Systems, must be met prior to specific binding site plan approval.
21.07.090 Sewage disposal.
(1) Within urban growth areas, public sewer shall be required in binding site plans unless the on-site sewage disposal requirements of WCC 24.05.220, Developments, subdivisions, and minimum land area requirements, can be met.

(2) Outside of urban growth area and small town Comprehensive Plan designations, binding site plans shall not be approved that require extension or expansion of public sewer except when:

(a) Public sewer is necessary to protect the public health, safety or environment; and

(b) Public sewer is financially supportable at rural densities and does not permit urban development.

(3) On-site sewage disposal systems shall meet the requirements of WCC 24.05.220, Developments, subdivisions, and minimum land area requirements.

(4) All portions of a community on-site sewage system that are held in common ownership shall be constructed and approved prior to specific binding site plan approval.

21.07.100 Fire protection.
Binding site plans shall incorporate adequate capability for fire protection in accordance with sound engineering practices and locally adopted codes and development standards and shall be approved by the county fire marshal.

21.07.110 Modifications to approved preliminary binding site plans.
(1) The technical review committee may approve minor changes to a preliminary binding site plan. In order to qualify as a minor change, the proposal must not adversely impact neighbors or the environment, and the density, uses and basic design of the approved preliminary binding site plan must be maintained.

(2) The hearing examiner or county council, whichever approved the original preliminary binding site plan, may approve major changes to the binding site plan. Major changes are those that, in the opinion of the technical review committee, would adversely impact neighbors or the environment, alter the density, alter the uses or alter the basic design of the preliminary binding site plan. The SEPA official shall review major changes and determine whether the original SEPA determination is still valid or a new determination required. The hearing examiner or county council shall hold a public hearing prior to issuing the decision. The appropriate city shall be notified of the request and given the opportunity to comment on major changes, if the land division is located within that city’s urban growth area.

21.07.120 Requirements for a fully completed application for preliminary binding site plans. Reserved. [proposed to be moved to administrative manual]
Requirements for a fully completed application must be provided in order to vest an application.

(1) Written and Other Data and Fees:
- Seven copies of written data.
- Completed application form.
- Name, address and phone number of owner(s), applicant, and contact person.
- The names, addresses and telephone numbers of the involved engineers, surveyors, and consultants.
- Intended uses.
- List of variances and waivers requested.
- Names and addresses of all persons, firms, and corporations holding legal interests in the land, such as easements, of which the applicant has knowledge.
- Assessor’s parcel number (of the parent parcel).
- List of names and addresses of owners of property within 300’ of site’s boundaries (based on the latest assessor’s equalized tax roll), together with corresponding parcel numbers and assessor’s parcel map.
- Proposed covenants, conditions, and restrictions (CC&Rs).
- SEPA checklist.
- Preliminary stormwater proposal, preliminary traffic analysis, utility, critical area study, and soils reports, as specified in the applicable development standards. All reports shall be certified by qualified professionals experienced in the applicable field of science.
- Brief statement covering the number of lots, proposed uses of lots, method of water supply and sewage disposal, approximate road length, total acreage, percentage of total acreage used for roads, lots, open space and other uses, and average lot size and number of lots per gross acre.
- Fees as specified in the Unified Fee Schedule.

(2) Map Data:
- Acceptable map size is 18” x 24” to 24” x 36”.
- Seven map copies of map proposal.
- Date of revisions, if any.
- Name of owner.
- Name, address, and telephone number of the surveyor or consultant preparing the map proposal.
- Name of proposed binding site plan.
- Names or numbers of any adjacent divisions.
- General layout of proposed land division.
- Approximate locations of existing utilities, infrastructure, roads, drainage and rights-of-way within 300’ of the boundary of the proposed land division.
- Vicinity map at a scale not less than 1” = 2000’.
- Common engineering scale (1” = 100’ or larger), sheet numbers, and north arrow.
- Section, township, range, municipal and county lines in the vicinity.
Location of monuments and fences located by any boundary survey and the date of the survey.

General boundaries of the site with general dimensions shown, perimeter boundary marked with a bold line.

Legal description of the land being subdivided.

Proposed access (including proposed improvements to on-site and off-site roadways).

Other proposed on-site or off-site utilities and facilities.

The location and widths of all proposed roads, rights-of-way, and easements.

When appropriate, location of natural features, including bodies of water, natural drainage areas, native vegetation, critical areas, and buffers.

Location of buildings, and parking on-site or contiguous to the site.

General location of existing and proposed facilities including: sanitation, water service, easements, landscaping, common areas, phasing boundaries, and (for mobile home and RV parks) typical details of individual lease spaces.

Existing and proposed street names.

General plans of proposed water distribution systems, sewage disposal systems, and drainage systems. The plans shall include system location and sizes, sources of water supply, location and size of storage reservoirs, location of drainage outlet, and other major features and shall be certified by a professional engineer.

Layout of proposed alleys, walkways, bicycle paths, and parcels to be dedicated or reserved for school, park, playground, well site or other use.

Sequential numbers to all lots within binding site plan and identify proposed phases.

21.07.130 Additional information for preliminary binding site plans. Reserved. [proposed to be moved to administrative manual]

Additional information is not required for vesting, but is required prior to county processing of the application.

Title report.

Written verification, as applicable, from agencies attesting to the availability of:

- Water supply.
- Sewage disposal.
- Fire-protection service.
- Public school system.

Code compliance checklist for WCC Title 20 and this title, on a form provided by the county, including:

- Project area.
- Area in lots, square feet, and percentage of total.
- Zoning designation and zone density.
- Number of lots.
- Average lot size, area, and maximum lot size.
- Area of streets, area in right-of-way, and percentage of total.
- Area of parks, open space, and percentage of total.
✓ — Area of impervious surface proposed.
✓ — Soil types and classifications.
✓ — Utility service types and name of provider.
✓ — School and fire district.
☐ Boundary survey, prepared and certified by a professional land surveyor.
☐ Additional reports, as required, prepared by qualified professionals may include the following:
✓ — Traffic study.
✓ — Stormwater design report.
✓ — Soils and/or geological report.
✓ — Wetlands delineation and/or report.
✓ — Soil testing results for pesticides for binding site plans on land historically used for raising row crops.
☐ Topographic map of sufficient contour interval, acceptable to the county engineer or director of planning and development services, or his/her designee, to show the topography of the land to be subdivided.

Chapter 21.08

GENERAL AND SPECIFIC BINDING SITE PLANS

Sections:

21.08.010 Purpose.
21.08.020 Final approval of general and specific binding site plans.
21.08.030 Security.
21.08.040 Binding site plan vacation and alteration.
21.08.050 Requirements for a fully completed application for general binding site plans and specific binding site plans. Reserved.
21.08.060 Final original drawing submittal. Reserved.
21.08.070 Disclosures and notes.

21.08.010 Purpose.
The purpose of this chapter is to establish or reference the procedure and requirements for the application, review and approval of general and specific binding site plans. The procedure is intended to provide orderly and expeditious processing of such applications.

21.08.020 Final approval of general and specific binding site plans.
(1) An applicant requesting final approval of a general and/or specific binding site plan shall submit to the administrative official copies of the materials specified in WCC 21.08.050 the department’s administrative manual. The request shall be accompanied by a statement from the county engineer that Whatcom County has accepted as complete all on-site and off-site improvements required by the
conditions of preliminary binding site plan approval, or has received cost estimates and performance guarantees to assure completion thereof.

(2) The applicant shall submit a current title report issued no more than 60 days prior to the director signing the general or specific binding site plan original drawing. The owner of record and the surveyor of record shall sign the general or specific binding site plan original drawing prior to filing it for record with the county auditor.

(3) The general binding site plan that will be filed with the county auditor shall contain a statement of approval from the following:

(a) The county engineer as to the layout of streets, alleys, and other rights-of-way, and the design of bridges, drainage and surface water management facilities, and other physical improvements required by the conditions of preliminary binding site plan approval;

(b) The county treasurer stating that all taxes and delinquent assessments for which the property may be liable as of the date of certification have been duly paid, satisfied, or discharged;

(c) The county health and human services department as to the adequacy of potable water supply and sewage disposal; and

(d) The director stating that the general binding site plan conforms to all terms of the preliminary binding site plan approval, the requirements of Chapter 58.17 RCW and other applicable state laws, and meets the requirements of this title that were in effect at the time of vesting of the preliminary binding site plan application.

(4) Each specific binding site plan shall contain a statement of approval from the following:

(a) The county engineer as to the layout of streets, alleys, and other rights-of-way, and the design of bridges;

(b) The county treasurer stating that all taxes and delinquent assessments for which the property may be liable as of the date of certification have been duly paid, satisfied, or discharged;

(c) The county health and human services department as to the adequacy of potable water supply and sewage disposal; and

(d) The director stating that the specific binding site plan conforms to all terms of approval of the preliminary and general binding site plan, the requirements of Chapter 58.17 RCW and other applicable state laws, and meets the requirements of this title that were in effect at the time of vesting of the preliminary binding site plan application.
(5) General and specific binding site plans shall be approved, disapproved, or returned to the applicant with corrections within 30 days of submittal to the county, unless the applicant consents to an extension of such time period.

(6) The Whatcom County auditor shall not accept a binding site plan for filing until the approving authorities have approved it, as indicated on the instrument by the appropriate signature. The signature of the approving authorities shall not be affixed until the developer has posted the guarantees as stipulated in the appropriate standards.

(7) After approval, the original drawings of the general or specific binding site plan shall immediately be filed by the professional land surveyor of record with the county auditor. After filing, the county auditor shall retain one original drawing and the county engineer shall retain one original drawing.

21.08.030 Security.
As an alternate to complete installation of required improvements, the subdivider applicant may elect to post securities, with the approval of the appropriate county authority, as set forth in the Whatcom County Development Standards guaranteeing completion of the work. No occupancy permit, final inspection, or use of the lot(s) created by a binding site plan shall be issued or allowed until all necessary infrastructure improvements as specified by this title have been met.

21.08.040 Binding site plan vacation and alteration.
The vacation and alteration of a binding site plan shall be processed in accordance with RCW 58.17.212 and 58.17.215, respectively, when the vacation or alteration involves a public dedication. Other vacations and alterations shall be approved by the hearing examiner, except for alterations to lot lines, which may be accomplished through the boundary line adjustment process.

21.08.050 Requirements for a fully completed application for general binding site plans and specific binding site plans: Reserved. [proposed to be moved to administrative manual]

(1) Written and Other Data and Fees:

☐ Name, address, and phone number of owner, applicant, and contact person.
☐ A separate map scaled at 1" = 400' for assignment of addresses. Addresses assigned by the county shall be shown on the original drawing prior to filing with the county auditor.
☐ Lot closures for the parcel being subdivided, each lot, and any dedicated right-of-way:
☐ Title report issued no more than 60 days old.
☐ Copies of covenants, conditions and restrictions.
☐ As-buit drawings for road and drainage improvements.
☐ Any fees as specified in the Unified Fee Schedule.

(2) Map Data:
☐ General or specific binding site plan size is 18" x 24".
☐ Seven map copies from original drawings.
☐ Name of owner(s).
☐ Name of the binding-site plan.
☐ Section, township, range, and municipal and county lines within the vicinity.
☐ Common engineering map bar scale (1" = 100' or larger), north arrow, legend, and sheet numbers.
☐ Perimeter of the binding-site plan shall be depicted with heavier lines.
☐ File number of the preliminary binding-site plan.
☐ Existing and proposed street names.
☐ Legal description of the land being divided.
☐ All lot and tract areas.
☐ Vicinity map.
☐ Names and numbers of any adjacent subdivisions, short subdivisions, and binding-site plans.
☐ Complete bearings, lineal dimensions, radii, arcs, and central angle, of all lines and curves of any lot or boundary lines within the binding-site plan.
☐ Location of all permanent control monuments found and established at the controlling corners of the parcel being divided and within the land division.
☐ Location of all monuments or other evidence used as ties to establish the land division boundaries and the basis of bearing.
☐ Type and location of monuments and the date set.
☐ Sequential numbers assigned to all lots (specific binding-site plans only).
☐ Location and width of all easements shown as dashed lines, and a description of the purpose of the easement (including beneficiary).
☐ Location and description of all fence and building encroachments and other matters which, in the judgment of a professional land surveyor, give rise to alternate boundary locations resulting from occupational evidence or prescriptive rights.
☐ Location, width, geometry, centerline, and names of all roads within and adjoining the binding-site plan.
☐ Identify and locate all stormwater facilities, areas set aside for stormwater management, utilities, permanent wells, and associated protective zones.
☐ Roads not dedicated to the public must be clearly marked.
☐ A reference to any covenants, conditions and restrictions.
☐ The statement required under RCW 58.17.040 (7)(e).
☐ Dedication and declaration signature block.
☐ Acknowledgement blocks.
☐ Surveyor's certificate, signature block and seal.
☐ County engineer's certificate.
☐ Director of planning and development services certificate.
☐ County health and human services department certificate.
☐ County treasurer's certificate.
☐ County auditor's certificate.
**21.08.060 Final original drawing submittal. Reserved.** [proposed to be moved to administrative manual]

☐ Two original drawings.
☐ Two sets of covenants, conditions and restrictions.
☐ Maintenance bond for road and drainage improvements.

**21.08.070 Disclosures and notes.**
The following disclosures and notes, if applicable, shall be recorded in the county auditor’s office and a statement identifying the subject and the auditor’s file number for each such instrument shall be on the general binding site plan and each specific binding site plan original drawing under surveyor’s notes prior to final approval by the county:

☐ Right to farm, right to practice forestry, mineral resource disclosures.
☐ Critical area notes.
☐ Boundary discrepancies.
☐ Protective covenants, conditions and restrictions.
☐ Drainage maintenance agreement block.
☐ Road maintenance agreement block (private roads only).
☐ Latecomers’ agreements.
☐ Significant pipeline in vicinity disclosure when the subject property is within 500 feet of a pipeline shown on Map 5-2, Chapter 5 of the Whatcom County Comprehensive Plan.

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**Chapter 21.09**

**SURVEYS AND DEDICATIONS Reserved**

[proposed to be moved to administrative manual]

Sections:

- 21.09.010—Plats, short plats and binding site plans.
- 21.09.020—Survey data.
- 21.09.030—Area data.
- 21.09.040—Control monuments.
- 21.09.050—Road monuments.
- 21.09.060—Lot corners.
- 21.09.070—Waterfront.
21.09.090—Dedications:

21.09.010 Plats, short plats and binding site plans:
The survey and preparation of every final plat, short plat and general and specific binding site plan shall be made by or under the direct supervision of a Washington State professional land surveyor. All surveys shall conform to Chapters 18.43 and 58.09 RCW and Chapter 332-130 WAC.

21.09.020 Survey data:
The county engineer shall be furnished with a complete survey of the section or sections in which the land division is located, or as much thereof as may be necessary to properly orient the land division within the section or sections. The land division survey shall be submitted with complete field and computation notes showing the original or re-established corners with descriptions of same and the actual traverse showing error or closure and method of balancing. Accuracy standards shall conform to Chapters 18.43 and 58.09 RCW and Chapter 332-130 WAC. A copy of the final short plat or plat shall be provided in an electronic format as required by the subdivision administrator.

21.09.030 Area data:
The surveyor shall provide data as to the area of each lot smaller than one acre to the nearest square foot, the area of each lot one acre or larger to the nearest one-hundredth of an acre, and the area of the entire subdivision, short subdivision, or general binding site plan to the nearest one-hundredth of an acre.

21.09.040 Control monuments:
(1) Permanent control monuments shall be established in accordance with Whatcom County Development Standards, and shall conform to RCW 58.17.240, and shall be placed at:

(a) All exterior corners on the boundaries of the original parcel being divided. For phased developments, monuments shall be placed at all intersections of the phase lines and the exterior boundary.

(b) The intersections of centerlines of rights-of-way within the land division.

(c) At the beginning and ends of curves on centerlines of rights-of-way.

(2) An alternative plan of intervisible monuments may be proposed by the surveyor subject to the approval of the county engineer.

21.09.050 Road monuments:
Permanent control monuments within the streets shall be set after the roads are constructed to final grade.

21.09.060 Lot corners:
Every lot corner shall be marked by a permanent marker as approved by the county engineer, except where extreme terrain necessitates establishment of a staking line.
21.09.070 Waterfront.
If any land in a subdivision, short subdivision, or binding-site plan is contiguous to a body of water, a staking line shall be established along the shore at an appropriate distance back from the ordinary highwater mark. Property lying beyond the staking line shall be defined by distances along the side property lines extended from the staking line. If the thread of a stream lies within a subdivision or forms the boundary of a subdivision, such thread shall be defined by bearings and distances as it exists at the time of the survey.

The county engineer may permit the placing of permanent control monuments and lot corners after filing of the final plat, short plat or binding site plan, provided the applicant ensures that:

(1) Securities (of 150 percent of the estimated cost) guaranteeing completion of said surveying within one year shall be posted in an acceptable form and amount; and

(2) Temporary surveyed and referenced markers are placed prior to filing of the plat, short plat, or binding site plan; and

(3) A certificate by a surveyor that is tied to the securities and states that the said surveying will be completed within one year is filed with the county auditor; and

(4) A certificate by a surveyor that states that the said surveying has been completed is filed within one year with the county auditor.

21.09.090 Dedications.
The owner shall provide evidence of his or her intent to dedicate by presenting for filing a final long plat, short plat or binding site plan showing the dedication thereon. The acceptance by the public shall be evidenced by:

(1) The approval of a final long plat for filing by the county council;

(2) The approval of a short plat or binding site plan for filing by the county engineer for road right-of-way purposes;

(3) The approval of a short plat or binding site plan for filing by the county council for purposes other than road right-of-way dedications.

Chapter 21.10
Definitions

21.10.020 Definitions.
(24) “Party of record” means any person, agency or entity entitled to receive notice of application or decision under this title, or any person, agency or entity providing written comments on any application received under this title, or any person, agency or entity providing written comments on any application received under this title or notified local government of their desire to receive a copy of the final
decision on a permit and who have provided an address for delivery of such notice by mail or email.
I. BACKGROUND INFORMATION

File # PLN2016-00008

File Name: Land Use and Development Procedures

Applicants: Whatcom County Planning and Development Services (PDS)

Summary of Request: Amend Whatcom County Code to add a new Title 22 Land Use and Development Procedures, and amend Titles 2, 9, 15, 16, 20, 21, 23, and 24 to move procedural content to the new Title 22.

Location: County-wide.

Staff Recommendation: Approval. The proposal adds clarity to the County’s project permit procedures and is intended to make processing of various applications more efficient.

Background
In 1995 the state adopted legislation regarding procedures for county land use and development applications (ESHB 1724; 36.70B RCW). The intent of the legislation was to ensure that applications were processed in a timely, predictable manner, and that different applications involving the same project could be consolidated. Whatcom County Code adopted a new Chapter 2.33 in 1996 in response to the 1995 state legislation. This new chapter contained many of the project permit review procedures, but many procedural sections remained in various sections of the County code, including Title 15 Building and Codes, Title 16 Environment, Title 20 Zoning, Title 21 Land Division Regulations, Title 23 Shoreline Management and Title 24 Health. These procedural sections typically involve requirements for application materials, review timelines, legal notifications, public hearings, and appeals.

With these requirements scattered throughout the code, there are some overlaps and inconsistencies. Staff now proposes consolidating all land use and development procedures in a new Title 22. (The County Council rescinded the
II. ZONING CODE AMENDMENT

Overview by Chapter
Staff proposes a new Title 22 Land Use and Development Procedures to contain administrative procedures that are now located throughout different titles and chapters in Whatcom County Code, eliminating redundancy and, in some cases, inconsistency between code chapters. In addition, staff proposes amendments to the code chapters showing the removal of procedural sections and revising references to code sections being changed.

The overall purpose of the proposed amendments is to make the code clearer and easier for the public to use, and to improve efficiency and clarity in processing applications for project permits and legislative actions.

The new Title 22 would be made up of five chapters. The first chapter, 22.05 Project Permit Procedures, would consolidate procedures for project permits in one place. Project permits are defined in RCW 36.70B.020(4) as:

"...Any land use or environmental permit or license required from a local government for a project action, including but not limited to building permits, subdivisions, binding site plans, planned unit developments, conditional uses, shoreline substantial development permits, site plan review, permits or approvals required by critical area ordinances, site-specific rezones authorized by a comprehensive plan or subarea plan, but excluding the adoption or amendment of a comprehensive plan, subarea plan, or development regulations..."

This chapter would generally follow the project permit process in chronological order and provide a new table listing the steps required for each type of project permit application. Some highly detailed requirements currently found in the code (for example, a list of items that need to be shown on a site plan and how many copies of the plan to submit) are proposed to be removed from code and consolidated into an Administrative Manual that can be updated without requiring a code amendment.

The second chapter, 22.10 Legislative Procedures, combines procedures for comprehensive plan amendments and zoning amendments (including both zoning map changes and code text amendments), from current Chapters 2.160 and 20.90, respectively. The goal is to make the process easier to understand, especially when a zoning amendment requires a comprehensive plan amendment and both are processed at the same time.

The third chapter would be 22.15 Code Compliance Procedures, consolidating
code enforcement procedures from Chapter 20.94 with other enforcement procedures scattered throughout the code. For this process, this chapter title will be reserved as a placeholder for when the separate process of consolidating those procedures is completed at a later date.

The fourth chapter, **22.20 Land Use and Development Code Interpretation Procedures**, would add procedures for citizens to request PDS interpretations of the County’s land use and development codes to clarify conflicting or ambiguous wording. Interpretation procedures commonly appear in other jurisdictions’ codes, but Whatcom County Code has no such provision. The proposed language for this relatively short chapter borrows wording from the City of Bellingham’s code.

The fifth chapter, **22.25 Land Use and Development Fees**, would place the fee provisions, now located in the general provisions of Title 20 Zoning, in Title 22, where it would apply to all development related titles of the County Code. These fee provisions include references to the Unified Fee Schedule, and procedures for refunds.

**Substantive Changes**
For the most part, these amendments move procedural provisions from one part of the County Code to another (often making grammatical improvements) but does not alter the substance of the procedures. However, in some instances, staff proposes substantive changes in the procedures to improve clarity and predictability in the permitting process or to remove inconsistencies with state law. These proposed substantive changes are detailed below.

**WCC Chapter 22.05 Project Permit Procedures**

- **WCC 22.05.060 and 20.05.140** – The proposed changes to **vesting and expiration** regulations are among the most significant changes in the draft amendments. Under state law, vesting refers to the “zoning or other land use control ordinances” a particular project permit must adhere to. In order to ensure fairness and predictability, those rules are established (vest) for a project as of the time a complete application, even if changes are made to those rules later.

The County’s vesting rules are currently located in WCC 20.04.31. Because vesting principles apply to applications beyond those described in Title 20 Zoning, and are in many places unclear in meaning, PDS proposes moving the vesting provisions to the new Title 22, which would apply to all land use and development projects, and making the wording clearer. The revised wording in the proposed 22.05.060 uses the state law’s phrase, “zoning or other land use control ordinances” so that County regulations will be consistent with state statute and case law. Several recent court decisions have interpreted what types of regulations are
included within that phrase (See the Municipal Research and Services Center’s "Vested Rights Overview" at mrsc.org) and interpreted when vesting applies. Proposed WCC 22.05.060 also clearly designates the date on which vesting occurs in various circumstances throughout the land use process. Proposed WCC 22.05.060(7) clarifies that vesting is in effect until withdrawal or expiration of the application.

Proposed subsection (3) would prevent the requirement of a preapplication meeting from delaying vesting, provided the preapplication materials are complete enough that a project permit can be applied for within 30 days of the preapplication notice of site-specific requirements. This is consistent with the West Main Assocs. vs. Bellevue decision.

Subsection (4) would extend vesting from an approved land use permit to a complete building permit application. Current code does not contain clear vesting procedures after approval of a land use permit. The proposed language is drafted from similar language found in Snohomish County and the City of Bellingham.

Under subsection (5), the 5- or 7-year vesting that applies specifically to long plats in RCW 58.17.170 is proposed to be extended to short plats and binding site plans in Whatcom County. State law does not appear to extend building permit vesting to short subdivisions or binding site plans (see the Alliance vs. Ellensburg decision). Staff is proposing to match short subdivision timeframes to the state allowance for long subdivisions which is consistent with approvals related to critical areas reports and other development standards.

Subsection (6) clarifies that building and fire code vest at the time of complete building permit application, whereas land use controls (e.g. zoning and critical areas) vest with the original project permit (e.g. subdivision or conditional use permit), which is consistent with the current 20.04.031(3)(d).

Subsection (7) clarifies that, except for applications described in subsections (5) and (6), vesting runs with the application until the application is denied, expires or is withdrawn.

Expiration of applications is covered in proposed 22.05.140. It provides time frames for applications to move to the next step of approval or implementation, or expire. This is intended to provide for consistent, predictable outcomes and establish clear expectations between the applicant and the County. This section would allow two years from date of approval to take action on the application before it expires with a possible one year extension. A project permit application can also be expired if there is no response to the notice of additional requirements.
• WCC 22.05.020(1)/22.05.110(5) - **Appeals of hearing examiner decisions would go directly to Superior Court** rather than County Council on most project permits. This is more consistent with the quasi-judicial role of the hearing examiner and legislative role of the council.

• WCC 22.05.020(1)/22.05.040(6) – This would require **preapplication meetings for more types of projects** (specifically administrative use permits and conditional use permits) and allow the meetings to be scheduled within 30 (currently 20) days of applicant’s request. The 30-day time frame is consistent with the current Shoreline Master Program and will allow additional time for staff site visits and review. In addition, the amendment would give the director or designee the option to waive the **preapplication meeting**, which is not in the current code other than in Title 15.

• WCC 22.05.040(8) – This amendment would allow staff **14 calendar days** (currently 10 days) to **issue comments and site-specific submittal requirements** to the applicant following pre-application meeting. This change will result in the comment response date to be within the work week rather than falling on a weekend.

• WCC 22.05.070(4)(b) Would remove language that requires the **notice of application to be sent to neighbors at least 15 days prior** to the public hearing. Current code (2.33.030) and RCW 36.70B.110 requires the notice of application within 14 days of the determination of completeness and solicits for comments early in the review process. The hearing date is generally unknown at the time the notice of application is issued.

• WCC 22.05.090(4) and 22.05.120(4) – Staff proposes adding these sections to clarify that applications meeting the definition of **quasi-judicial actions** in RCW 42.36 must be processed in accordance with the Appearance of Fairness Doctrine described in that chapter of state law.

• WCC 22.05.100(3) **Staff report to the Hearing Examiner** due 10 (currently 17) calendar days before the public hearing. This is consistent with the notice of hearing requirements.

• WCC 22.05.120(4)(b) and (c) For Major Project Permits and Planned Unit developments, **time limits for the Hearing Examiner to file a recommendation with the County Council and for the County Council to hold a public meeting** are both currently 45 calendar days. These limits make it highly unlikely the permit would be processed within the required 120 days, as required by state law (RCW 36.70B.080) and the new WCC 22.05.130(1). This section changes the limits to 21 and 28 calendar days, respectively, with the possibility for the County Council to...
increase the time limit for holding the public meeting if it makes findings that a specified amount of additional time is needed to process a specific application or project type, as authorized by RCW 36.70B.080(1). This would allow more time for the few large, complex projects while requiring a shorter time for the majority of applications.

- WCC 22.05.120(5)(c) – An optional additional review by the Planning Commission is proposed for omission because that review would make it highly unlikely the permit would be processed within the 120 days. State law and this section of WCC require that there can be only one public record hearing. That hearing is done by the Hearing Examiner and any subsequent meeting by the County Council (or currently the Planning Commission) is only for discussion and must be based entirely on the record established by the Hearing Examiner.

- WCC 22.05.130 – The proposal would revise the current 2.33.090(G), which is not clearly worded but apparently states an application is automatically approved if not processed within the prescribed timelines. This provision is not supported by state law, and could place an application in unclear legal status if it gains approval without meeting State or County regulations. Staff instead proposes a process which holds the County accountable for following permit review procedures by allowing for a meeting with the director for dispute resolution, potentially including refund of applications fees.

- WCC 22.05.160 – This section would add specific requirements for a written appeal, copied from the City of Bellingham’s code.

**WCC Chapter 22.10 Legislative Action Procedures**

- WCC 22.10.020 – Docketing methods would include a majority vote by County Council, addition by Planning and Development Services (PDS), a suggestion by a citizen to PDS, which PDS could place on the docket if it is not quasi-judicial, and an application by a citizen. This is similar to the current list of docketing options, except the suggested amendment is proposed to be distinguished from a citizen application, and the Planning Commission would not be able to directly docket an application (though nothing would prevent individual members from submitting suggestions or applications as citizens).

- WCC 22.10.030(4) – Similar to the proposed 22.05.090(4), staff proposes this section to clarify that the actions that meet the state law’s definition of quasi-judicial actions in RCW 42.36.010 are subject to the Appearance of Fairness Doctrine. An example would be an application for a zoning map amendment that would affect a single lot.
WCC 22.10.050 – Staff proposes removing the requirement that the applicant provide stamped envelopes because PDS now prepares the mailed notices.

WCC 22.10.060(1) – Staff proposes deleting from the list of Comprehensive Plan consistency review criteria the current requirement that UGA expansions require acquisition of development rights. Staff believes this criterion may be inconsistent with RCW 82.02.

WCC 22.10.060(2) – Staff proposes adding a requirement that the Planning Commission and County Council make a finding that a proposed amendment is consistent with the Comprehensive Plan in order to approve the application.

**WCC Chapter 22.20 Land Use and Development Code Interpretation Procedures**

- Current Whatcom County Code does not prescribe a procedure for requesting or appealing an interpretation of the code. The proposed wording is largely borrowed from the Bellingham Municipal Code (BMC 21.10.270) with the addition of a provision to publish interpretations on the County’s web site.

**WCC Chapter 22.25 Land Use and Development Fees**

- This chapter would contain the fee provisions now contained in WCC 20.04.090-.092 so that it would apply to other development-related titles of the Whatcom County Code. Aside from clarifying that these fee provisions apply to the other development-related titles of the code, no changes to these fee provisions are proposed.

### III. COMPREHENSIVE PLAN EVALUATION

The Whatcom County Comprehensive Plan supports streamlined regulations in Chapter 2:

**Regulations**

It is very important to Whatcom County citizens to maintain local control over land use decisions. Regulations should be clear, concise, and predictable with enough flexibility to allow for reasonable and efficient decision making. Regulations should be enforced. Promote and maintain incentive programs to encourage land to be used in ways that meet community goals.

**Goal 2D: Refine the regulatory system to ensure accomplishment of desired land use goals in a fair and equitable manner.**

. . . . .
IV. PROPOSED FINDINGS OF FACT AND REASONS FOR ACTION

Staff recommends the Planning Commission adopt the following findings of fact and reasons for action:

1. Whatcom County Planning and Development Services has submitted an application for amendments to add a new Title 22 Land Use and Development Procedures, and amend Titles 2, 9, 15, 16, 20, 21, 23 and 24 to move procedural content to the new Title 22.

2. A determination of non-significance (DNS) was issued under the State Environmental Policy Act (SEPA) on October 16, 2017.

3. Notice of the subject amendment was submitted to the Washington State Department of Commerce on September 20, 2017.


5. The Planning Commission held a public hearing on the proposed amendments on October 26, 2017.

6. In 1995 the State Legislature adopted legislation regarding procedures for county land use and development applications (ESHB 1724; 36.70B RCW). The intent of the legislation was to ensure that applications were processed in a timely, predictable manner, and that different applications involving the same project could be consolidated.

7. Whatcom County Code adopted a new Chapter 2.33 in 1996 in response to the 1995 state legislation. This new chapter contained many of the project permit review procedures, but many procedural sections remained in various sections of the County code, including Title 16 Environment, Title 20, Zoning, Title 21 Land Division Regulations, and Title 23 Shoreline Management.

8. The proposed Title 22 Land Use and Development Procedures would contain administrative procedures that are now located throughout
different titles and chapters in Whatcom County Code, eliminating redundancy and, in some cases, inconsistency between code chapters.

9. The proposed Chapter 22.05 Project Permit Procedures would consolidate procedures for project permits in one place.

10. RCW 36.70B.020(4) defines project permits as "...any land use or environmental permit or license required from a local government for a project action, including but not limited to building permits, subdivisions, binding site plans, planned unit developments, conditional uses, shoreline substantial development permits, site plan review, permits or approvals required by critical area ordinances, site-specific rezones authorized by a comprehensive plan or subarea plan, but excluding the adoption or amendment of a comprehensive plan, subarea plan, or development regulations..."

11. Because vesting principles apply to applications beyond those described in Title 20 Zoning, the vesting provisions are proposed to be moved from Title 20 to the new Title 22, which applies to all land use and development projects. The revised wording in the proposed 22.05.060 uses state law’s phrase, “zoning or other land use control ordinances” so that County regulations will be consistent with state statute and case law.

12. RCW 19.27.095(1) states, "A valid and fully complete building permit application for a structure, that is permitted under the zoning or other land use control ordinances in effect on the date of the application shall be considered under the building permit ordinance in effect at the time of application, and the zoning or other land use control ordinances in effect on the date of application."

13. RCW 58.17.033(1) states, "A proposed division of land, as defined in RCW 58.17.020, shall be considered under the subdivision or short subdivision ordinance, and zoning or other land use control ordinances, in effect on the land at the time a fully completed application for preliminary plat approval of the subdivision, or short plat approval of the short subdivision, has been submitted to the appropriate county, city, or town official."

14. The proposed Chapter 22.10 Legislative Procedures combines procedures for comprehensive plan amendments and zoning amendments (including both zoning map changes and code text amendments), from current Chapters 2.160 and 20.90, respectively.

15. The proposed Chapter 22.20 Land Use and Development Code Interpretation Procedures would add procedures for citizens to request PDS interpretations of the County’s land use and development codes to
clarify conflicting or ambiguous wording. Interpretation procedures commonly appear in other jurisdictions’ codes, but Whatcom County Code has no such provision.

16. The proposed Chapter 22.25 would contain the fee provisions now contained in WCC 20.04.090 - .092 so that it would apply to other development-related titles of the Whatcom County Code beyond Title 20 Zoning.

17. Some highly detailed requirements currently found in the code are proposed to be removed from code and consolidated into an Administrative Manual that can be updated without requiring a code amendment.

18. The Whatcom County Comprehensive Plan supports streamlining regulations.

V. PROPOSED CONCLUSIONS

1. The amendments to the zoning code are in the public interest.

2. The amendments are consistent with the Whatcom County Comprehensive Plan.

VI. RECOMMENDATION

Planning and Development Services recommends the Planning Commission forward the proposed amendments to the County Council with a recommendation of approval.

ATTACHMENTS

A. Draft amendments adding WCC Title 22 Land Use and Development Procedures (clean and with redlines)
B. Draft amendments to WCC Title 2 Administration and Personnel
C. Draft amendments to WCC Title 9 Public Peace, Morals and Welfare, Title 15, Title 16 Environment, Title 23 and Title 24 Health
D. Draft amendments to WCC Title 20 Zoning
E. Draft amendments to WCC Title 21 Land Division Regulations
WHATCOM COUNTY
PLANNING COMMISSION

Land Use and Development Procedures Code Amendments

FINDINGS OF FACT AND REASONS FOR ACTION

1. Whatcom County Planning and Development Services has submitted an application for amendments to add a new Title 22 Land Use and Development Procedures, and amend Titles 2, 9, 15, 16, 20, 21, 23 and 24 to move procedural content to the new Title 22.

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development-related titles of the Whatcom County Code beyond Title 20
Zoning.

17. Some highly detailed requirements currently found in the code are
proposed to be removed from code and consolidated into an
Administrative Manual that can be updated without requiring a code
amendment.

18. The Whatcom County Comprehensive Plan supports streamlining
regulations.

CONCLUSIONS

1. The amendments to the zoning code are in the public interest.

2. The amendments are consistent with the Whatcom County Comprehensive
Plan.

RECOMMENDATION

Based upon the above findings and conclusion, the Whatcom County Planning
Commission recommends approval of the proposed amendments as shown on
Exhibits A through E.

WHATCOM COUNTY PLANNING COMMISSION

Nicole Oliver, Chair

Becky Boxx, Secretary

1-11-18

Date

Commissioners present at the October 26, 2017 meeting when the vote was taken:
Natalie McClendon, Gary Honcoop, Nicole Oliver, David Hunter, Kelvin Barton, Kate
Blystone and Dominic Moceri.

Vote: Ayes: 7, Nays: 0, Abstain: 0, Absent: 1. Motion carried to adopt the
above amendment.
TITLE OF DOCUMENT: Resolution cancelling uncollectible personal property taxes

ATTACHMENTS: Cover letter
Resolution
Resolution with Exhibit A

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.)

The County Treasurer is required by law (RCW 84.56.240) to present a list of uncollectible personal property to the Council for cancellation.

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 Council's website at: www.co.whatcom.wa.us/council.
MEMORANDUM

TO: Jack Louws, Whatcom County Executive
FROM: Steven N. Oliver, Treasurer
DATE: January 26, 2018
RE: Resolution cancellation

We are presenting this resolution, consistent with RCW 84.56.240 and RCW 59.20.030, for cancellation of personal property taxes which are considered to be uncollectible, for delivery to the Whatcom County Council for consideration at its meeting on February 13, 2018. Council’s action is required to formally cancel the uncollectible personal property tax.

We certify that we have made diligent search and inquiry for goods and chattels to collect such tax and were unable to collect the same.
RESOLUTION NO. __________

CANCELING UNCOLLECTIBLE PERSONAL PROPERTY TAXES

WHEREAS, RCW 84.56.240 requires that the treasurer shall file with the county legislative authority (county council) a list of uncollectible personal property taxes; and

WHEREAS, Council action is required to formally cancel the uncollectible personal property tax;

NOW, THEREFORE, BE IT RESOLVED by the Whatcom County Council that the uncollectible personal property tax, attached hereto as Exhibit A & B, is hereby cancelled.

APPROVED this ______ day of February, 2018.

ATTEST: WHATCOM COUNTY COUNCIL

Dana Brown-Davis, Council Clerk WHATCOM COUNTY, WASHINGTON

Rud Browne, Council Chair

APPROVED AS TO FORM:

Civil Deputy Pros. Atty.
<table>
<thead>
<tr>
<th>PID</th>
<th>NAME AND ADDRESS</th>
<th>REASON</th>
<th>YR</th>
<th>AMOUNT</th>
<th>TOTAL</th>
</tr>
</thead>
<tbody>
<tr>
<td>3740</td>
<td>MOTOR WELD INC Sandra Howem 2426 E BakerVIEW Rd Bellingham, WA 98226</td>
<td>DELETED PROPERTY GONE OUT OF BUS. NO ASSETS</td>
<td>2016</td>
<td>$262.80</td>
<td>$262.80</td>
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<tr>
<td>7841</td>
<td>VIA BIRCH BAY CAFE &amp; BISTRO 78296 Birch Bay DR Blaine, WA 98230</td>
<td>DELETED PROPERTY OUT OF BUS. NO ASSETS WEATHER DAMAGE,DISPUTE WITH LANDLORD TO FIX.</td>
<td>2016</td>
<td>$185.14</td>
<td>$185.14</td>
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<tr>
<td>10143</td>
<td>Ebenal General Inc David &amp; Bonita Ebenal 4326 Pacific Hwy Bellingham, WA 98226</td>
<td>DELETED PROPERTY GONE BALANCE DUE AFTER COURT ORDER #15-2-01011-1</td>
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<td>$216.30</td>
<td>$216.30</td>
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<td>Account</td>
<td>Company Name</td>
<td>Address</td>
<td>Property Status</td>
<td>Year</td>
<td>Amount</td>
</tr>
<tr>
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<td>--------------------------------</td>
<td>--------------------------------------------</td>
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<tr>
<td>179455</td>
<td>BUCKEYE BUILDING FIBERS LLC</td>
<td>3463 CEDARVILLE RD</td>
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<td>BELLINGHAM, WA 98226</td>
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<tr>
<td></td>
<td></td>
<td></td>
<td>No Assets</td>
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<tr>
<td>13157</td>
<td>THOMAS &amp; CO WEALTH MANAGEMENT LLC</td>
<td>DAVID P THOMAS</td>
<td>Deleted Property</td>
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<td>114 W MAGNOLIA ST $405</td>
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<td>2012</td>
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<td>11844</td>
<td>YVR AIR TRUCK FREIGHT SYSTEMS INC</td>
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<td></td>
<td>FERNDALE, WA 98248</td>
<td>No Longer in Business</td>
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<td></td>
<td></td>
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<td>No Assets</td>
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<td>1762</td>
<td>CALLEN CONSTRUCTION CO INC</td>
<td>CLEO CALLEN</td>
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<td>1350 SLATER RD #9</td>
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<td>$10,149.37</td>
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<td>178941</td>
<td>BELLINGHAM GOLD &amp; SILVER BUYERS INC</td>
<td>ROGER CORLISS</td>
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<tr>
<td></td>
<td></td>
<td>4509 MERICIAN ST</td>
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**Total cancellation**

$18,126.40
## Exhibit B - Mobile Homes

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<th>PARCEL/PID</th>
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<tr>
<td>159071</td>
<td>RICHARD L FROST 1106 SUMAS AVE SUMAS, WA 98295</td>
<td>Destroyed Property 1970 Fleetwood</td>
<td>2016</td>
<td>$112.56</td>
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<tr>
<td>117396</td>
<td>DIONN M RHoads 4672 BIRCH BAY LYNDEN RD #138 BLAINE, WA 98230</td>
<td>Deleted 1959 Owosso No longer on property</td>
<td>2013</td>
<td>$13.06</td>
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<td>2016</td>
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<td>119553</td>
<td>SHANNON M LOOMIS 8080 HARBORVIEW RD #M110 BLAINE, WA 98230</td>
<td>Destroyed Property 1970 Olympian Park demolished</td>
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<td>$33.98</td>
<td>$48.89</td>
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<td>172918</td>
<td>JOHN WALKER 4700 ALDERSON RD #55 BLAINE, WA 98230</td>
<td>Deleted 1994 Seaview Mobile Home Gone</td>
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|        |        |        |        |        | $347.39 |

page 1
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<td>$97.75</td>
<td>$98.22</td>
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Total of cancellation

$1,042.23

$1,729.47
**WHATCOM COUNTY COUNCIL AGENDA BILL**

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<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>twh</td>
<td>01/29/18</td>
<td>02/13/18</td>
<td>Finance Council</td>
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<td>Dept. Head:</td>
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<tr>
<td>Executive:</td>
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</table>

**TITLE OF DOCUMENT:** EDI Board recommendations for funding

**ATTACHMENTS:**
- Memo
- EDI Fund application for NW Fair Ag Center
- EDI Fund application for Housing Affordable through the Workforce (HATWF) (HATWF) Program Guidelines

**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.)

Executive Louws requests Council approval of the EDI Board recommendations for funding as presented in the attached EDI Fund applications and approval of the updated HATWF program guidelines.

**COMMITTEE ACTION:**

**COUNCIL ACTION:**

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

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289
MEMORANUM

To: Whatcom County Council Members  
From: Executive Jack Louws  
Subject: Economic Development Investment Board – Funding Recommendations  
Date: January 29, 2018

At the last meeting of the EDI Board, the following recommendations were adopted by the Board. They are being presented for review and approval by the County Council. Please note the attached meeting notes and project applications. If the recommendations of the Board are accepted by the Council, the administration will proceed with the preparation of Interlocal Agreements and supplemental budgets for County Council review and approval.

<table>
<thead>
<tr>
<th>Project</th>
<th>Funding Request</th>
<th>Recommendation</th>
<th>Vote</th>
</tr>
</thead>
<tbody>
<tr>
<td>Washington State University</td>
<td>$470,000 (grant)</td>
<td>up to $470,000 (grant)</td>
<td>11-0</td>
</tr>
<tr>
<td>NW WA Fair – Ag Center</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Whatcom County Housing Affordable for the Workforce (HAFTW)</td>
<td>$500,000 (loan)</td>
<td>$500,000 (loan)</td>
<td>11-0</td>
</tr>
</tbody>
</table>

Please consider these recommendations at your February 13, 2018 meeting. The EDI Board under the recommendation of the Board Chair recommends funding for the NW WA Fair expansion. As project partner and tenant occupant of the proposed facility, Washington State University has agreed to serve as sponsor and funding recipient for the project. The City of Lynden has also included this project on their Comprehensive Economic Development Strategy (CEDS) list update for 2018.

The Housing Affordable for the Workforce (HAFTW) request is for continued funding support of the low income housing loan program via the impact fee loan program. Additionally, we are seeking approval of the updated HAFTW program guidelines which have been streamlined to more accurately reflect the loan application process by transferring the entire administrative role to Whatcom County. As the program evolved the administrative role and duties shifted to the County. Both the City of Ferndale and Whatcom have agreed that Whatcom County, as guardian of all loan assurance documents, should be listed as the program administrator. The program guidelines now accurately represent that process.

If you have any questions on this matter, please feel free to contact me or Deputy Executive Schroeder.

Attachments:  EDI Board Meeting Notes of 12/12/17  
              HAFTW Funding Request EDI Program Application  
              NW WA Fair – Ag Center EDI Program Application  
              Updated HAFTW Program Guidelines
Notes of EDI Board Meeting

December 12, 2017 – 9:30 a.m.

Board Members present at Meeting:
Jack Louws, County Executive
Kelli Linville, Mayor, City of Bellingham
Jim Kyle, Fishing Industry
Aubrey Stargell, Timber Industry
Tyler Schroeder, Deputy Executive
Jeff McLure, PUD#1

Bobby Briscoe (POB Commissioner)
Scott Korthuis, City of Lynden Mayor
Guy Occhiogrosso, Bellingham Chamber
Stephen A. Jones, Agricultural Industry
Barry Buchanan, County Council Chair

Board Members absent:
Bob Bromley, Mayor, City of Sumas

David Franklin, At-Large

Staff present:
Suzanne Mildner, Board Clerk (Executive Office)

Guests present:
Pual Schissler, Community Planner
Stephan Jilk, PUD#1
Jim Baron, NW WA Fair
Carole McDonald, Citizen
Greg Young, City Administrator, Ferndale

Rob Fix, Port of Bellingham
Brad Rader, Rader Farms VP/GM
Nancy Larsen, Whatcom-Skagit Housing
Don Goldberg, Economic Dev Director-POB

1. Welcome and Introductions
Board Chair, Executive Jack Louws welcomed everyone and called the meeting to order. Round table introductions were made. A special welcome was made to Don Goldberg, who is the new Economic Development Director for Port of Bellingham.

2. Correspondence from PUD #1 – confirming release of fund commitment made previously. Steve Jilk confirmed the $217,000 allocation for the Foothills broadband project has been withdrawn. The associated funding requirements could not be met.

3. EDI Fund Review – Status as of 10/31/17
A review of the Public Utilities Improvement/EDI Fund was given as of 10/31/17. Executive Louws briefly went over the revenues, expenditures and commitments noted on the spreadsheet. There is currently a cash balance of $10.5 million dollars. Of the $10.5 million dollar cash balance, $2 million is committed to EDI projects. That leaves a remaining balance of approximately $8.5 million. The program has committed $17.8 million in loans, and been paid back about $5 million thus far, leaving a net amount of approximately $12 million out on loan. Executive Louws said the fund is doing well; it is his opinion that there are sufficient dollars available to fund both projects being discussed today. The question is whether the projects are appropriate and does the board wish to support them.

4. Northwest Washington Fair’s application: Agricultural Education Center
Executive Louws introduced Brad Rader and Jim Baron. Jim Baron, with NW Washington Fair, introduced a brief history of this project, which began with the Farming For Life Exhibit at the annual fair. He then introduced Brad Rader, of Rader Farms, who has been championing the effort to bring this project to life. Mr. Rader addressed the board, and provided a short power point presentation. Whatcom County has a strong community of agricultural producers. This
project is meant to promote agriculture on an ongoing basis, year-round, and on a larger scale than is currently done at the annual fair. The goal is to create connections and build the ag community by showcasing to the general public and supporting agriculture on into the future. In researching what other communities are doing around the country, Mr. Rader found at least four other similar projects underway in other areas. The building that is being proposed is 40,000 square feet, with the first floor housing exhibits: various food processing equipment, and a commercial kitchen. The second floor would be for education (meeting/classroom) space for WSU Extension. Mr. Rader noted the project budget, estimated at $4.7-million, is largely made up from private donors. $1.25-million is pending from the State of Washington, and Mr. Rader stressed the important of the partnership they are developing with WSU (he provided an updated letter from WSU's Mt. Vernon office). He asked that the board support this request for EDI funding.

Mayor Linville made a motion to recommend approval of this funding to support this project. Councilmember Buchanan seconded the motion. Discussion on the motion ensued.

Mayor Linville said she represented the ag community for 17 years, and this education center is a wonderful idea which she supports 100%. Mayor Korthuis said he supports the project, as does Commissioner Briscoe, who said it will be especially beneficial for supporting the youth in our community and potentially lead them to consider joining the ag community. Aubrey Stargell asked what role WSU will play on a daily/ongoing basis. Mr. Rader said their staff will likely be in the field for the most part, but possibly teaching on-site as well. Undergraduate degree classes are a possibility in this space. Other comments were made by Stephen Jones (in support) and Jeff McLure (also in support, adding that museum displays/exhibits are very costly and to ensure that adequate budget is provided for that).

Jim Kyle said he supports this project. However he questioned the board and the Chair about the scoring system that used to be in place for project applications. Chair Louws said that previously we had the technical advisory committee scoring applications, and they were members of COG’s Economic Development Council, which no longer exists. He agreed that by using the current scoring criteria, this project does score low, however he supports it and sees the benefits for the community. He’d like to engage the County Council on the question of how they would like to set criteria for project approval. Tyler Schroeder commented that it would be beneficial to engage Don Goldberg, the new Economic Development Director, and also engage Team Whatcom, who have been working at setting economic development goals and strategies.

Chair Louws reiterated he supports this project, and will recommend approval of the application based on two conditions: 1) Instead of a $470,000 grant, the County provide a grant of “up to 15% of the total project budget for the building as described in the application, to a maximum of $470,000”; and 2) That Northwest Washington Fair check the legality of accepting these funds under State law, and if necessary partner with City of Lynden or another agency in order to accept funding. Steven Jones made a motion to accept the amendment, and Mayor Kelli accepted the amended motion. Jim Baron asked Chair Louws for clarification on 15% of the project budget, noting that the $4.7-million figure does not include donations. How do they record those donations in relation to total project budget? Chair Louws said that they would be noted as “in kind” contributions and be fully included in the gross amount – this is what the 15% would be based upon. There being no further discussion, a vote was called for on the amended motion, which reads as follows:

A motion was made by Mayor Linville and seconded by Councilmember Buchanan, and amended by Chair Louws, that the board recommend approval of the Northwest Washington Fair application for a grant of up to 15% of the total building cost as
described in the application, to a maximum of $470,000, and to forward this recommendation for approval to the Whatcom County Council. A vote was taken and the motion passed unanimously 11-0.

5. Additional Funding Request: Housing Affordable for the Workforce Program.
Executive Louws introduced Paul Schissler, Community Planner. Mr. Schissler addressed the board regarding the nature of this funding request, which is an additional allocation of funding to support the program that was approved several years ago, and for which funding will run out very soon. Mr. Schissler cited Agenda packet highlights and the results of the initial $1,225,000 in the program. Up to now several housing groups have utilized this program, and many of the stakeholders in the community support it, as is evidenced by the numerous letters of support that have been submitted. If this $500,000 allocation is approved, an estimated of 30 homes will have been built using this impact and utility fee program. As Mr. Schissler explained the mechanisms of how the program works, a few questions arose regarding the terms that apply to the use of the EDI: interest rate, term, long-term affordability, and mechanism for tracking by the county. There was a suggestion made that it would be less costly for the county to simply grant the monies if the homes remain affordable long-term, similar to how the program works in Skagit County.

Chair Louws said he is in support of the additional funding allocation, and made mention of the program improvements that are noted in Mr. Schissler’s memorandum dated 11/2/17. He agrees with all but one item, which will need further discussion; that is, the suggestion that the county allow an “option to forgive” the loan at the end of the term. He believes this may be considered a gift of public funds, so he’d seek legal counsel before deciding on that option.

Mayor Linville said she has a letter for the board in which she states her support for this program, and also offers a few tools that the City uses to assist in facilitating affordable housing. She suggested that other jurisdictions give these tools some consideration as well. Executive Louws directed the Clerk to distribute the letter to board members following today’s meeting.

Mayor Korthuis made a motion to forward the County Council a recommendation to approve loan funding in the amount of $500,000 to support this program. The motion was seconded by Steve Jones.

Executive Louws called for comments and discussion. Commissioner Briscoe commented that although he supports the goals of the program, he does not see that job creation is a component. Mayor Linville responded that in her view, she hears from employers who have difficulty finding qualified employees due to the lack of availability of housing in Bellingham. By encouraging construction of affordable homes, this helps create jobs in construction; this EDI fee program ties in with that. Guy Occhiogrosso concurred and said housing is a critical need in our community; we need to support this program to help to increase capacity. Steve Jones supports this program, as member of this board, as well as the Opportunity Council’s board, who are key partners in the housing community. Nancy Larsen, of Whatcom-Skagit Housing, said they build about 15 houses a year, and annually about $2-million goes back into the county in the form of fees, construction supplies, taxes, insurance costs, etc.

Rob Fix asked about the loan length, and asked why not a shorter term? Or no loan at all; just grant the funds, thereby eliminating the administrative burden? Another question arose regarding the long term affordability of homes that are part of the program and whether the homes remain “affordable” after the original owner sells the home down the road? Mr. Schissler explained the program was designed to work with either type of program, whether long-term
EDI Board Meeting Notes
12/12/17
Page 4

affordability or not. Greg Young said he believes this program supports job creation, helping families rise up from minimum wage jobs to living wage jobs.

Executive Louws called for a vote on the motion (as stated above). The vote was taken and the motion carried unanimously 11-0.

6. Other business
Executive Louws asked for final comments. Mayor Linville said she would like to see project criteria and scoring discussed by this board at the next meeting. Chair Louws said he plans to engage the County Council after the first of the year in order to gain better insight as to the direction they want to go with the EDI Program. He also noted he agrees that the work that Team Whatcom is doing is a good way to go for economic development planning.

Meeting was adjourned at 10:40 a.m.

NEXT MEETING DATE: TBD

Respectfully Submitted,
Suzanne Mildner,
EDI Board Clerk
Whatcom County Executive Office
January 31, 2018

Jim Barron  
Northwest Washington Fair Manager

Re: WSU as applicant for Whatcom County EDI funding for the NW Washington Ag Center

Dear Jim,

This letter serves to indicate the agreement of WSU via the College of Agricultural, Human and Natural Resource Sciences to sponsor the Whatcom County EDI project request and contract for the Northwest Washington Ag Center in partnership with the Northwest Washington Fair. It is our understanding as a past recipient of these funds (for construction of the WSU Ag Research & Technology Building at the WSU Northwestern Washington Research and Extension Center in Mount Vernon) that we are an eligible entity.

We look forward to partnering with the NWWF on this important project in Whatcom County. In addition to partnering on the development of the facility, WSU intends to be a tenant occupant in the proposed facility to conduct research, extension, and educational programs that promote agriculture and economic development in Whatcom County.

Go Cougs!

Ron Mittelhammer, Dean  
WSU CAHNRS

Chad Kruger, Director  
WSU CAHNRS Western Washington
October 18, 2017

Jack Louws
County Executive as Chair of EDI Board
311 Grand Avenue, Suite 108
Bellingham, WA 98225

Dear Mr. Louws,

Please find attached our application for a grant from the EDI.

The Board of Directors of the Northwest Washington Fair is very enthused about the community support we have received for the construction of an Agricultural Educational facility. One of our goals is to provide a place where visitors will come to understand the critical connection between land, water and air for the food we eat. We believe the educational and interactive agricultural exhibits planned will make this one of the premier destination locations in Washington for people interested in learning about how local food is originated, produced, harvested and marketed.

Additionally, this multi-purpose facility will provide the community with space for other exhibits, meetings, banquets and conventions. With the completion of this project, the Northwest Washington Fair will impact the community and support visitors all year by bringing benefit to the local economy and enhancing current and future education opportunities.

As stated earlier, we the board of directors are excited about the support the rare opportunity that the community has already shown in raising funds to complete this project, and we hope that you also see the benefit and will join us in support so we can see this vision become a reality.

On behalf of the Board of Directors of the Northwest Washington Fair:
Nate Kleindel, Vice President
Deane Sandell, Secretary
Marv Tjoelker, Treasurer
Lloyd Bos
Bill DeGroot
Jim Hale
Matt Koetje
Lauren Meenderinck
Ron Polinder
Randy Smit

Thank you for your consideration,

Chad Chambers, President
Whatcom County
Economic Development
Investments Program
Application for Funding

Jack Louws, Whatcom County Executive
Whatcom County Economic Development Investment (EDI) Program
Revolving Loan and Grant Program to Encourage Creation or Retention of Private Sector Jobs

Preliminary Information and Application

Note: The intent of this Program is to be consistent with State law, RCW 82.14.370

1. Who is eligible to apply: Local general or special-purpose governments and higher education.

2. What projects are covered: Construction of publically-owned infrastructure, facilities, and related improvements, which enable or encourage the creation or retention of private sector businesses and jobs in Whatcom County consistent with EDI Program Policy Objectives.

3. What activities are fundable: New construction, refurbishment, replacement, rehabilitation, renovation or repair. Demolition is allowable if tied to construction. Soft costs allowed within scope of construction budget. No land acquisition except right-of-way included in a construction project.

4. What can you use the funds for: Transportation (roads, bridges, rail), utility services (water, sewer, storm, energy, telecom) and public buildings or structures.

5. Other Limitations: Planning/feasibility only projects are not eligible. Minimum local match is 10% of EDI request. EDI Board will make recommendations to the County Council which makes the final decision.

Preferential Project Types

First Preference – “JOBS IN HAND PROJECTS” – These types of projects will allow for the immediate creation and/or retention of jobs by providing public infrastructure that directly supports jobs. A perfect example would be a private business that will build or move into a facility and hire employees if a road is built or if water/sewer lines are extended to the site. These types of proposals would include a commitment by the private sector employer to create jobs and provide private investment.

Second Preference – “BUILD IT AND JOBS WILL COME PROJECTS” – These types of projects will construct public infrastructure but are not associated with a specific commitment from a private business to locate and/or create jobs. A perfect example would be the construction of roads and utility infrastructure to serve a new business park that would benefit multiple businesses.

Third Preference – COMMUNITY ENHANCEMENT PROJECTS” – These types of projects generally improve the physical appearance or create community assets to enhance the business climate. Examples would be boardwalk, streetscaping, downtown structures, and other publicly-owned facilities that make a community or region more attractive to existing or future businesses.
Whatcom County Economic Development Investment (EDI) Program
Roving Loan and Grant Program to Encourage Creation or Retention of Private Sector Jobs

Preferential Project Terms

First Preference – EDI LOAN – Due to the preferred revolving nature of EDI funds, proposals that are loan only will receive higher scoring. Loan terms and interest rate structure matches the Public Works Trust Fund program. The county will maintain discretion to modify such as including a deferral period.

Second Preference – LOAN/GRANT COMBINATION – The preferred combination of grant funds and loan funds is 1/3 grant, 2/3 loan.

Third Preference – EDI GRANT – Due to the “one-shot” nature of grants, projects of equal scoring requesting a grant only will be scored lower than another similar project requesting a loan/grant mix.

Preferential* Project Amounts (Guidelines)

JOBS IN HAND PROJECTS - $1,000,000 limit if grant only. $2,000,000 limit if combination of grant and loan. $3,000,000 limit if loan only.

BUILD IT AND JOBS WILL COME PROJECTS - $500,000 limit if grant only. $1,000,000 limit if combination of grant and loan. $1,500,000 limit if loan only.

COMMUNITY ENHANCEMENT PROJECTS - $250,000 limit if grant only. $500,000 limit if combination of grant and loan. $750,000 limit if loan only.

*Based on compelling reasons, the EDI Board and County Council may consider exceptions.

Past Performance

Have you received EDI Program funding in the past? ________ X Yes ________ X No

If yes, provide project name and EDI grant/loan awarded: ____________________________________________

If yes, EDI Program staff and/or the EDI Board may conduct an audit to review performance measures against projected outcomes, such as job creation projections.

Has your jurisdiction received any audit findings from the Washington State Auditor in the past 10 years? ________ X Yes; ________ X No. If yes, provide details:

__________________________________________________________

__________________________________________________________

Last Updated: 11/18/13
THRESHOLD PROJECT CRITERIA

Evidence of Planning

YES NO

___ ___
Project included on an adopted regional economic strategy ("CEDS" list).

___ ___
Project included in the applicant's Comprehensive Plan.

___ ___
Project included in the applicant's Capital Expenditure Plan or adopted budget.

COMMENTS:


Total Points

To proceed to other parts of the application and to receive EDI Board review, a proposed project must score 10 or more points on the above section.
Whatcom County Economic Development Investment (EDI) Program
R revolving Loan and Grant Program to Encourage Creation or Retention of Private Sector Jobs

PROJECT APPLICANT

Applicant Name: Northwest Washington Fair
Applicant Address: 1775 Front Street, Lynden, WA 98264
Applicant Contact Person: Brad Rader
Applicant Email and Phone Number: bradrader2@gmail.com

PROJECT TITLE
Agriculture Education Center

PROJECT AMOUNT REQUESTED

$________________ EDI TOTAL - (Loan $________________); Grant $470,000.00

$________________ Local Match (10% of EDI request minimum)

PROJECT TYPE

_ Jobs In Hand _ Build It And Jobs Will Come _X_ Community Enhancement

PROJECT TERMS

_ Loan Only _ Grant/Loan _X_ Grant Only If a loan, term requested: _____ (years)

PROJECT LOCATION: Lynden, WA

PROJECT DESCRIPTION
(one page limit)

Our plan is to build a 40,000 sq. ft. Agriculture Education Center on the Northwest Washington Fairgrounds. This facility would be open six (6) days a week year around. The first floor would be an exhibit pavilion showcasing local agriculture and will also be a place where the farming for life display would be exhibited on a bigger scale than what is done during our annual fair. At this time, our plan is to have WSU use the second floor to house their Whatcom County Research and extension office, and the third floor would be the new location of the Northwest Washington Fair main office. We feel this is a once in a lifetime opportunity to showcase agriculture to the general public and supporting agriculture by having a place for WSU.

Last Updated: 11/18/13
Whatcom County Economic Development Investment (EDI) Program
Roving Loan and Grant Program to Encourage Creation or Retention of Private Sector Jobs

BASIC PROJECT INFORMATION

1. Complete the public project budget and status of funds below. If EDI funds are approved is funding 100% complete?  ___ Yes  ___ No

Fundraising is in process. $500,000.00 to date committed for the project.

<table>
<thead>
<tr>
<th>Funding Source</th>
<th>Amount</th>
<th>Planned/Applied For</th>
<th>Secured</th>
</tr>
</thead>
<tbody>
<tr>
<td>Federal Dollars</td>
<td>$0</td>
<td>Yes</td>
<td>Yes</td>
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<tr>
<td>State Dollars</td>
<td>$1.5 M</td>
<td>X</td>
<td>X</td>
</tr>
<tr>
<td>Private Dollars</td>
<td>$2.7 M</td>
<td></td>
<td></td>
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<tr>
<td>EDI Funding</td>
<td>$470,000</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td>TOTAL</td>
<td>$4.7 M</td>
<td>No</td>
<td>No</td>
</tr>
</tbody>
</table>

*State Dollars secured once Capital Budget is approved

2. Describe the amount of outside (private) funding committed to the project (eg. Plant and equipment).

Our capital campaign has begun with a goal of discussions with individuals and business, as well as the WSU Foundation on options for private funding.

3. Describe the public infrastructure being proposed. Include engineering estimates and a site map detailing the proposed improvements as Attachments A and B.

N/A

4. Describe how these improvements will enhance or encourage community vitality and stimulate other private development in the area.

The agriculture industry totals over $1 billion locally. The opportunity to educate people locally from BC and other counties to the south, as well as the tie in with WSU and their support in the agriculture industry is essential to this community.
Whatcom County Economic Development Investment (EDI) Program
Revolving Loan and Grant Program to Encourage Creation or Retention of Private Sector Jobs

5. List all permits and environmental reviews required for the public project and detail their status (completed, in-process, etc.)

<table>
<thead>
<tr>
<th>Permit/Review</th>
<th>In Process</th>
<th>Date Completed</th>
</tr>
</thead>
<tbody>
<tr>
<td>Preliminary Engineering</td>
<td>X</td>
<td>2017</td>
</tr>
<tr>
<td>Environmental Review</td>
<td></td>
<td></td>
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<tr>
<td>Design Engineering</td>
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<tr>
<td>Right-of-Way</td>
<td></td>
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<tr>
<td>Construction Permits</td>
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<tr>
<td>Environmental Permits</td>
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<tr>
<td>Bid Documents</td>
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<tr>
<td>Award Construction Contract</td>
<td></td>
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<tr>
<td>Begin Construction</td>
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<tr>
<td>Project Operational</td>
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</tbody>
</table>

6. Are any other public jurisdictions involved in this project? If so, in what way?
   N/A

7. Who will maintain the public facility/infrastructure to be completed with EDI funds? Will this project impact utility rates within the jurisdiction?

   Northwest Washington Fair is a non-profit, and they will maintain the facility. This facility will be located on the Fair property.

8. Will this project directly generate a revenue stream that could be used to repay an EDI loan? Will this project spur indirect revenues that could be used to repay an EDI loan? If no to either question – why?
   N/A
Whatcom County Economic Development Investment (EDI) Program
Roving Loan and Grant Program to Encourage Creation or Retention of Private Sector Jobs

9. What other revenue sources are available for this project and have they been considered. This includes forming a Local Improvement District (LID or ULID), issuing Councilmanic Bonds, Revenue Bonds, or other source(s).

Our plan in the future is to look at other revenue sources.

10. Describe the private development project that will be supported by this public facility project. If there is a committed private sector partner include Contingency Agreement (Attachment C).
N/A

11. Explain why the private development requires the proposed public improvement(s).
N/A

12. What is the status of the associated private development review and permits. List all permits required and give the current status (applied for, being reviewed, issued).

<table>
<thead>
<tr>
<th>Environmental Review</th>
<th>In Process</th>
<th>Date Completed</th>
</tr>
</thead>
<tbody>
<tr>
<td>Construction Permits</td>
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<tr>
<td>Environmental Permits</td>
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</tbody>
</table>

13. Describe the type of industry or economic activity the public development will attract. What is the strategy to attract industry to the project site?

Our goal is to have WSU on site for their research and extension offices. This would increase the support for our local farmers by having them in the county. Currently WSU's staff travels from Mt. Vernon and Puyallup.

Last Updated: 11/18/13
14. List the number of projected jobs, by type, to be retained and/or created by the private entity.

<table>
<thead>
<tr>
<th>Occupation</th>
<th>Current Jobs Retained** (In FTEs)</th>
<th># Of Jobs Created Year 1 (In FTEs)</th>
<th># Of Jobs Created by Year 5 (In FTEs)</th>
<th>Hourly Wage of current or new position</th>
<th>Local Occupational Hourly Wages***</th>
</tr>
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<tbody>
<tr>
<td>Mgmt/Admin*</td>
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<td>N/A</td>
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<tr>
<td>Technical/Prof</td>
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<td>Office/Clerical</td>
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<tr>
<td>Production</td>
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<tr>
<td>Sales</td>
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<tr>
<td>Skilled Crafts</td>
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<tr>
<td>Others</td>
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<tr>
<td>Totals</td>
<td></td>
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<td></td>
<td>N/A</td>
<td>N/A</td>
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</tbody>
</table>

* Indicate Management positions in annual salary.

** Retained jobs are defined as jobs that would otherwise be lost from the county without this project.

*** This column will be populated with data from the state before application is distributed and revised annually.

a. Projected annual gross payroll for all job classifications $ 

b. Describe fringe benefits the company offers to regular full time employees? (health insurance, retirement plans, etc.)

15. How does this project support the economy of Whatcom County and how does it fit into a county-wide economic development strategy?

This project is a once in a lifetime opportunity to show visitors how large of an impact agriculture has locally. This $1 billion+ industry, contributes in a variety of ways to the local economy. One being the 3,000+ jobs maintained annually. So many farm families have sacrificed so much and worked so hard we finally have the chance to show and exhibit it. Having WSU on site is a huge opportunity to help support the future of agriculture and assist these many family businesses transfer to the next generation.

Last Updated: 11/18/13
Whatcom County Economic Development Investment (EDI) Program
Revolving Loan and Grant Program to Encourage Creation or Retention of Private Sector Jobs

16. What will the effect of this project be on the natural environment – does the project address any issues related to public health, pollution, or quality of life?

N/A

17. Does this project address any existing issues related to public safety and/or does it increase public safety in the future or address a potential future public safety issue?

N/A

18. Describe specific quantifiable measures of the outcomes, other than purely jobs, that will demonstrate project success. Describe how you will measure this and explain what you expect to show as progress toward the outcome.

We can measure success by the volume of visitors over the next twelve (12) months. We can also, watch WSU’s contributions to new varieties of raspberries and see added acreage. Their contributions to the dairy industry could also allow threatened industries to maintain long term viability.

Application for Funding – Certification

I HEREBY CERTIFY THAT THE INFORMATION GIVEN IN THIS APPLICATION TO WHATCOM COUNTY FOR INVESTMENTS IN ECONOMIC DEVELOPMENT IS TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE AND BELIEF.

Signature of Responsible Public Official

Date 10-23-17

Jim Baron, Manager

Last Updated: 11/18/13
Agriculture Education Center Budget

*Preliminary Budget*

- Main Building – $3.5M
  - Includes: Main exhibit hall, second floor offices for WSU and other tenants, third floor for Northwest Washington Fair main office, includes cost for elevator and Commercial Kitchen.

- Exhibits - $1.0M
  - Includes: All costs involved with planning and consulting on design and installation.

- Miscellaneous - $200K
  - Includes: Replacement of the 4H Barn, greenhouse and tissue culture lab.
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<tr>
<td>Whatcom County</td>
<td>12,980</td>
<td>15,442</td>
<td>14,786</td>
<td>15,111</td>
<td>17,643</td>
<td>19,795</td>
<td>19,580</td>
<td>21,037</td>
<td>17,358</td>
<td>23,668</td>
<td>22,252</td>
<td>18,148</td>
<td>$ 217,799</td>
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<td>22,075</td>
<td>23,592</td>
<td>21,930</td>
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<td>23,769</td>
<td>24,511</td>
<td>24,379</td>
<td>26,567</td>
<td>27,168</td>
<td>28,105</td>
<td>28,170</td>
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<td>24,142</td>
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<td>31,927</td>
<td>33,417</td>
<td>31,521</td>
<td>32,471</td>
<td>$ 368,808</td>
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<td><strong>2018</strong></td>
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Calculations based off Department of Revenue reports
November 2, 2017

To: Whatcom County Executive Jack Louws

From: Paul Schissler, on behalf of housing affordability advocates and developers

Re: Housing Affordable for the Workforce program summary, case for support, and improvements

Whatcom County can consider and approve a second investment of RCW 82.14.370 sales tax revenue, similar to the initial $1,200,000 investment, but with improvements to streamline and extend the program’s impact.

In the last six years, the County’s initial $1.2 million investment in Housing Affordable for the Workforce (HAFTW) resulted in over $20 million in economic development while creating construction jobs building homes affordable for people who work here. The County’s HAFTW program was funded from local RCW 82.14.370 sales tax revenue, known locally as the Economic Development Investment (EDI) Program. EDI now has reserves enough to renew and expand the program. New HAFTW funding will reserve more EDI for cities to invest in construction of public facilities while simultaneously catalyzing the construction of new homes. Doing so will allow more families in Whatcom County the chance to afford their home because their monthly housing costs will be less than the normal market rate.

The County’s initial $1.2 million investment leveraged at least $20 million in economic development by creating over $18 million in taxable residential property while the entire $1.2 million is being used by cities to construct public facilities (utilities, roads, etc.) that are eligible for RCW 82.14.370 sales tax revenue.

How it has worked so far:

Homebuilders, including Habitat for Humanity of Whatcom County and Whatcom Skagit Housing, applied for funding from the County with the support of city governments. The initial $1.2 million was used to pay city impact fees and utility connection charges, averaging $15,000 per home. Homebuyers then applied for other private or public funds for construction and purchase of the homes. Matching funds included low interest loans, such as USDA’s Section 502 mortgages, and other sources of community investment, such as the state’s Housing Trust Fund and Bellingham’s HUD grants. In many cases, homebuyers added “sweat equity” to their cash downpayment. Finally, when construction was complete, homes were added to the tax rolls, with home values that ranged from $216,000 to $255,000 or more. The leveraging rate is trending at an assessed valuation of $15 in residential real estate for every $1 of EDI spent, so far, on HAFTW.

Results since 2011 include:

- $1.2 million invested in HAFTW, sending $1.2 million from EDI to cities to build public facilities,
- 80 homes have applied for funds so far, resulting in taxable real estate in excess of $18 million,
- 80 homebuyers will have accessed over $12 million in mortgage financing at favorable terms,
- homebuyers and their families contributed over $2.3 million in “sweat equity” downpayments, and
- $67,000 in loan repayments have been received by the County so far, after the resale of four homes.

Next steps:

If a portion of the County’s RCW 82.14.370 EDI revenue is used to continue the HAFTW program, the County and cities can expect at least ten times the EDI amount in economic development, in terms of additional
taxable real estate, and the entire EDI amount will be sent to cities to construct public facilities. If EDI invests $500,000, for example, the County can expect 30 homes or more will get built, based on fees averaging $15,000 per home during the County’s initial $1.2 million HAFTW investment. The taxable value of 30 or more homes will exceed $7.5 million.

Based on the County’s experience during the use of the first $1.2 million, the HAFTW program can be streamlined and improved, with minor changes to the adopted guidelines.

Suggested improvements to the HAFTW program are:

1. Streamline the administrative review of homebuilders’ applications at the County Executive’s Office
2. Reduce $1.2 million to a smaller number this time, and aim to invest that amount in two years or less
3. Allow the HAFTW loans to have longer terms, deferred for as long as the homes remain affordable
4. Offer an Option to Forgive or Renew at the end of the term, as long as the homes remain affordable
5. Allow up to 100 percent of eligible impact and utility fees to be eligible for HAFTW and EDI funds
6. Allow rental projects to include affordability for any mix of incomes up to 80 percent of AMI²
7. Compare the performance of the initial 2011-2017 project to the next phase, 2018-2019

Ferndale City Administrator Greg Young has confirmed that the City of Ferndale is willing to continue to assist with administration of the HAFTW program, if needed. From Mr. Young’s point of view, the program works well, and he would like to see the program continue.

For more about the intent and design of the HAFTW program, one can refer to the 2010 EDI application. Although somewhat dated, the application makes a good case for what was then considered an experiment.

The experiment appears to have worked well. After seeing Whatcom County’s use of RCW 82.14.370 funds for HAFTW, Skagit County funded the same concept, with slight variations, for new homes being built in Mount Vernon. Whatcom County was the first to show this use of EDI is allowable, Skagit County was second, and Island County and San Juan County are now being urged to consider their own, similar programs.

If more information is needed about the HAFTW program, I can make myself available to answer questions and provide more information.

Thank you for your consideration.

Paul Schissler
Paul Schissler, independent contractor, community development planner, public interest projects

² AMI refers to the Area Median Income, adjusted for household size, published annually by the US Department of Housing & Urban Development.
HOUSING AFFORDABLE FOR THE WORKFORCE

Supplement to Paul Schissler memo dated 11/2/17

The following pages contain:

- Letter of support from Opportunity Council
- Letter of support from Whatcom County Housing Advisory Committee
- Letter of support from Whatcom-Skagit Housing
- Background reference: original EDI Program application dated 9/9/10
November 16, 2017

Mr. Jack Louws
Whatcom County Executive
311 Grand Avenue
Bellingham, WA 98225

RE: Utilizing EDI funds to support affordable housing in Whatcom County,

Dear Mr. Louws,

Communities throughout Whatcom County are experiencing significant housing challenges due to a shortage of available and affordable housing options. Costs of housing have increased while wages have stayed stagnant and families and individuals are struggling to make ends meet. As a social service provider we see this struggle every day and are always seeking new resources to help those most vulnerable in our community.

As an owner/operator and developer of affordable housing Opportunity Council is strongly supportive of the County’s continued use of Economic Development Investment (EDI) funds to pay for the impact fees and utility infrastructure for affordable housing. Financing affordable multi-family housing is quite complex and typically involves patching together multiple sources of funding to make a project feasible. Being able to utilize EDI funds helps leverage other capital sources at the city, state and federal levels and for some projects the EDI funds may be what ultimately makes a development financially feasible.

With so many unknowns regarding the future of federal housing subsidies and the Low Income Housing Tax Credit program, now more than ever we need our local governments to demonstrate their commitment to affordable housing. Reinvesting in the EDI program will be a clear showing of Whatcom County’s continued commitment to safe and affordable housing for all members of our community.

I hope you will consider and encourage the County Council to support a second investment of RCW 82.14370 sales tax revenue, similar to the initial $1,200,000 investment. Thank you for the work that you do.

Sincerely,

Greg Winter
Executive Director
Memorandum

TO: Jack Louws, Whatcom County Executive

FROM: Emily O’Connor, Chair, Whatcom County Housing Advisory Committee

DATE: October 20, 2017

RE: Use of EDI Funds for Housing Affordable for the Workforce

As chair of the Whatcom County Housing Advisory Committee, I would like to confirm that our Committee remains supportive of the proposed use of Economic Development Investment (EDI) funds for Housing Affordable for the Workforce (HAFTW). The County has shown how EDI can be used to pay impact and utility fees related to the construction of homes affordable for people with income at or below 80 percent of the area median income. It would be great to see the program continue.

As you know, the Housing Advisory Committee’s role includes making recommendations to the County Executive and County Council, and the Committee has recommended in favor of this use of EDI funds. The Committee’s support for this use of EDI funding dates back to the 2007-2008 Countywide Housing Affordability Taskforce (CHAT) process. The CHAT members unanimously supported this idea among their top recommendations, and the Housing Advisory Board was unanimous in its support when the HAFTW program was first proposed by the City of Ferndale in 2010. Since 2011, HAFTW has shown impressive results and deserves to continue.

The Whatcom region is facing an urgent need for more homes affordable for seniors, veterans, families, and our community’s most vulnerable people. The County’s Ten Year Plan to End Homelessness highlights the vital role the County and its allies play in a cooperative strategy that produces more homes people can afford. This is one way the County can help.

Having EDI help with impact and utility fees will be hugely important as local matching funds that leverage other private and public funding from the state and federal sources.

I hope you will encourage the EDI Advisory Board to recommend to the County Council that a second investment of EDI be allocated to the HAFTW program.

Thank you for your consideration and for the opportunity I have to serve on the Whatcom County Housing Advisory Committee.

Emily O’Connor, Chair
On behalf of the Whatcom County Housing Advisory Committee
Whatcom - Skagit Housing
A Mutual Self-help Building Program

5 1971 Midway Lane Suite C E #105
E Bellingham, WA 98226
(360) 398-0223 (888) 360-0223
(360) 398-0223
FAX# (360) 398-0854
Email: nancy@whatcomskagithousing.com
www.whatcomskagithousing.com

November 17, 2017

Mr. Jack Louws
Whatcom County Executive
311 Grand Avenue
Bellingham, WA 98225

Dear Mr. Louws:

Whatcom-Skagit Housing (WSH) is a Washington State Nonprofit Corporation whose operating funds are provided by the US Department of Agriculture-Rural Development (USDA-RD). The program has operated in Whatcom County since 1976 and has produced over 620 homes for families and individuals whose income is below 80% of the County’s median income. Participants must have a reliable income, a good credit history, agree to work 35 hours a week on the houses and qualify for a one-step construction loan through USDA-RD.

WSH provides technical assistance to the owner-builders who contribute labor toward the construction of their homes. Participants work in groups and contribute about 1500 hours of labor per household over a 10-12 month building period. This represents 65% of the total labor needed to build each home. All homes are built to be energy efficient.

Since the inception of this program, our participating families have been able to access about $952,000 of the funds set aside for the Impact Fee portion of their building permits in Ferndale and Blaine. We have another group of 10 families that will be closing their loans in the next 2 months that would like to also access the funding. The total of approximately $1,095,000 will have helped with the production of 71 new homes since 2012. One of the main advantages of the EDI program is that it makes it possible to reduce the amount of the participants USDA Mortgage Loan, making it easier for the families to qualify for the program. Another advantage is that the local communities receive funding to go toward the cost of roads, schools, parks and utilities. Please note that in the future when the home is sold by the family, the EDI funds are paid back to Whatcom County.

Over the past 5 years, WSH has averaged about $2,000,000 a year being invested back into the Whatcom County community through the purchase of building...
supplies, hiring sub-contractors, Real Estate taxes paid, wages paid, insurance policies purchased, etc. None of the above figures included the future payment of Real Estate Taxes which go back to the County.

We are hopeful that the EDI funds will continue to be available to us and other housing programs in order to help make homeownership available to lower-income working families. We will be building 28 new homes in Ferndale on property we own in the next few years and hope to have the EDI funds available to those families as well.

Thank you for your consideration.

Sincerely,

[Signature]

Nancy Larsen  
Executive Director  
Whatcom Skagit Housing

CC:  Paul Schissler  
      Suzanne Mildner
Whatcom County Economic Development Investments Program

Application for Funding

EDI Program Funding for Public Facilities Related to Housing Affordable for the Work Force

Lead Applicant: City of Ferndale

Project Beneficiaries: All seven cities in Whatcom County

Date of Application: September 9, 2010
EDI Application Summary Page

Applicant (Governmental Entity)  City of Ferndale on behalf of 7 Whatcom cities
Federal Tax Number  91-6001429
Contact Name  Greg Young
Title  City Administrator
Telephone  (360) 384-4302
Fax  (360) 384-1163
Email  GregYoung@CityofFerndale.org
Address  P.O. Box 936
          2095 Main Street
          Ferndale, WA 98248

Project Title:
EDI for Public Facilities Related to Housing Affordable for the Work Force

Amount of EDI loan requested:  $800,000  (Revised to $1,200,000)
Amount of EDI grant requested:  $400,000  (Revised to $0)
Source of Local Match for public facilities:  Varies, depends on public facility project
TOTAL public facilities project costs:  Varies, depends on public facility project
Source of Match for housing affordability:  Private and public examples, such as:

<table>
<thead>
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<th>Source of matching funds for housing affordable at less than 80% AMI**:</th>
<th>Typical dates for applications</th>
<th>Typical dates for allocations</th>
<th>Annuals amounts of matching funding</th>
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<td>Annually</td>
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<td>Low Income Housing Tax Credits</td>
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<td>Project specific</td>
<td>Project specific</td>
<td>7 figures each year</td>
</tr>
<tr>
<td>Homebuyers' downpayments and/or sweat equity investment</td>
<td>Project specific</td>
<td>Project specific</td>
<td>6 figures each year</td>
</tr>
</tbody>
</table>

* AMI is Area Median Income, published annually by US HUD, adjusted for household size. See Attachment H.

As outlined in the narrative below, the amount of EDI invested will leverage six to ten times that amount in construction, acquisition and renovation jobs, plus secondary impacts.
Overview of the concept:

EDI funding will be earmarked for use in an economic development strategy, paying for public facility costs that are related to construction of housing affordable for the local work force (eligibility explained below).

The City of Ferndale has prepared this application on behalf of itself, the City of Bellingham and any Whatcom city or town that would like to participate. This application will summarize the proposed use of EDI grant and loan funds; that is, EDI will be used for impact fees and public utility charges that are directly related to construction of housing affordable at or below 80 percent of the area median income.

The following application provides more detail about how EDI will be used in a simple, efficient way to increase the number of construction projects and construction jobs producing housing for the local work force. The sections below include information about administration of the program, how loans and grants will be structured, the division of labor between the County and the cities, and how cities can request EDI funds from the County.

Support for the general concept:

The use of EDI funding for public facilities related to housing affordability has the support of many leading housing advocates including County Executive Kremen, Mayor Jensen, Mayor Pike, Mayor Bromley and others.

At its June 15th meeting, members of the Small Cities Partnership discussed the general concept, and County Executive spoke strongly in favor of the proposal. Representative Kelli Linville and WA Department of Revenue staff were present.

After discussion, the Small Cities Partnership voted in favor of a motion to support this proposed use of EDI funds, even though the Small Cities Partnership does not routinely vote on agenda items like this June 15th informational presentation. For background information for the Small Cities group, a memo dated June 11, 2010 was provided, outlining the proposal. (See Attachment A for copy of the memo.)

The general concept also has the support of the Building Industry Association of Whatcom County, the Whatcom County Association of Realtors and local nonprofit housing developers. (See Attachment B, letters of concurrence and support.) It also had the unanimous support of the Countywide Housing Affordability Taskforce. (See Attachment C, excerpt from CHAT September 2008 report executive summary.)

Source of funds:

State statute and Revised Code of Washington Chapter 82.14.370 redirects to local jurisdictions a portion of the state sales tax revenue. This local funding is intended for use by local jurisdictions specifically to finance public facilities serving economic development strategies. (See Attachment D for RCW excerpt.)

In Whatcom County, this funding is known as the Economic Development Investments (EDI) Program. It is also sometimes generically referred to as the "rural sales tax" program. (See Attachment E for a Northwest Economic Council website screen shot describing the EDI Program.)
Using EDI for public facilities that are required as a prerequisite of housing construction:

As the reader may already know, under the state statute, EDI funds may be used only for public facilities, not for private facilities or private buildings. In conformance with this statute, the proposed eligible uses of this EDI application will be payments for public facilities, specifically, fees and charges for public facilities associated with new construction.

These public facility costs are often called "off-site improvements", and examples of these costs include impact fees (transportation, schools, parks) and certain utility charges (capital facility costs of public utilities including water systems, sewer systems and stormwater systems). These public facility fees and charges add up to a significant cost, especially when the target price point is housing affordable for the local work force.

Components of this EDI economic development strategy and the outcomes that result:

This use of EDI funding has several components as an economic development strategy:

✓ EDI will spur job growth in the construction sector, with skilled jobs that will help revitalize the local economy, especially in the hard-hit real-estate sector and the construction trades. The EDI funds can pay the public facility costs attached to affordable residential construction, reducing or eliminating this significant cost hurdle and, as a result, making projects feasible that would otherwise not happen. More homes will be feasible financially, resulting in more construction getting started and, ideally, construction of this type would continue without interruption.

✓ In addition to the job creation that results from construction of homes for the work force, this EDI proposal is an investment in human capital. The results from this economic development strategy will include a human capital return on investment, and its impact will be annual and long lasting.

The local economy needs human capital; that is, a stable, reliable, skilled work force that can afford a home close to where the jobs are. Investing in the human capital of a stable work force means less spent on employee turnover, on employee recruitment and training expenses, and on the loss of productivity or loss of quality that can result from higher employee turnover. Instead, local employers benefit from the higher productivity of more experienced workers.

This labor force issue is especially acute in certain economic sectors, including the health care, agriculture and education sectors, where many essential, skilled employees earn incomes that are well below the median income and therefore too low to afford market-priced housing for themselves or their families. Many thousands of these modest-wage jobs are essential to the local economy and will never be off-shored; that is, these jobs will always be local. It's also likely that these jobs will always be paid wages that are less than the median wage. Some of the jobs, like early childhood care and education, will likely be paid wages well below the median, in spite of early childhood being the smartest time to invest in people.

✓ Just like there is a human capital component to this economic development strategy, there is physical capital or built capital component. Strategically, public facilities and housing for the work force are essential components of a healthy, local, economic infrastructure. "Housing for the work force" is just as important as a water supply or transportation system. Like other parts of the built infrastructure, the community's homes are a long-term capital asset. The use
of EDI funds proposed in this application will help to increase the built capital of affordable homes, bringing the supply closer to what the real demands are, given the demographics of the local work force. EDI funds will help build up the number of more affordable homes available within the economic infrastructure that serves the local area, or job-shed as it's sometimes called.

(A short aside about the scale of the need for more homes people can afford:

Data for the Whatcom area, including the US Census, show a very large need for more homes that local workers, families and individuals can afford, especially for those who have local jobs that pay less than the median income.

Roughly 20,000 households in Whatcom County, approximately one out of every four households, had housing costs that were unaffordable, according to the US Census in 2000, and about half of those 20,000 households, approximately one out of every eight in Whatcom County, was spending over half of their gross monthly income on housing costs. Spending half your income or more on your housing costs is called an "extreme housing cost burden" in the US Census. Over 10,000 households in Whatcom County, one out of every eight, had an extreme housing cost burden in 2000. New numbers will be available soon from the 2010 Census, and it's unlikely that these percentages will have improved.

To add to this existing acute affordability problem among certain segments of the current population, planners have projected that, as Whatcom's population grows over the next 20 years, we can anticipate the demographics of the jobs and households that will comprise that growth. Based on that analysis, an estimated 40 percent or more of the population growth in Whatcom County will be households that will have incomes at or below 80 percent of the median income; many will have incomes well below the median.

Using this method of estimating housing demand, the 2006 estimate was 11,000 more affordable homes needed to meet projected growth in the population with incomes below 80 percent of the area median income. The County Executive and Mayor of Bellingham convened the Countywide Housing Affordability Taskforce (CHAT) in 2007 to address this number. The County and City of Bellingham estimated that over the next 20 years roughly two out of every five new households will likely have a difficult time affording a market-priced rental home or home to own. What will happen is that these 11,000 households will likely spend an unaffordable amount of their household income on housing costs unless more affordable homes become available.

Based on these housing affordability demographics, we see a staggering number of affordable homes will be needed through efforts supported by this EDI strategy and other programs.)

Returning to economic development strategy components:

✓ Another outcome of this EDI strategy is an improved competitive advantage in the business world, because there is a Housing+Transportation Affordability issue that increasingly factors into workers' and businesses' decisions about staying or relocating. To increase this competitive advantage, the EDI strategy proposed in this application will increase the number of homes that will be affordable for workers who earn lower wages in the local job-shed.

The proximity of homes to workers' job sites is the part of the built capital side of investing in the human capital of the local labor force. Ideally, workers' homes will be close to where they
work and/or where family members have the option of not driving all the time.

This idea of homes for the work force, sometimes called workforce housing, has become a catch-phrase in economic development circles, in the real estate industry, and in affordable housing strategies around the country. (See Attachment F for excerpts from recent reports on homes for the work force.)

✓ For a broader economy-wide impact, EDI for public facilities related to housing for the work force will have a double multiplier effect. The first multiplier effect multiplies spending by six to ten times\(^1\); that is, construction spending would be six to ten times the amount of EDI funds invested.

The second multiplier effect results from construction spending rippling throughout the overall economy, creating three or more times the local economic impact of the construction spending. Therefore, conservatively estimated, each $1,000,000 in EDI invested will create $6,000,000 to $10,000,000 in construction activity, and an overall impact of $18,000,000 to $30,000,000 or more in local economic activity. Seldom will Whatcom-area EDI funding leverage that much additional spending nor have as large a multiplier effect.

✓ There are other facets to this EDI strategy, and it is consistent with other economic development strategies previously published, for example in the CHAT report, local GMA Comprehensive Plans, and the local CEDS (Community Economic Development Strategy).

The following responds to the subsections of the NWEC EDI standard application form:

A. Request For Funding Terms

A1. Indicate the terms of the funding that you are requesting here.

EDI will be invested either as a deferred investment loan or recoverable grant secured by a contract or deed restriction recorded at the County Auditor and running with the land. Title reports will list this recorded document as long as the EDI funds remain invested in the property. (At County Executive’s request, application changed to all loans, no grants.)

Deferred loans: For affordable housing that is structured to be temporarily affordable, a deferred subordinate loan is appropriate, with EDI loan funds being paid back when the home exits the affordability program. Examples of housing structured to remain affordable temporarily include Habitat for Humanity and Whatcom/Skagit Homes.

Recoverable grants: For affordable housing that is structured to stay permanently affordable, a recoverable grant is appropriate, with the EDI grant funds being recovered (or “recaptured”) if the home ever comes out of a permanent affordability program. Examples of housing structured to remain affordable permanently include the Bellingham/Whatcom County Housing Authority, Catholic Housing Services, Mercy Housing and Kulshan Community Land Trust. (This section about Recoverable Grants no longer applicable.)

\(^1\) Based on recent rental projects completed by the Bellingham/Whatcom County Housing Authority and recent homeownership projects completed by Kulshan Community Land Trust.
Readers familiar with housing affordability investments will recognize the use of deferred loans and recoverable grants in public financing of both affordable rental and affordable homeownership housing. The non-amortizing nature of deferred loans and recoverable grants always results in lower monthly housing costs, helping to bring housing costs into the affordability range. Affordable is always defined in relationship to household income, and as a reasonable monthly housing expense, spending roughly one-third of household gross income on housing costs. (See Attachment G for Whatcom County Code Chapter 20.97.221 which has a detailed definition of "low-income housing", essentially housing affordable to a "low-income person" which is defined as income at or below 80 percent of the area median income.)

A simple, uniform, county-wide system will list, track and monitor the properties that use EDI investments so the public can be assured of the longest possible benefit and the eventual recapture of funds, when appropriate. The ongoing monitoring of a small, growing database of properties is not expected to be a substantial burden, considering that these types of properties already have reporting requirements with other funders. In any case, the number of projects that qualify for this EDI program is expected to be less than five per year in the initial years, and five per year ought to be manageable, given that administrative costs would be EDI-eligible expenses.

Readers may also be familiar with the question of whether public funding may assist with housing affordability and how this addresses the provision in the Washington State Constitution at Article 8, Section 7 which says "No county, city, town or other municipal corporation shall hereinafter give any money, or property, or loan its money, or credit to or in aid of any individual, association, company or corporation, except for the necessary support of the poor and the infirm..."

This issue has been addressed by the Washington State Legislature which, as a measure of "support of the poor", authorized towns, cities and counties to assist in low income housing with loans or grants to owners or developers of such affordable housing. WA State statutes also refer to the same income standard used with many federal affordable housing programs, that is, gross household income at or below 80 percent of the area median income, adjusted for household size. (See Attachment H for the current income maximums that define 80 percent of AMI for the Whatcom County area, published annually by the US Department of Housing and Urban Development.)

To protect the EDI investments and to require repayment, a contract or deed restriction will be recorded with the County Auditor, not necessarily in the form of a lien that interferes with loan-to-value ratios or other financing considerations. The recorded document would mandate repayment of the EDI funds whenever the home, whether rental or owner-occupied, is no longer included in an affordability program. The State of Washington Housing Trust Fund uses this approach when it invests in affordable housing construction projects, with annual reports that monitor the status of assisted homes. (See Attachment I for example of a WA HTF contract.)

The EDI investment will remain in place as long as the home remains in an affordability program that stewards the affordability of the home for future eligible income-qualified households. When a home comes out of an affordability program, the EDI invested on behalf of that home must be repaid into the EDI Program.
This proposed system will allow access to the EDI funding for both rental and homeownership construction, and it will be available both to projects that are temporarily affordable (for example, Habitat for Humanity, Whatcom/Skagit Homes) and for permanently affordable programs (for example, Bellingham/Whatcom County Housing Authorities, Mercy Housing, Catholic Housing Services, Kulshan Community Land Trust).

(a) Total number of years for repayment:

The years for repayment will vary with the period of affordability of the homes assisted. For homes built by Habitat for Humanity, the affordability period is designed to last as long as 20 years, and for Whatcom/Skagit Homes, the period of affordability ends when the original homebuyer/builder sells the home. For the local Housing Authority and other nonprofit rental developments, the period will likely be the useful life of the building unless the property is sold out of an affordability program. For Kulshan Community Land Trust homes, the period of affordability is designed to be perpetual; however, any home removed from the KulshanCLT affordability program would repay the EDI investment associated with that property.

In all cases, the EDI investments will be tracked and will be recorded in the title records of the Whatcom County Auditor and title insurance companies. The properties with these recorded contracts or deed restrictions will be monitored for their continued inclusion in an affordable housing program or for their repayment of EDI when the home is withdrawn from an affordability program.

(b) Other specific terms:

The EDI funds will be need to be drawn from the County's EDI reserve account when the impact fees and utility charges are due and payable to the applicable jurisdiction, often prior to construction of the homes. Prior to when the EDI funds are needed, a municipality and project proponent would send a simple request for funds, with appropriate documentation, to the City of Bellingham office that reviews projects for eligibility. If the construction project is found to be eligible, the request for funds will go to the County for payment. The County would send a payment to the municipality which would then pay the impact fees and utility charges that were described in the request for funds.

Note that each city will not be liable for repayment of the EDI loan. Instead, responsibility for repayment will be recorded on a residential property's title; the repayment responsibility will run with the land, and will be due and payable if the home is withdrawn from an affordability program.

All recaptured or repaid EDI funding from this housing affordability program will be accounted for by the County in the same way the County currently tracks EDI repayments. The recapture or repayment of EDI deferred loans or recoverable grants will occur when a property is being removed from an affordability program, at the time of sale or title transfer.
B. Project Description

B1. Describe the entire public facility project, including the parts that you are not asking EDI to fund.

For each municipality that collects impact fees and public utility fees, the funds collected are invested in public facility projects. Residential construction is required to pay its fair share of these off-site public facility costs. This EDI program is designed to pay those off-site costs on behalf of income-qualified affordable homes being built to serve households at or below 80 percent of median income.

B2. Will this project upgrade an existing public facility? _______ (Y/N) Build a new one? _______ (Y/N) Describe:

(This question is not applicable to the proposed EDI project in this application.)

B3. Specifically, what element(s) of the public facility project will EDI funds pay for?

(This question is not applicable to the proposed EDI project in this application.)

B4. Include a site map of the area. (Materials must be reproducible in black and white and in 8 1/2 x 11 format.) Identify the location of the site, public infrastructure and private development project, existing and/or proposed.

(This question is not applicable to the proposed EDI project in this application.)

B5. Attach engineering estimates that support project costs. Identify if estimates are from preliminary engineering or design engineering work.

(This question is not applicable to the proposed EDI project in this application.)

B6. Describe how the public facility project will enhance or encourage other development in the immediate area in addition to the direct development described in this application.

(This question is not applicable to the proposed EDI project in this application.)
B7. List all permits and environmental reviews required for the public sector project and give their current status (applied for, application being prepared, permit issued, etc.)

(This question is not applicable to the proposed EDI project in this application.)

B7. Provide preliminary project schedule:

(This question is not applicable to the proposed EDI project in this application.)

B8. Other jurisdictions.

(a) Are other jurisdictions, such as counties, cities, port districts, tribes, state/federal agencies involved in the planning, design, financing, construction or operation of this project? If so, please identify all entities:

Potentially, all seven towns and cities in Whatcom County could participate in the use of this EDI program. The City of Ferndale and the City of Bellingham might be the first, although the City of Lynden may have an eligible project with the Whatcom County Housing Authority in the near future. Blaine, Sumas, Everson and Nooksack, to the extent they have eligible residential construction and eligible fees and charges, would also have access to this EDI program.

The City of Ferndale agreed to take the lead in preparing and submitting this EDI application on behalf of itself, the City of Bellingham and any other town or city that might like to participate.

In earlier discussions, and based on the amount of EDI reserve funds currently available, the proposed EDI amount to be earmarked or reserved for this EDI application’s purpose would be $1,200,000, which is based on roughly $120,000 being available for each of the six small cities and $500,000 being available for projects in the City of Bellingham and its unincorporated UGAs. Affordable housing developments would have access to the $1,200,000 based on a "first come, first served" basis, with the projects that are ready to proceed being given access to the EDI funding first.

(b) Explain how completion of the project is coordinated between these entities.

The coordination between the County, as steward of EDI funds, and the cities that might tap into the EDI funds earmarked for public facilities related to affordable housing construction would be administered through an interlocal agreement between the County and the City of Bellingham. The County had expressed its preference that the cities take the lead in administering the proposed program, and the City of Bellingham has offered to administer the program.
In an interlocal agreement between the County and Bellingham, the County would look to the City to review for eligibility any construction project that appears to be EDI-eligible. The City will assemble the documentation to support a decision and will recommend to the County that the County pay certain costs on behalf of an eligible construction project. The County would then receive and review a request for EDI payment, knowing it had been thoroughly reviewed by the City prior to being submitted to the County. The City of Bellingham has had in place for many years a system for reviewing and approving expenditures of public funds on affordable housing projects, and therefore it will be efficient and reliable to have Bellingham staff and its loan committee review for EDI-eligibility all projects anywhere in the County.

The City of Bellingham's administrative costs are estimated to be 30 to 50 staff hours per housing development project, with these costs being EDI-eligible and reimbursed by EDI funds. Actual hours devoted to administration will be tracked, and the estimated 30 to 50 hours may change, based on experience.

After the Whatcom County Council reviews and approves the EDI allocated as proposed in this application, the funds would be available for construction projects after those projects have been determined to be eligible. The County will retain its EDI stewardship role, providing a final review of the documentation prior to making a payment of EDI funds to the municipality that is charging the impact fees and utility charges.

**B9. Who will operate and maintain the public facility in this project?**

(This question is not applicable to the proposed EDI project in this application.)

**B10. Will this project impact utility rates and public services within the jurisdiction?**

(This question is not applicable to the proposed EDI project in this application. The affordable housing projects would have paid their fair share for any impact on utility rates and public services within the jurisdiction.)

**B11. Is this project consistent with your local comprehensive plan, capital facilities plans and/or county comprehensive economic development strategy?**

(This project is consistent with the Whatcom County Comprehensive Plan Housing Chapter. Also, the project fits within the top six recommendations of the Countywide Housing Affordability Task Force (CHAT) (See Attachment C, excerpt from CHAT September 2008 report executive summary.)
C. Financial Information On Cities, Towns, Port Districts or Counties

C1. Will a revenue stream be generated that could repay an EDI loan in addition to funding the operations and maintenance costs of the facility? Yes ___ No ___.

(This question is not applicable to the proposed EDI project in this application. As noted above, EDI investments will be deferred so as not to add to monthly housing expenses, with repayment of EDI funds whenever a home or homes come out of an affordability program.)

C2. In the context of your entity's overall annual budget, explain the need for EDI assistance.

(This question is not applicable to the proposed EDI project in this application.)

C3. If the local jurisdiction is not financially contributing to the project, please explain why.

(This question is not applicable to the proposed EDI project in this application.)

C4. Has the use of revenue or general obligation bonds, LID, ULIDS been explored for this public facility project? Yes ___ No ___ Explain the outcome and describe why these financing sources would or would not be applicable for this project.

(This question is not applicable to the proposed EDI project in this application.)

D. Private Sector Commitment

(This Section D. is generally not applicable to the proposed EDI project in this application. This part of the blank EDI application form was intended for a single development project, not a series of construction projects producing affordable homes.)

D1. Private Sector Firm Name, Address, etc.

(This question is not applicable to the proposed EDI project in this application.)
D2. Describe the proposed private development or expansion project that will be supported by the public facility project.

The private development supported by the public facility projects will be construction of housing affordable to households with incomes at or below 80 percent of the area median income, both rental housing and homes for homeownership, at various locations in each of the seven cities.

D3. Explain why the private development requires the proposed public infrastructure improvements described in this application.

Generally, construction of housing triggers the payment of applicable impact fees and public utility charges, based upon the policies and municipal code for the location where the homes will be built. Each municipality decides what fees and charges are applicable to construction of homes as a contribution to the capital costs of public facilities.

D4. In the table below, list the number of projected jobs, by job type, to be retained and/or created as a direct result of the project. Express jobs as Full Time Equivalents.

This question is not applicable at this time for the proposed EDI project in this type of application. Later, each project will be able to list the job descriptions, duration and hourly rates of employment created in residential construction.

However, as a measure of job creation related to housing construction, the National Association of Home Builders in 2008 estimated that there are 3.05 jobs created from building an average new single family home, and 1.16 jobs from building an average new multifamily rental home.

Note also that many jobs related to real estate development and construction have incomes that fall within the livable wage range.

D5. Explain how these job projections were developed. Attach supporting information such as a business plan or year-end financial statements. (Financial statements may be unaudited). Note: The entire EDI application is considered a public record; however, financial and commercial information provided by the private business is exempt from disclosure to the extent permitted by 42.17 RCW.

(This question is not applicable to the proposed EDI project in this type of application. Later, each project will need to present a business plan for each proposed request for use of EDI funds.)
D6. Will the project provide expanded employment opportunities to disadvantaged or unemployed workers? How will the firm work to hire people from Whatcom County?

Yes, local construction of housing is most often local companies hiring local people, with a range of skills, from entry level to master tradespersons. Local construction offers a wide range of opportunities including bringing back unemployed workers, job training/education linked to employment, job readiness programs, YouthBuild and apprenticeship programs, etc.

D7. Outline construction schedule (if applicable) for the proposed private sector project.

(This question is not applicable at this time for the proposed EDI project. Later, each project will be able to present its construction schedule in its request for EDI funding.)

D8. List all permits required for the private sector project and give the current status (applied for, application being prepared, permit issued, etc.)

(This question is not applicable at this time for the proposed EDI project. Later, each project will be able to present its permits required and their current status in its request for EDI funding.)

D9. What private authorizations are still needed before proceeding with the proposed private development project?

(This question is not applicable at this time for the proposed EDI. Later, each project will be able to present its other applicable authorizations required and their current status, in its request for EDI funding.)

D10. Explain how the private sector is financing their capital investment in this project. When will private sector financing be in place? Please list financial references that can verify financing sources and capacity for this project.

(This question is not applicable at this time for the proposed EDI. Later, each project will be able to present its other capital investments, whether private or public, and their current status, in its request for EDI funding.)

E. Project Feasibility

E1. Summarize the results of the feasibility analysis that supports your proposed public facility investments.

Affordable housing developers have been struggling to find additional means with which to
collaborate further with the private sector. Some affordable housing construction has been feasible, but a much higher volume of production might be possible and is definitely needed.

More affordable homes could be built if more funding becomes available, and EDI funds for public fees and charges would fill a significant gap in matching funds needed to make construction feasible, often in the range of ten percent of the total costs of construction.

The local public/private collaboration that produces affordable homes, involving the local Housing Authority, Habitat for Humanity, Whatcom/Skagit Homes, The Opportunity Council, Kulshan Community Land Trust and others along with general contractors, subcontractors and suppliers, has proven it is feasible to plan and build affordable homes. The challenge is to do more of what has proven to be feasible.

**E2. Identify industries that are targeted for recruitment with this project.**

(This question is not applicable for the proposed EDI use.)

**E3. Describe a market strategy that contains action elements with appropriate timelines. Who will be responsible for implementing the marketing strategy?**

(This question is not applicable for the proposed EDI use.)

**E4. Describe the site’s appropriateness by addressing zoning, environmental restrictions, access to infrastructure, distance to markets, etc.**

(This question is not applicable at this time for the proposed EDI use. Later, each project will need to present its site’s appropriateness in its request for funding.)

**E5. Provide an analysis of other adequately serviced land in the area and give the primary reasons for the selection of the proposed site over other existing sites.**

(This question is not applicable at this time for the proposed EDI use. Later, each project will need to present its site’s appropriateness in its request for funding.)

**E6. Describe the plan to secure the total required funding for the public facility improvements. Is it secured or not, and will it be available in the time frame established for project completion?**

(This question is not applicable for the EDI application. Public facilities are the purview of municipalities, and the impact fees and public utility charges are set by the municipality.)
E7. For the total project, including public and private components, please describe the projected number of jobs created and/or retained, anticipated wages and how wages compare to local prevailing wages, opportunities the project may offer to the local labor force and other related issues.

This question is not applicable at this time for the proposed EDI application. Later, each project will be able to list the job created and/or retained and their typical wages.

In the construction trades, residential construction usually pays the local prevailing wage, and affordable housing construction projects often are required to pay state prevailing wages, sometimes with Davis/Bacon Act compliance certification.

E8. Describe specific, quantifiable measures of the outcomes, other than jobs, that will demonstrate project success. Describe how you will measure these. Explain what you expect to show as progress toward the outcome for each year before the whole outcome has been achieved.

The proposed use of EDI will help to demonstrate that additional local funding can have an important, catalyzing effect on the production of affordable homes.

The measure of success will be how often and quickly an allocation of $1,200,000 is deployed and how many additional affordable homes are created using this funding.

Application for Funding – Certification

I HEREBY CERTIFY THAT THE INFORMATION GIVEN IN THIS APPLICATION TO WHATCOM COUNTY FOR INVESTMENTS IN ECONOMIC DEVELOPMENT IS TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE AND BELIEF.

Signature of Responsible Public Official: Signed by Greg Young Date 9/9/2010

Print or Type Name and Title: Greg Young, Ferndale City Administrator
Homes Affordable for the Workforce Program

Guidelines for Requesting the Use of Whatcom County Economic Development Investment (EDI) Funds For Public Facility Costs Related to Construction of Affordable Single-Family Owner-Occupied Homes and Renter-Occupied Homes

The Whatcom County Executive’s Office, as the administrative agent for these EDI funds, will accept requests for use of EDI funds for public facility costs related to construction of single-family owner-occupied affordable homes and renter-occupied affordable homes, in both single-family detached and attached housing.

Generally, the public facility costs eligible for EDI include impact fees and utility connection fees. This includes the following:

- Water/Sewer/Storm Drainage utility connection fees
- Traffic impact fees
- Park Impact fees
- School Impact Fees
- Fire Impact Fees

Not eligible for EDI funding are the home’s side sewer line, water service line, or water meter – only payments to the local government for utility connection and impact fees are eligible.

Builders who would like to request use of EDI funds for this purpose will need to provide adequate information for Whatcom County to determine the eligibility of the proposed project. The Whatcom County Executive's Office will process the application and generally administer the program, and the final approval for the use of EDI funds rests with Whatcom County.

Generally, two types of construction projects are eligible; long-term affordability and temporary affordability:

- When long-term affordability is the aim of the project:
  If the affordable home is in a not-for-profit organization’s affordable housing program and there is State and/or Federal investment in the property that restricts its use to affordable housing long-term, the EDI loan shall be due and payable when the property ceases to be used for affordable housing or at the end of the loan term whichever occurs first.
    a. Loan term for single family owner-occupied homes: 50 years
    b. Loan term for affordable renter-occupied homes: 20 years

These loans will be secured with a recorded Declaration of Restrictive Covenants or a recorded deed of trust and promissory note. If a property changes ownership during the term of 50 or 20 years, a Loan Transfer application recorded against the deed of trust and promissory note will be required at the time of sale/transfer if the property continues to be affordable for people with incomes at or below 80 percent of the county median income, adjusted for family size. This will allow the County to track the original loan along with the property, the deed of trust, or any other recorded documents.
The County, at some future date, may or may not consider alternatives to the repayment of the deferred interest and principal, including alternatives such as the extension of the loan for another period of affordability or an option to forgive the loan principal and interest if the property remains in a not-for-profit organization's affordable housing program.

- When temporary affordability is the aim of the project:
  If the home is other than described above, the loan shall be due and payable when the property is sold or transferred or, if rental housing, when the home is no longer rented at an affordable price to a person with income at or below 80 percent of the county median income, adjusted for family size, whichever comes first. These loans will be secured through a deed of trust and promissory note.

If approved for a particular property, EDI funds shall be paid directly by the County to the permitting agency charging the impact fees or utility fees, and the EDI funds shall be considered a deferred loan (or investment) carrying a simple 1 percent annual interest rate.

**Interest shall accrue and be tracked by the County but shall not be required to be repaid unless and until the home(s) come out of the affordable housing inventory and/or is sold at market rate or at the end of the applicable loan term, whichever comes first. Repayment of the loan and deferred interest shall be fully payable to the County at time of closing.**

For purposes of this EDI Program, qualifying “affordable” housing shall be defined for renter-occupied and owner-occupied homes as follows:

(i) Affordability is determined via the participating housing agencies’ chosen state or federal rental cost maximums or homeownership cost maximums, updated annually, such as the Washington State Housing Finance Commission guidelines

(ii) Renter-occupied housing units shall be affordable to, and occupied by, households with an income of eighty percent or less of the county median income, adjusted for family size,

(iii) Owner occupancy housing units shall be affordable to, and occupied by, at time of purchase, households with an income of eighty percent or less of the county median income, adjusted for family size.

To qualify, the home(s) shall not have been owner-occupied and may be currently under construction. In most cases, the preference is to award these funds for homes during or prior to the permitting stage.

For more information about this funding program, contact Tawni Helms, Administrative Coordinator, Whatcom County Executive Office at (360) 778-5208 or thelms@co.whatcom.wa.us. Completed applications should be mailed to:

Tawni Helms, Administrative Coordinator
Whatcom County Executive Office
311 Grand Avenue, Suite 108
Bellingham, WA 98274

**Proposal Format**

A. Applications must be typewritten in black font on standard 8 ½ x 11-inch white paper with one-inch margins and stapled once in the upper left corner. Applications submitted on recycled paper and printed double-sided are encouraged. Applications submitted with binders or covers will be rejected. Page numbers are required.

B. Applications at this stage will not have a page limit.
C. Applicants must submit one (1) original and three (3) copies of the application in a sealed envelope, plainly marked on the outside with the applicant's name and address and the words “Application for Use of EDI Funds for Public Facility Costs Related to Affordable Housing Construction.”

D. The original must have original signatures.

E. All submittals must contain the information requested. Please respond to each section in the same order in which it is asked. Any deviation from these specifications must be clearly addressed in writing.

Proposal Contents

A. Provide a cover letter, limited to one page, on agency letterhead, briefly describing the project and how much EDI funding is being requested for which specific fees. An attached written statement by the permitting agency detailing the connection and/or impact fees payable shall be required.

B. Provide a signed Application Cover Sheet, using the format at the end of these guidelines. An authorized signatory of the applicant’s organization must sign the cover sheet.

C. Provide a Project Proposal, including the following.
   1. Applicant's corporate history, mission, and organizational structure.
   2. A description of the construction project, including location, number and type of homes to be built, and the characteristics of the individuals or families that will benefit. A detailed map showing the location of the proposed affordable housing is required.
   3. A project capital budget summary, including all sources and uses of funding and the costs per home.
   4. A discussion of each funding source in the capital project, including the timing and certainty or uncertainty that those funds are or will be secured.
   5. A description of how the home’s affordability will be created and monitored.
   6. A discussion of the proposed timeline, including dates for applying for and securing other funding, as well as for design, permitting, construction and completion of the project.
   7. A discussion of the likelihood that the project will be completed as proposed, including contingencies that may occur, and other factors that will improve the County’s confidence that the project will be completed.
   8. A discussion of site control, including how long the property has been owned, past investments in the property, current debt if any, etc.
   9. A description of how long the homes will remain affordable to households with low income and how funds will be repaid to the County if the home is removed from its affordability program,
   10. If any nonresidential improvements, facilities or other amenities are included in the project, please describe.
   11. Any other information that helps to describe the project.

D. Provide as attachments, other pertinent information, including:
   1. Excerpts of pages or sections from other applications for funding for this project, such as pertinent sections from the WA Housing Trust Fund application and/or the Low Income Housing Tax Credit Application, if applicable.
   2. Agency board of directors names and affiliations
   3. Project team, including staff, consultants and contractors
   4. A capital project budget, based on best available estimates
   5. Any other information that helps to describe the project
Homes Affordable for the Workforce Program

Objectives

The objectives of the Housing Affordable for the Workforce Program are to finance public facilities through payment of City impact fees and eligible utility charges that will:

1. Improve and maintain public infrastructure
2. Increase construction sector jobs.
3. Stimulate the Whatcom County economy.
4. Stimulate affordable private homeownership and affordable rental home construction.

Policies

1. Whatcom County will fund the program with EDI loans up to the amount recommended by the EDI Board and approved by the Whatcom County Council. The County will review the effectiveness of the program periodically.

2. EDI Loans are limited to city impact fees and eligible utility charges related to new affordable homes that are constructed as owner-occupied homes and renter-occupied homes.

3. For purposes of this EDI Program, qualifying “affordable” housing shall be defined for renter and owner occupancy program purposes as follows:
   (i) Affordability is determined via the participating housing agencies’ chosen state or federal rental cost maximums or homeownership cost maximums, updated annually, such as the Washington State Housing Finance Commission guidelines
   (ii) Renter-occupied housing units shall be affordable to, and occupied by, households with an income of eighty percent or less of the county median income, adjusted for family size,
   (iii) Owner occupancy housing units shall be affordable to, and occupied by, at time of purchase, households with an income of eighty percent or less of the county median income, adjusted for family size.

4. EDI Loans shall bear 1 percent simple interest payable when loans become due.

5. EDI loans shall be due:
   i. If the affordable home is in a not for profit organization’s affordable housing program and there is State or Federal investment in the property that restricts its use to affordable housing, the EDI loan shall be due when the property ceases to be used for affordable housing or at the end of the loan terms, whichever comes first.
      a) Loan term for single family owner-occupied homes: 50 years
      b) Loan term for affordable rental housing: 20 years
   These loans will be secured with a recorded Declaration of Restrictive Covenants or a recorded deed of trust and promissory note. A Loan Transfer application recorded against the deed of trust and promissory note will be required at the time of sale/transfer. This will allow the County to adequately track the original loan against the deed of trust and other recorded title documents.
ii. If the home is other than as described in 5.i. above, the loan shall be due when the property is sold or transferred or, if rental housing, when the home is no longer rented at an affordable price, whichever comes first. These loans and affordability requirements will be secured through the deed of trust.

6. Payment of impact fees and eligible utility charges:

   i. The county will pay the city directly assessing the impact fees and/or eligible utility charges.

   ii. Payments by the county will be based on an itemized list of impact fees and related charges provide by the city and signed by a city official.

   iii. The program administrator will approve the program loan prior to county payment.

   iv. The program administrator will approve the title documents prior to county payment.

   v. The restrictive covenant or deed of trust will be recorded prior to payment of impact fees and eligible utility charges.

   vi. The program administrator will issue and record the notice of satisfaction when the loan is paid.

7. Whatcom County Executive’s Office will be the program administrator for the Housing Affordable for the Work Force Program.
Housing Affordable for the Work Force Program

Application Cover Sheet Requesting the Use of
Whatcom County Economic Development Investment (EDI) Funds for
Public Facilities Costs Related to Construction of Affordable Homes

Applicant Information

Name and Title of Authorized Representative: ________________________________

Name of Organization: _____________________________________________________

Address: __________________________________________ City: ________________

State: ______ Zip Code: ______ Phone: __________ Fax: ______________________

E-mail: ________________________________________________________________

Project Information

Location of Proposed Affordable Housing ______________________________________

Legal Requirements

Please check the appropriate box below and provide the information requested:

___ Incorporated as a private non-profit corporation in the State of Washington and has been granted 501(c)(3) tax exempt status by the U.S. Internal Revenue Service.

    IRS Employer Identification Number (EIN): ________________________________

___ A public corporation, commission, or authority established pursuant to applicable Washington State law

    IRS Employer Identification Number (EIN): ________________________________

___ Incorporated as a private for-profit corporation

    IRS Employer Identification Number (EIN): ________________________________

Other Information

Please indicate the total amount of funding requested: $____________

If rental project, identify State or Federal maximum used to determine affordable rental rates:

_______________________________________________________________________

I certify that the above-named applicant will comply with all Whatcom County requirements if EDI funding is used by my agency. All information contained in this application is true and accurate to the best of my knowledge.

Authorized Signature and Title ________________________________ Date ____________
# WHATCOM COUNTY COUNCIL AGENDA BILL

## TITLE OF DOCUMENT:
Electronic Patient Care Reporting System for Emergency Medical Services

## ATTACHMENTS:
1. Cover Memo on Contract
2. Contract Information Sheet
3. Software Licensing 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.)

Request approval for the County Executive to enter into an agreement between Whatcom County and ImageTrend, Inc. in the amount of $143,134.20 for software licenses, professional services and annual fees to implement a regional Electronic Patient Care Reporting (ePCR) software system for Emergency Medical Services (EMS).

## 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)

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MEMORANDUM

TO: Jack Louws, County Executive
    Whatcom County Council
FROM: Tyler Schroeder, Deputy Executive
DATE: February 6, 2018
RE: Contract for New Countywide Emergency Medical Services Software

Enclosed for your consideration is the proposed agreement between Whatcom County and ImageTrend, Inc. (ImageTrend) for one-time software licenses, professional services and annual fees to implement a countywide Electronic Patient Care Reporting software system for Emergency Medical Services (EMS).

• Background and Purpose

With the successful passage of the EMS Levy, efforts have been made to fulfill the recommendations of the Whatcom County EMS Funding Work Group adopted by County Council in March of 2016. One of the recommendations was the acquisition of a countywide Electronic Patient Care Reporting (ePCR) system. A new countywide ePCR and Records Management System (RMS) will provide common data collection, analysis and reporting across all of the fire jurisdictions (Whatcom County Fire Protection Districts 1, 4, 5, 7, 8, 11, 14, 16, 17, 18, 19, and 21, Bellingham Fire Department, Lynden Fire Department, and South Whatcom Fire Authority).

The Fire Chief’s Association in collaboration with the three largest fire agencies, nominated for the task, vetted several vendors to determine which could best accommodate countywide needs. ImageTrend, a leader in the industry, was determined to be the vendor most suited to meet Whatcom County system wide needs. The Fire Chief’s Association also recognizes that the ImageTrend software will provide system wide data and analytical tools to further improve all aspects of response, patient care and outcomes.

In a parallel effort, City of Bellingham Fire Department issued Request for Proposal (RFP) and subsequently contracted with ImageTrend. Whatcom County is able to contract directly with ImageTrend using City of Bellingham RFP #44B-2016 and Contract #2016-0609 pursuant to the Washington State Interlocal Cooperative Act, RCW 39.34.
As recognized by the Whatcom County EMS Funding Work Group, system wide data collection and appropriate metrics are not currently available. The fire jurisdictions currently use disparate electronic and manual systems to collect and report data. The data is not easily consolidated for system wide analysis. The Funding Work Group recommended that Key Performance Indicators (KPIs) be developed that provide an effectiveness dashboard for management, employees, elected officials and citizens.

The ImageTrend software has robust features to collect and report the data, metrics and outcomes for analysis essential to pinpoint opportunities for system improvements. Some of the beneficial features are listed below:

- All fire jurisdictions will be using the same fully integrated RMS and it will be easy to consolidate data for system wide analysis and reporting
- Quickly create and provide dynamic reports that include measures and outcomes.
- Monitor key performance indicators to reveal trends
- Continuum feature provides active data monitoring on key outcomes such as EMS times, medications and procedures.
- Fully compliant with federal reporting requirements:
  - National EMS Information System (NEMSIS) v3
  - National Fire and Incident Reporting (NFIRS) 5.0
- Integration with the new Computer Aided Dispatch (CAD) system at the WHAT-COMM 911 Dispatch Center
- Integration with local hospitals to quickly transmit patient information
- Integration with medical billing companies for efficiencies

A new EMS Manager has now been hired by Whatcom County to facilitate and oversee this implementation.

**Funding Source and Amount**

In Ordinance 2018-002, County Council approved a Supplemental Budget Request in the amount of $150,000.00 to fund this software implementation.

The amount of the agreement is $143,134.20. The contract has a provision to auto renew each year and there will be annual maintenance fees for software support and hosting starting at $98,176.75.

**Contact Information**

Please contact Tyler Schroeder at x 5207 if you have any questions or concerns regarding the terms of this agreement.
Originating Department: Emergency’s Office
Division/Program: (i.e. Dept. Division and Program) Emergency Medical Services / Reporting
Contract or Grant Administrator: Tyler Schroeder – Deputy Executive
Contractor’s / Agency Name: ImageTrend, Inc.

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

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

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

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

Is this the result of a RFP or Bid process? Yes ☒ No ☐
City of Bellingham
Contract
If yes, RFP and Bid number(s): RFP #44B-2016
Cost Center: 130100

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

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

Contract Amount:(sum of original contract amount and any prior amendments):
$ 143,134.20

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:
Agreement between Whatcom County and ImageTrend, Inc. in the amount of $143,134.20 for software licenses, professional services and annual fees to implement a regional Electronic Patient Care Reporting (ePCR) software system for Emergency Medical Services (EMS).

Term of Contract: Term: Ongoing Expiration Date: Until vacated by either party
Date: 01/31/2018
Date: 01/31/2018
Date: 01/31/2018
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Last edited 10/31/16

346
SOFTWARE LICENSING AGREEMENT

CONTRACT NO.: 276480

WHATCOM COUNTY
CONTRACT NO.
201802004

BETWEEN

WHATCOM COUNTY
311 GRAND AVE, SUITE 108
BELLINGHAM, WA 98225

AND

IMAGETREND, INC.
20855 KENSINGTON BLVD.
LAKEVILLE, MN 55044

IMAGETREND®
THIS AGREEMENT is made and entered into on the date last written below, by and between the ImageTrend, Inc., a Minnesota corporation (hereinafter "IMAGETREND"), and Whatcom County (hereinafter "CLIENT").

RECITALS

WHEREAS, IMAGETREND owns the software system known SOFTWARE; and

WHEREAS, CLIENT desires to obtain the license of the Software mentioned above; and

WHEREAS, IMAGETREND is willing to provide CLIENT with a non-exclusive license of the Software on the terms and conditions contained herein;

NOW, THEREFORE, THE PARTIES HEREBY AGREE AS FOLLOWS:

SECTION 1. DEFINITIONS.

"Authorized personnel" means employees of CLIENT that use the Software in the scope of their employment, licensed EMS and Fire personnel that operate in Whatcom County, Washington which work for local government subdivisions, as well as those same local governments, or CLIENT’s contractors where the contractor’s services must necessarily require access to the Software. Supporting staff to Authorized Personnel, such as information technology personnel, management or overseeing personnel, shall also be considered Authorized Personnel. Personnel who intend to: reverse engineer, disclose, or use or acquire for any purpose not in the scope of the personnel’s employment or necessary for contractor services, any Confidential Information are not Authorized Personnel.

"Confidential information" means the proprietary products and trade secrets of IMAGETREND and/or its suppliers, including, but not limited to, computer software, code, technical parameters, price lists, customer lists, designs, software documentations, manuals, models and account tables, and any and all information maintained or developed by CLIENT pursuant to this AGREEMENT which is deemed confidential under existing state and/or federal law.

"Custom Development" means that CLIENT contracts IMAGETREND through a signed and accepted Statement of Work to customize the software. Each CLIENT shall have the non-exclusive license to utilize such software. Such software may then become a part of the core product and be distributed. Custom Development may require ongoing support and/or hosting and shall be subject to support and/or hosting fee increases. IMAGETREND maintains ownership of all Custom Development.

"ePCR" means an Electronic Patient Care Report.

"ImageTrend Elite Data Marts" means the relational database(s) that contain an enhanced and simplified reporting-ready format of the transactional data collected within ImageTrend Elite. The Elite Data Marts are available for use with the ImageTrend Elite Reporting Tools.

"ImageTrend Elite Reporting Tools" means the Transactional Report Writer, Visual Informatics, Analytical Chart Reporting Tool and Analytical Tabular Reporting Tool in the Software that are based on a set of Elite Data Marts.

"Incident" means any time the CLIENT sends a vehicle to a potential or actual patient.

"License" means an unlimited use license of the software, without rights for resale, for the duration of the contract, defined as Software as a Service (SaaS) which expires when this AGREEMENT expires.
“Licensed Information” means any information pertaining to the Software which is owned by IMAGETREND and is licensed to CLIENT. Licensed Information includes such information as input form, user manuals and user documentation, interface format and input/output format, and any other materials pertaining to the Software.

“Reference” means referral in the promotion of IMAGETREND’S software to other potential CLIENTS.

“Run(s)” means an incident where the CLIENT sends a vehicle to a potential or actual patient.

“Software” means the computer program(s) in machine readable object code form listed in Exhibit “A”, including the executable processing programs comprising the various modules from the Software and the Licensed Information.

“Statement of Work” means the technical document which outlines mutually agreed upon system specification for Custom Development and associated costs, payment terms and acceptance procedures. This document requires CLIENT acceptance and signature prior to beginning work.

“Support” means interactive telephone and e-mail support, computer based online training, product upgrades and enhancements, along with defect corrections, delivered from IMAGETREND’s offices.

“Upgraded Version” means the Licensed Software and/or Licensed Information to which updates, enhancements, corrections, installations of patches or other changes have been made. The exterior form of the Updated Version is reflected by changes to the version numbers.

SECTION 2. TERM OF AGREEMENT.
The term of this AGREEMENT shall be one year(s) from signature date, subject to Section 13 of this AGREEMENT. This AGREEMENT shall be subject to automatic annual renewal unless terminated by either party as provided in Section 13, below.

SECTION 3. GRANT OF LICENSE.
A. NON-EXCLUSIVE USE LICENSE.
In accordance with the terms and conditions hereof, IMAGETREND agrees to grant to CLIENT and CLIENT agrees to accept a non-transferable and non-exclusive use license of the Software for the term of this Agreement. During the term of the AGREEMENT, the CLIENT shall have access to the Software, which will be installed on servers at the IMAGETREND hosting facility and subject to the Service Level Agreement attached as Exhibit B. CLIENT expressly acknowledges that all copies of the Software and/or Licensed Information in any form provided by IMAGETREND to CLIENT hereunder are the sole property of IMAGETREND and/or its suppliers, and that CLIENT shall not have any right, title, or interest to any such Software and/or Licensed Information or copies thereof except as provided in this AGREEMENT.

B. IMAGETREND ELITE DATA MARTS NON-EXCLUSIVE USE LICENSE
In accordance with the terms and conditions hereof, IMAGETREND agrees to grant the use of the ImageTrend Elite Data MartS only via ImageTrend Elite Reporting Tools as included and detailed in Exhibit A. This AGREEMENT does not give the CLIENT the rights to access and query the ImageTrend Elite Data MartS directly using SQL query tools, reporting tools, ETL tools, or any other tools or mechanisms. Direct access to ImageTrend Elite Data MartS is available via separately-priced product and service offerings from IMAGETREND. This Section 3.B, is subject to the Non-Exclusive Use License as covered in Section 3.A and terms of this AGREEMENT.
C. PROTECTION OF SOFTWARE AND LICENSED INFORMATION.
CLIENT agrees to respect and not to, nor permit any third-party to, remove, obliterate, or cancel from view any copyright, trademark, confidentiality or other proprietary notice, mark, or legend appearing on any of the Software or Licensed Information, and to reproduce and include the same on each authorized copy of the Software and Licensed Information.

CLIENT shall not nor shall CLIENT permit any third-party to, copy or duplicate the Software or any part thereof except for the purposes of system backup, testing, maintenance, or recovery. CLIENT may duplicate the Licensed Information only for internal training, provided that all the names, trademark rights, product names, copyright statement, and other proprietary right statements of IMAGETREND are reserved. IMAGETREND reserves all rights which are not expressly granted to CLIENT in this AGREEMENT.

CLIENT shall not, nor shall CLIENT permit any third-party to, modify, reverse engineer, disassemble, or decompile the Software, or any portion thereof, and shall not use the software or portion thereof for purposes other than as intended and provided for in this AGREEMENT.

D. DATA OWNERSHIP AND DATA PROTECTION.
All CLIENT data collected with IMAGETREND Software remains at all times the property of the CLIENT. IMAGETREND will not use or make available any personally identifiable information other than for administering the CLIENT's account and collecting usage statistics in order to improve our products and services specifications. During the term of this AGREEMENT and after termination or expiration of this AGREEMENT, IMAGETREND will not in any way transfer to any third party or use in direct or indirect competition with the other party any information or data posted by CLIENT's and others on IMAGETREND's website and acknowledges that all such information is confidential. CLIENT shall have access to creative tools within the Elite Software platform. Use of these features is conditioned upon assignment to IMAGETREND of all copyrights in any work created within and using the Elite software platform, the terms of use for such creative tool features will prompt all users upon first use to agree to terms of use; those terms are hereby incorporated as part of this AGREEMENT and valid whether accepted before or after execution of this AGREEMENT. Please contact IMAGETREND for a copy of these terms prior to final acceptance of this AGREEMENT, if necessary.

E. CLIENT DATA.
On an annual basis, CLIENT may request a complimentary electronic copy of its data, in machine readable format, on appropriate media, at the CLIENT's option for disaster recovery purposes. If the CLIENT wants the data to be delivered in a medium other than tape or CD, IMAGETREND shall do its best to accommodate the CLIENT, provided the CLIENT shall provide the medium on which the data is to be provided and shall pay for any additional cost incurred by IMAGETREND in accommodating this request.

Within thirty (30) days after the expiration of this AGREEMENT, the termination of this AGREEMENT, or IMAGETREND is no longer in business, IMAGETREND will deliver to the CLIENT its data, in machine readable format, on appropriate media, at the CLIENT's option. If the CLIENT wants the data to be delivered in a medium other than tape or CD, IMAGETREND shall do its best to accommodate the CLIENT, provided the CLIENT shall provide the medium on which the data is to be provided and shall pay for any additional cost incurred by IMAGETREND in accommodating this request.
SECTION 4. SOFTWARE ABSTRACT.

A. The IMAGETREND Elite contains and stores the data elements of an emergency medical database, including data schema and values that may originate from traditional computer aided dispatch (CAD) sources and data values that may be used in billing from pre-hospital patient care. The emergency medical database may contain certain vehicle transport information but does not contain data elements and/or values specific to the vehicle path tracking such as automatic vehicle location (AVL) or third party AVL integrations. The emergency medical database does support integrations to third party CAD and billing solutions. The emergency medical database does not support any AVL, CAD or billing functions executed directly from the database. CLIENT shall not use IMAGETREND Software to integrate patient information from a clinical encounter associated with a patient incident requiring emergency medical care by the emergency transport crew with flight information relating to an emergency transport crew dispatch to produce an encounter record indicative of the patient’s clinical encounter.

B. The IMAGETREND Elite contains and stores the data elements of an emergency medical database as defined, described and mandated by the National EMS Information System (NEMSIS). The dataset was adopted by IMAGETREND for State and local regulatory authorities as required by NEMSIS. The NEMSIS data schema and elements are the sole work of the NEMSIS organization in conjunction with the National Highway Traffic Safety Administration (NHTSA). The NEMSIS dataset contains data elements and data structures originating and potentially owned by a number of nonprofit third party organizations and government agencies such as the World Health Organization (ICD 9 and ICD 10), International Health Terminology Standards Development Organization (SNOMED), U.S Department of the Interior and U.S. Geological Survey (GNIS), National Institute of Standards and Technology (FIPS), Health Level Seven International (HL7), Joint APCO/NENA Data Standardization Working Group (AACN). The NEMSIS dataset offers customer driven extensibility that allows the end user to extend and define the dataset at their own discretion.

SECTION 5. SERVICES PROVIDED BY IMAGETREND.

A. SUPPLY OF SOFTWARE AND LICENSED INFORMATION.
IMAGETREND shall provide CLIENT software and services as detailed in Exhibit A.

B. MODIFICATIONS, IMPROVEMENTS AND ENHANCEMENTS.
During the terms of this AGREEMENT and any extensions under Section 2, IMAGETREND will provide CLIENT with error corrections, bug fixes, patches or other updates to the Software in object code form, to the extent available in accordance with IMAGETREND’s release schedule. If CLIENT desires to add new functions or make enhancements to the Software, CLIENT must, for additional consideration, negotiate with IMAGETREND to develop new functions or improvements to the existing Software. All such error corrections, bug fixes, patches, updates, or other improvements or modifications shall be the sole property of IMAGETREND.

C. IMPLEMENTATION SERVICES
1. IMAGETREND shall provide CLIENT with initial services such as the system configuration and installation into the IMAGETREND hosting infrastructure.
2. “Train-the-trainer” training for administrators as detailed in Exhibit A. Additionally, online training videos and user guides in electronic format will be made available.
3. “IMAGETREND will separately enter into an ePHI Data Export Sign Off (example template in Exhibit G) with each Whatcom County fire agency prior to any data export from the
IMAGETREND system to third party transerees to comply with the Health Insurance Portability and Accountability Act of 1996 ("HIPAA").

SECTION 6. MAINTENANCE AND SUPPORT.
A. Application use support as detailed in Service Level Agreement Exhibit B.

B. Server hosting environment is monitored and supported 24/7. Emergency support information is available on the IMAGETREND Support site for emergency purposes. Non-emergency related contact may be charged to the CLIENT.

C. Maintenance of IMAGETREND software, which includes scheduled updates and new releases, as well as defect correction as needed, is included. Specific out-of-scope system enhancement requests will be reviewed with the CLIENT and subject to approval if additional charges are necessary.

SECTION 7. FEES.
A. Except as otherwise provided in this AGREEMENT, IMAGETREND shall offer the Products and the Services at the prices set forth on Exhibit A.
   (i) IMAGETREND will perform price increases of the recurring fees. The first price increase will occur with the fees due for Year 3. These price increases will occur once every year and may not exceed 3% of the price then currently in effect.

B. The fees for this contract are as detailed in the attached Exhibit A.

C. At any time during this AGREEMENT, the CLIENT may contract with IMAGETREND for additional software and services not covered in this AGREEMENT with fees to be negotiated on an item-by-item basis. The CLIENT may contract Custom Development by IMAGETREND for additional fees as outlined and agreed to in a signed and accepted Statement of Work.

D. If there is a delay in acceptance on the remaining items for longer than 60 days, IMAGETREND has the option to invoice the remaining balance on any or all of the open items for Year 1.

SECTION 8. PROTECTION AND CONFIDENTIALITY.
A. ACKNOWLEDGEMENT.
   CLIENT hereby acknowledges and agrees that the Software and Licensed Information provided hereunder constitute and contain valuable proprietary products and trade secrets of IMAGETREND and/or its suppliers, embodying substantial creative efforts and confidential information, ideas and expressions. Accordingly, CLIENT agrees to treat (and take precautions to ensure that its authorized personnel treat) the Software and Licensed Information as confidential in accordance with the confidentiality requirements and conditions set forth below. CLIENT acknowledges and agrees that CLIENT shall not permit any non- Authorized User from accessing the Software made available to the CLIENT.

B. MAINTENANCE OF CONFIDENTIAL INFORMATION.
   Each party agrees to keep confidential all confidential information disclosed to it by the other party in accordance herewith, and to protect the confidentiality thereof in the same manner it protects the confidentiality of similar information and data of its own (at all times exercising at least a reasonable degree of care in the protection of confidential information); provided, however, that the provisions of this Section 8 shall not apply to information which: (i) is in the public domain; (ii) has been acquired by CLIENT by normal means upon the disclosure of the information by IMAGETREND; (iii) is duly obtained by CLIENT directly or indirectly from a third
party who has independently developed the information and is entitled to disclose the information to CLIENT, and such disclosure does not directly or indirectly violate the confidentiality obligation of such third party; or (iv) becomes known publicly, without fault on the part of CLIENT, subsequent to the receipt of the information by CLIENT.

C. SURVIVAL.
This Section 8 shall survive the termination of this AGREEMENT or of any license granted under this AGREEMENT.

SECTION 9. WARRANTIES.
A. PERFORMANCE.
IMAGETREND warrants that the Software will conform to the specifications as set forth in the Licensed Information. However, this warranty shall be revoked in the event that any person other than IMAGETREND and its agents make any unauthorized amendment or change to the Software in any manner.

B. OWNERSHIP.
IMAGETREND represents that it is the owner of the entire right, title, and interests in and to the Software, and that it has the sole right to grant licenses thereunder, and that it has not knowingly granted licenses thereunder to any other entity that would restrict rights granted hereunder to CLIENT.

C. LIMITATIONS ON WARRANTY.
All of IMAGETREND's obligations under this Section 9 shall be contingent on CLIENT's use of the Software in accordance with this AGREEMENT and in accordance with IMAGETREND's instructions as provided by IMAGETREND in the Licensed Information, and as such instructions may be amended, supplemented, or modified by IMAGETREND from time to time.
IMAGETREND shall have no warranty obligations with respect to any failures of the Software which are the result of accident, abuse, misapplication, extreme power surge or extreme electromagnetic field.

The express warranties provided herein are the only warranties made by IMAGETREND with respect to the Software and supersede all other express or implied warranties, including, but not limited to, any warranties of merchantability and warranties for any special purpose.

SECTION 10. LIMITATION OF LIABILITY.
Unless otherwise provided in this Section 10, CLIENT's exclusive remedy for any damages or losses arising out of IMAGETREND's breach of warranties shall be, at IMAGETREND's option, either (i) immediate release from the AGREEMENT; or (ii) repair of the Software.

SECTION 11. INDEMNIFICATION.
A. INDEMNITY
IMAGETREND (which includes its agents, employees and subcontractors, if any) agrees to indemnify CLIENT, as well as any agents thereof from all damages, judgments, loss and expenses, but not including consequential or incidental damages arising out of:

(i) any personal injuries, property damage, or death that CLIENT may sustain while using IMAGETREND's, as well as any agents thereof, controlled property or equipment in the performance of this AGREEMENT; or
(ii) any personal injury or death which results or increases by any action taken to medically treat CLIENT agents, employees and subcontractors; or

(iii) any liability, loss, expenses, damages, judgements, lawsuits, claims, personal injury, property damage or death that CLIENT may sustain from any claim or action brought against CLIENT, as well as any agents thereof arising out of the negligence or recklessness of IMagetrend in the performance of this AGREEMENT,

Except for the foregoing claims, CLIENT, as well as any agents thereof agrees to indemnify, defend, and hold harmless IMagetrend from all claims, lawsuits, damages, judgments, loss, liability, or expenses, arising out of any claim or action brought against IMagetrend arising out of the negligence or recklessness of CLIENT, as well as any agents thereof in the performance of this AGREEMENT.

B. ENTIRE LIABILITY

SECTION 11 (A) ABOVE STATES THE PARTIES ENTIRE LIABILITY THE PARTIES SOLE AND EXCLUSIVE REMEDY FOR ANY CLAIMS OF INDEMNIFICATION. SECTION 9 OF THIS AGREEMENT STATES THE FULL EXTENT OF IMAGETRENDS’S WARRANTY AND SECTION 11(A) PROVIDES NO ADDITIONAL WARRANTY OF ANY KIND. ANY OTHER WARRANTY, EXPRESS OR IMPLIED OUTSIDE OF THIS AGREEMENT, INCLUDING THOSE ARISING OUT OF THE UNIFORM COMMERCIAL CODE, ARE WAIVED.

SECTION 12. INSURANCE REQUIREMENTS.
IMAGETRENDS shall carry for the duration of this Agreement general liability and property damage insurance with the following minimums:

Property Damage per occurrence - $500,000.00 (this amount may vary with circumstances)

General Liability & Property Damage for bodily injury- $1,000,000.00 (this amount may vary with circumstances)

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

Professional Liability - $1,000,000 per occurrence:

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

SECTION 13. TERMINATION.
A. TERMINATION WITHOUT CAUSE.

Following the expiration of the original term of this AGREEMENT, either party shall have the right to terminate this AGREEMENT, without cause, by giving not less than sixty (60) days written notice of termination.

B. CUSTOM DEVELOPMENT TERMINATION

Either party shall have the right to terminate any Custom Development portion(s) of this AGREEMENT, without cause, by giving not less than thirty (30) days written notice of termination.

C. TERMINATION FOR CAUSE.

This AGREEMENT may be terminated by the non-defaulting party by giving not less than thirty (30) days written notice of termination if any of the following events of default occur: (i) if a party
materially fails to perform or comply with this AGREEMENT or any provision hereof; (ii) if either party fails to strictly comply with the provisions of Section 8, above, or makes an assignment in violation of Section 15, below; (iii) if a party becomes insolvent or admits in writing its inability to pay its debts as they mature, or makes an assignment for the benefit of creditors; (iv) if a petition under any foreign, state, or United States bankruptcy act, receivership statute, or the like, as they now exist, or as they may be amended from time to time, is filed by a party; or (v) if such a petition is filed by any third party, or an application for a receiver is made by anyone and such petition or application is not resolved favorably within ninety (90) days.

SECTION 14. COOPERATIVE USE
Public and nonprofit agencies that have entered into a Cooperative Purchasing Agreement with the CLIENT are eligible to participate in any subsequent Agreement. The parties agree that these lists are subject to change. Any such usage by other municipalities and government agencies must be in accord with the ordinance, charter, rules and regulations of the respective political entity and with applicable State and Federal laws.

Any orders placed to, or services required from IMAGETREND will be requested by each participating agency. Payment for purchases made under this Agreement will be the sole responsibility of each participating agency. The CLIENT shall not be responsible for any disputes arising out of transactions made by others. IMAGETREND shall be responsible for correctly administering this Agreement in accordance with all terms, conditions, requirements, and approved pricing to any eligible procurement unit.

SECTION 15. NONASSIGNABILITY.
CLIENT shall not assign this AGREEMENT or its rights hereunder without the prior written consent of IMAGETREND.

SECTION 16. GOVERNING LAW.
The parties agree that the law governing this AGREEMENT shall be that of the State of Washington without regard to its conflict of laws principles.

SECTION 17. COMPLIANCE WITH LAWS.
IMAGETREND shall comply with all applicable laws, ordinances, codes and regulations of the federal, state and local governments.

SECTION 18. WAIVER.
Any waiver by either party of any default or breach hereunder shall not constitute a waiver of any provision of this AGREEMENT or of any subsequent default or breach of the same or a different kind.

SECTION 19. NOTICES.
All notices and other communications required or permitted to be given under this AGREEMENT shall be in writing and shall be personally served or mailed, postage prepaid and addressed to the respective parties as follows:

TO CLIENT: Whatcom County
311 Grand Ave, Suite 108
Bellingham, WA 98225

ATTENTION: Tyler Schroeder

February 5, 2018 www.imagetrend.com
TO IMagetrend: ImageTrend, Inc.

20855 Kensington Blvd.

Lakeville, MN 55044

ATTENTION: Mike McBrady

Notice shall be deemed effective on the date personally delivered or, if mailed, three (3) days after deposit in the mail.

SECTION 20. FORCE MAJEURE.
Neither party shall be liable in damages or have the right to terminate this AGREEMENT for any delay or default in performing hereunder if such delay or default is caused by conditions beyond its control including, but not limited to Acts of God, Government restrictions (including the denial or cancellation of any export or other necessary license), wars, insurrections and/or any other cause beyond the reasonable control of the party whose performance is affected.

SECTION 21. ARBITRATION.
Any dispute between IMagetrend and CLIENT under this AGREEMENT shall be resolved by arbitration by an arbitrator selected under the rules of the American Arbitration Association (WASHINGToN) and the arbitration shall be conducted in that same location under the rules of said Association. If an arbitrator cannot be agreed upon by the parties, IMagetrend and CLIENT shall each choose an arbitrator, and those two chosen arbitrators shall choose a third arbitrator, who shall preside over any dispute. IMagetrend and CLIENT shall each be entitled to present evidence and argument to the arbitrator. The arbitrator shall have the right only to interpret and apply the provisions of this AGREEMENT and may not change any of its provisions. The arbitrator shall permit reasonable pre-hearing discovery of facts, to the extent necessary to establish a claim or a defense to a claim, subject to supervision by the arbitrator. The determination of the arbitrator shall be conclusive, final and binding upon the parties and judgment upon the same may be entered in any Washington court having jurisdiction thereof. The arbitrator shall give written notice to the parties stating his determination, and shall furnish to each party a signed copy of such determination. IMagetrend and CLIENT shall equally share the cost of the arbitrator(s) fees. The arbitrator may award reasonable costs and expenses, including reasonable attorney fees, to the prevailing party.

SECTION 22. INTERPRETATION.
This AGREEMENT has been negotiated between persons sophisticated and knowledgeable in the matters dealt with in this AGREEMENT. Each party further acknowledges that it has not been influenced to any extent whatsoever in executing this AGREEMENT by any other party hereto or by any person representing it, or both. Accordingly, any rule or law or legal decision that would require interpretation of any ambiguities in this AGREEMENT against the party that has drafted it is not applicable and is waived. The provisions of this AGREEMENT shall be interpreted in a reasonable manner to effect the purpose of the parties and this AGREEMENT.

SECTION 23. SIGNATOR'S WARRANTY AND ACCEPTANCE BY PERFORMANCE.
Each party warrants to each other party that he or she is fully authorized and competent to enter into this AGREEMENT, in the capacity indicated by his or her signature and agrees to be bound by this AGREEMENT. CLIENT understands and agrees that if CLIENT accepts any Software, goods, or services from IMagetrend prior to IMagetrend receiving a final, mutually signed copy of this AGREEMENT, that CLIENT has accepted this AGREEMENT and all of its terms and conditions.
SECTION 24. PRIOR AGREEMENTS AND AMENDMENTS.
This AGREEMENT, including all Exhibits attached hereto, represents the entire understanding of the parties as to those matters contained herein. No prior oral or written understanding shall be of any force or effect with respect to those matters covered hereunder. This AGREEMENT may only be modified by a written amendment duly executed by the parties to this AGREEMENT.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]
WITNESS THE EXECUTION HEREOF on the day and year last written below.

APPROVED AS:

"IMAGETREND"

By: Michael J. McBrady

Name: Michael J. McBrady

Title: President
Dated: 2-6-18

"CLIENT"
WHATCOM COUNTY:

Recommended for Approval:

2-6-18

Deputy Executive
Date

Approved as to form:

2/6/18

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 __________, 2018, 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
__________________________________________

February 6, 2018

www.imagetrend.com

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EXHIBITS

EXHIBIT A – Pricing Agreement
EXHIBIT B – Implementation Timeline
EXHIBIT C – Implementation Plan
EXHIBIT D – Service Level Agreement
EXHIBIT E – HIPAA Business Associate Agreement
EXHIBIT F – Insurance Certificate
EXHIBIT G – ePHI Data Export Sign Off Template
**EXHIBIT A – PRICING AGREEMENT**

IMAGETREND’s license and annual support are based upon 14,340 annual incidents as provided by CLIENT. IMAGETREND reserves the right to audit the annual incident volume and the option to increase future support costs, with prior notification to the CLIENT, if the number of annual incidents increases by more than ten percent (10%) and has a resulting effect of increased support calls to IMAGETREND.

### Pricing Agreement

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<td>(Included for all agencies for data elements that match ImageTrend workbook)</td>
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<td>Hospital Hub Setup and Access Fee for Services</td>
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<td>Webinar Training Sessions (2 hour session M-F during ImageTrend’s Standard Business Hours)</td>
<td>8</td>
<td>$250.00</td>
<td>$2,000.00</td>
</tr>
<tr>
<td>Success Coordinator</td>
<td>36</td>
<td>$225.00</td>
<td>$8,100.00</td>
</tr>
<tr>
<td>Success Coordinator Audit</td>
<td>1</td>
<td>$4,000.00</td>
<td>$4,000.00</td>
</tr>
<tr>
<td>Database Backup - Setup</td>
<td>1</td>
<td>$2,500.00</td>
<td>$2,500.00</td>
</tr>
<tr>
<td>Waived Fee: Database Backup - Setup</td>
<td>1</td>
<td>($2,500.00)</td>
<td>($2,500.00)</td>
</tr>
</tbody>
</table>

**TOTAL One-Time Fees**

**$41,350.00**

### Recurring Fees

<table>
<thead>
<tr>
<th>Recurring Fees</th>
<th>Units</th>
<th>Price</th>
<th>Extended</th>
</tr>
</thead>
<tbody>
<tr>
<td>ImageTrend Elite Rescue Annual SaaS</td>
<td>14,340</td>
<td>$3.23</td>
<td>$46,318.20</td>
</tr>
<tr>
<td>(Includes Discount of $0.27 per run)</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>ImageTrend Elite Field Annual Support</td>
<td>1</td>
<td>Included</td>
<td>Included</td>
</tr>
<tr>
<td>ImageTrend Elite Mobile Fire Inspections Annual Support</td>
<td>1</td>
<td>Included</td>
<td>Included</td>
</tr>
<tr>
<td>ImageTrend Elite Agency Level Validation (EMS) Annual SaaS Fee</td>
<td>11,610</td>
<td>$1.00</td>
<td>$11,610.00</td>
</tr>
<tr>
<td>ImageTrend Elite Agency Level Validation (EMS) Annual SaaS Fee</td>
<td>2,730</td>
<td>$1.00</td>
<td>$2,730.00</td>
</tr>
<tr>
<td>ImageTrend Investigations Annual Support</td>
<td>1</td>
<td>$400.00</td>
<td>$400.00</td>
</tr>
<tr>
<td>ImageTrend Continuum Annual SaaS Fee</td>
<td>1</td>
<td>$0.50</td>
<td>$7,170.00</td>
</tr>
<tr>
<td>Domains: EMS Times, Medications, Procedures</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Additional Domains: .25/domain/call volume</td>
<td>14,340</td>
<td>$0.50</td>
<td>$7,170.00</td>
</tr>
<tr>
<td>FTP Automated Export of the NEMSIS v3 XML and PDF File Annual Support and Hosting</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>How Often: Runs every 10 minutes</td>
<td>1</td>
<td>$2,500.00</td>
<td>$2,500.00</td>
</tr>
</tbody>
</table>

February 5, 2018
**EMS and Fire**

<table>
<thead>
<tr>
<th>Description</th>
<th>Units</th>
<th>Price</th>
<th>Extended</th>
</tr>
</thead>
<tbody>
<tr>
<td>FTP Automated Export of the NEMSIS v3 XML and PDF File</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Number of Connections: A connection to an Elite Site and a FTP Destination: Annual Fee</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Client or ImageTrend Hosted: QMC and/or Systems Design</td>
<td>10</td>
<td>$1,000.00</td>
<td>$10,000.00</td>
</tr>
<tr>
<td>CAD Integration Annual Support and Hosting</td>
<td>12</td>
<td>$800.00</td>
<td>$9,600.00</td>
</tr>
<tr>
<td>Vendor: Versaterm</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Hospital Hub Support and Hosting</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Number of Hospitals Included: 15</td>
<td>1</td>
<td>Included</td>
<td>Included</td>
</tr>
<tr>
<td>Database Backup Support - Annual</td>
<td>1</td>
<td>$3,600.00</td>
<td>$3,600.00</td>
</tr>
<tr>
<td>Waived Fee: Database Backup Support - Annual</td>
<td>1</td>
<td>($3,600.00)</td>
<td>($3,600.00)</td>
</tr>
<tr>
<td><strong>TOTAL Recurring Fees</strong></td>
<td></td>
<td><strong>$90,328.20</strong></td>
<td></td>
</tr>
<tr>
<td><strong>TOTAL Year 1 without Tax</strong></td>
<td></td>
<td><strong>$131,678.20</strong></td>
<td></td>
</tr>
<tr>
<td><strong>Estimated Tax</strong></td>
<td></td>
<td><strong>$11,456.00</strong></td>
<td></td>
</tr>
<tr>
<td><strong>Grand Total Year 1</strong></td>
<td></td>
<td><strong>$143,134.20</strong></td>
<td></td>
</tr>
</tbody>
</table>

**Optional**

<table>
<thead>
<tr>
<th>Description</th>
<th>Units</th>
<th>Price</th>
<th>Extended</th>
</tr>
</thead>
<tbody>
<tr>
<td>Out of Scope billed at $175/Hour</td>
<td></td>
<td>$175.00</td>
<td></td>
</tr>
<tr>
<td>ImageTrend Elite Community Health (Community Paramedicine) Setup Fee (Add-on to System)</td>
<td></td>
<td>$4,500.00</td>
<td></td>
</tr>
<tr>
<td>ImageTrend Elite Community Health (Community Paramedicine) Annual Support and Hosting</td>
<td></td>
<td>$3,000.00</td>
<td></td>
</tr>
<tr>
<td>Additional Data Migration Services (EMS &amp; Fire)</td>
<td></td>
<td>$4,500.00</td>
<td></td>
</tr>
<tr>
<td>(Per agency migration of additional data elements that do not match ImageTrend workbook)</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>CrewSense Integration Setup Fee</td>
<td></td>
<td>$4,000.00</td>
<td></td>
</tr>
<tr>
<td>CrewSense Integration Annual Support</td>
<td></td>
<td>$2,000.00</td>
<td></td>
</tr>
<tr>
<td>DataMart – FTP Delivery (1 Data Source) License Fee</td>
<td></td>
<td>$5,000.00</td>
<td></td>
</tr>
<tr>
<td>DataMart – FTP Delivery (1 Data Source) Annual Support</td>
<td></td>
<td>$800.00</td>
<td></td>
</tr>
<tr>
<td>DataMart – FTP Delivery (Additional Data Source) License Fee</td>
<td></td>
<td>$2,500.00</td>
<td></td>
</tr>
<tr>
<td>DataMart – FTP Delivery (Additional Data Source) Annual Support</td>
<td></td>
<td>$400.00</td>
<td></td>
</tr>
<tr>
<td>ImageTrend 2017 Connect Conference (Full Conference)</td>
<td></td>
<td>$645.00</td>
<td></td>
</tr>
<tr>
<td>Onsite Training Sessions @ $1,000/day</td>
<td></td>
<td>$1,000.00</td>
<td></td>
</tr>
<tr>
<td>Travel per Trainer (for Onsite Training at Client's Facility Training) @ $1,750/trainer/trip</td>
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<td>$1,750.00</td>
<td></td>
</tr>
<tr>
<td>Webinar Training Sessions (2 hour session M-F during ImageTrend's Standard Business Hours) $250/session</td>
<td></td>
<td>$250.00</td>
<td></td>
</tr>
</tbody>
</table>

*The CLIENT may elect to purchase additional services as set forth in the options identified above at any time during the contract term. The CLIENT shall exercise said options by written notice to IMagetrend. The prices above are valid for one year from contract signature.*
Payment Schedule:

<table>
<thead>
<tr>
<th>Payment</th>
<th>Amount *</th>
<th>Milestone</th>
</tr>
</thead>
<tbody>
<tr>
<td>Payment 1</td>
<td>$20,675.00</td>
<td>50% of one-time fees due upon acceptance and signature of contract.</td>
</tr>
<tr>
<td>Payment 2</td>
<td>$20,675.00</td>
<td>50% of one-time fees due 30-days after system go-live upon project completion and acceptance</td>
</tr>
<tr>
<td>Payment 3</td>
<td>$90,328.20</td>
<td>Year 1 recurring fees due 30-days after system go-live upon project completion and acceptance</td>
</tr>
<tr>
<td>Total</td>
<td>$131,678.20</td>
<td></td>
</tr>
</tbody>
</table>

*Applicable Sales Tax Not Included

Payment Terms:

a. Upon acceptance and signature of Contract, 50% of the One-Time Fees will be invoiced. The remaining 50% of One-Time Fees will be invoiced independently upon project completion. The Recurring Annual Fees will begin at project completion. Payment terms of Net 30 days.

b. Project completion occurs upon acceptance 30 days past system go-live.

c. If there is a delay in acceptance on the remaining items for longer than 60 days, IMAGETREND has the option to invoice the remaining balance on any or all of the open items for Year 1.

d. CLIENT agrees IMAGETREND may, in IMAGETREND’s discretion, cease to provide access, hosting, support or otherwise disable the Software listed in Exhibit A due to CLIENT’s breach of contract, overdue payments, or missed payments.

e. CLIENT agrees IMAGETREND may charge to CLIENT a late fee of 1.5% per month, or the highest rate allowed under the law, whichever is lower, on any overdue amounts. CLIENT also agrees IMAGETREND may charge to CLIENT all reasonable costs and expenses of collection, including attorneys’ fees where, in IMAGETREND’s discretion, payments are consistently deficient or late.

f. IMAGETREND will invoice sales tax to non-exempt CLIENTS where applicable.

Note: If Client would like to schedule Onsite Training on the weekend, additional fees may apply. Note: ImageTrend is not responsible for any CAD Vendor requirements and any associated fees. Note: CAD data will only be available for 60 days in the dispatch database; which may impact CAD Recon Reports.

Pricing escalation factors:

a. IMAGETREND will perform price increases of the recurring fees. The first price increase will occur with the fees due for Year 3. These price increases will occur once every year and may not exceed 3% of the price then currently in effect.

b. All Annual SaaS Fees are based upon anticipated usage and are subject to an annual usage audit, which may affect future fees.

c. All hosting fees are based upon anticipated usage and includes 100 GB of Storage total. These fees are subject to annual usage audits, which may affect future fees at an increase of $15/10GB/month for Storage.
Statements/Invoices should be mailed to:
  Sandy Korthuis
  Whatcom County
  311 Grand Ave, Suite 108
  Bellingham, WA
  Phone: 360-778-5212
  Email: skorthui@co.whatcom.wa.us

ImageTrend Salesperson Contact:
  Joe Robinson
  952-469-1589
  jrobinson@imagetrend.com
  contracts@imagetrend.com
EXHIBIT B - IMPLEMENTATION TIMELINE

TIMELINE (EMS)

Implementation Kick Off

- Client works on configuration workbooks
- Site deployment
- Education session 1
  - General Navigation
- CAD/Telestaff Kick Off (if applicable)
- Education session 2
  - Run Form Configuration
  - Dynamic Power Tools
  - Dataset Manager
- Education session 3
  - Validation Rules
  - User Management
  - Incident List View Configuration
- Education session 4
  - Workflow
  - Permission Groups
- Education session 5
  - Print Report Manager
  - Resources/System Config

Design / System Admin Testing Phase

User Testing / Final System Configuration

- Onsite/Webinar Training
- Education session 6
  - General questions/status check
- Education session 7
  - Report Writer
- Education session 8
  - Q3 & other optional modules
  - State reporting

GO LIVE

Post Go Live Check-ins (3)

Transition to Support

OPTIONAL
On-site Post Go Live Visit
(Recommended)
EXHIBIT C – IMPLEMENTATION PLAN

ImageTrend will work with Whatcom County to implement a regional system for Electronic Patient Care Reporting (ePCR) and also a Fire Records Management System (RMS). The ImageTrend software components and services to be implemented have been listed in EXHIBIT A – Pricing Agreement. The goal is for all of the fire districts, authorities and departments within the county to use a single system. City of Bellingham has separately contracted with ImageTrend and the regional system is planned to be implemented as a single ImageTrend site.

The goal of ImageTrend’s Implementation Plan is to install a single regional site with multiple agencies with Whatcom County in the primary site administrator role. In 2017, the Whatcom County EMS Oversight Board unanimously approved a recommendation to acquire and implement the ImageTrend software as a countywide ePCR software system. Whatcom County is in the process of finalizing interlocal agreements with each agency for a formal commitment to using the ImageTrend system as a single regional system.

Whatcom County expects to use the existing Emergency Medical Services Technical Advisory Board (TAB) augmented with some power users and technology staff from various agencies to work with ImageTrend to guide and complete this regional implementation. Agencies will be provided with a standardized configuration template and customization will be minimized to streamline the implementation.

ImageTrend will provide the software, implementation and training services, along with on-going technical support services as part of this contract with Whatcom County. The ImageTrend software is hosted in the cloud and web browser based. Each agency will need to independently acquire and support the computer hardware (i.e. computer tablets) that will access the regional ImageTrend system.

In addition to the standard ImageTrend project manager and implementation team, ImageTrend will be providing a Success Coordinator to assist Whatcom County with various “client” responsibilities as part of the implementation.

The implementation approach (i.e. “all at once” vs “phased”) will be determined collaboratively with the County and County Fire Districts shortly after the Kick-Off meeting.

The goal of ImageTrend’s Implementation Plan install the main agency site for the Client and assist in system configuration and understanding to promote ease of use, workflow and data entry. A task breakdown of the Implementation Plan follows:

- Initial conference call with the system administrator and any other applicable participants to establish ongoing communication, as well as project roles, timelines and deliverables. The team will meet via webinar weekly for 4 - 6 weeks.
- ImageTrend will provide the workbook for the Client to complete for importing data into the system. This includes destinations, staff, vehicles and station information for each jurisdiction
- ImageTrend will work with the system administrator to configure the system level settings to ensure fast and easy use for the crew. ImageTrend will complete system walkthroughs with the Client designed to get system administrators technically competent with the configuration. This
allows for ImageTrend to share in best practices. ImageTrend will also complete Website Management training, which expands on the system administrator training and includes scheduled tasks, views and PDF generation. These trainings are aimed at making the client self-sufficient on the system.

This includes but is not limited to:

- **Administrative**
  - Site Management
  - Product Settings
  - NEMSIS, NFIRS, and State Data Reporting
  - Data Exchange
  - Incident Forms
  - Validation
  - Administrative Reports
  - Report Writer
  - Hospital Dashboard (if applicable)

- **Service Level**
  - Staff setup
  - CE/Training
  - Workflow (incl. QA/QI)
  - Add ePCR
  - Add NFIRS report
  - Inspections
  - Investigations (if applicable)
  - Elite Field (if applicable)
  - Elite Mobile Fire Inspections (if applicable)

- **Other Integrations**
  - CAD Integration (if applicable)
  - Billing Integration (if applicable)

- **Training Plan (Admin, Train the Trainer)**
  - Training will be designed based on client needs as defined in the contract

- **Testing and Quality Assurance** will occur throughout the implementation

### Progress Checklist

ImageTrend will utilize a Microsoft Project Plan as well as a Progress Checklist to provide an overview of milestones and assignment during implementation of Elite EMS, Elite Field and associated modules. This checklist is used as a working, living document that is updated and shared in order to keep all parties informed of the rollout as well as additional tasks that are required for completion. ImageTrend will work with the Client at the onset of implementation to determine dates and additional tasks that may be necessary in the implementation process.

<table>
<thead>
<tr>
<th>Title</th>
<th>Status</th>
<th>Date</th>
<th>Owner</th>
<th>Description &amp; Comments</th>
</tr>
</thead>
<tbody>
<tr>
<td>Establish Support Suite Account(s)</td>
<td></td>
<td></td>
<td>ImageTrend</td>
<td></td>
</tr>
<tr>
<td>Title</td>
<td>Status</td>
<td>Date</td>
<td>Owner</td>
<td>Description &amp; Comments</td>
</tr>
<tr>
<td>--------------------------------------------</td>
<td>--------</td>
<td>------</td>
<td>---------------</td>
<td>------------------------</td>
</tr>
<tr>
<td>Present Implementation Timeline</td>
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<td></td>
<td>ImageTrend</td>
<td></td>
</tr>
<tr>
<td>Build Elite EMS Website</td>
<td></td>
<td></td>
<td>ImageTrend</td>
<td></td>
</tr>
<tr>
<td>Send Elite EMS Data Import workbook</td>
<td></td>
<td></td>
<td>ImageTrend</td>
<td></td>
</tr>
<tr>
<td>Initial Hardware delivery</td>
<td></td>
<td></td>
<td>ImageTrend</td>
<td></td>
</tr>
<tr>
<td>Send Elite Field installation guides</td>
<td></td>
<td></td>
<td>ImageTrend</td>
<td></td>
</tr>
<tr>
<td>Send CAD Integration workbook</td>
<td></td>
<td></td>
<td>ImageTrend</td>
<td></td>
</tr>
<tr>
<td>Email logo(s)</td>
<td></td>
<td></td>
<td>Client</td>
<td></td>
</tr>
<tr>
<td>Install Elite Field Applications</td>
<td></td>
<td></td>
<td>Client/ImageTrend</td>
<td></td>
</tr>
<tr>
<td>Return completed Elite EMS Data Import Workbook</td>
<td></td>
<td></td>
<td>Client</td>
<td></td>
</tr>
<tr>
<td>Import Elite EMS Data Workbook</td>
<td></td>
<td></td>
<td>ImageTrend</td>
<td></td>
</tr>
<tr>
<td>Implementation Kickoff (System Walkthrough 1)</td>
<td></td>
<td></td>
<td>Client/ImageTrend</td>
<td></td>
</tr>
<tr>
<td>CAD/Billing Kickoff Meeting</td>
<td></td>
<td></td>
<td>Client/ImageTrend</td>
<td></td>
</tr>
<tr>
<td>Send completed CAD workbook with sample files to ImageTrend</td>
<td></td>
<td></td>
<td>Client</td>
<td></td>
</tr>
<tr>
<td>CAD Development, Configuration &amp; Testing</td>
<td></td>
<td></td>
<td>ImageTrend</td>
<td></td>
</tr>
<tr>
<td>Install Windows Service &amp; apply configuration file</td>
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<td>Client</td>
<td></td>
</tr>
<tr>
<td>Test CAD Integration</td>
<td></td>
<td></td>
<td>Client</td>
<td></td>
</tr>
<tr>
<td>Billing Configuration &amp; Testing</td>
<td></td>
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<td>Client</td>
<td></td>
</tr>
<tr>
<td>Test Billing Export</td>
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<td>Billing Company</td>
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</tr>
<tr>
<td>System Walkthrough (2)</td>
<td></td>
<td></td>
<td>Client/ImageTrend</td>
<td></td>
</tr>
<tr>
<td>System Walkthrough (3)</td>
<td></td>
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<td>Client/ImageTrend</td>
<td></td>
</tr>
<tr>
<td>System Walkthrough (4)</td>
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<td>Client/ImageTrend</td>
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<tr>
<td>System Walkthrough (4+)</td>
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<td>Client/ImageTrend</td>
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</tr>
<tr>
<td>System Testing</td>
<td></td>
<td></td>
<td>Client</td>
<td></td>
</tr>
<tr>
<td>Schedule Onsite Training</td>
<td></td>
<td></td>
<td>Client/ImageTrend</td>
<td></td>
</tr>
<tr>
<td>Organize Onsite Training Agenda</td>
<td></td>
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<td>Client/ImageTrend</td>
<td></td>
</tr>
<tr>
<td>Conduct Onsite Training</td>
<td></td>
<td></td>
<td>ImageTrend</td>
<td></td>
</tr>
<tr>
<td>Complete Crew Training</td>
<td></td>
<td></td>
<td>Client/ImageTrend</td>
<td></td>
</tr>
<tr>
<td>Go-Live Preparation</td>
<td></td>
<td></td>
<td>Client</td>
<td></td>
</tr>
<tr>
<td>Go-Live</td>
<td></td>
<td></td>
<td>Client</td>
<td></td>
</tr>
</tbody>
</table>

**Communication and Coordination**

The overall success of the project will require a close working relationship between the Client and ImageTrend. The project as detailed has various status checkpoints and scheduled meetings to ensure project performance.

The project begins with a kickoff meeting to establish project roles and provide your project team with familiarity of the key components of the ImageTrend products and introduce best practices into all
phases of the project. The project involves high-level planning that helps establish system requirements and estimates of resource requirements and task durations. This can be achieved through the use of ImageTrend’s standard Project Plan. The following guidelines are base responsibilities for all project team members:

- Be a vital part of the project team that will carry the project through to completion.
- Provide a single point of contact for the customer on all issues.
- Assist the customer in helping them ensure that project deadlines are met and that deliverables are provided as discussed.
- Coordinate tasks between different departments and functions within the company.
- Identify and resolve project conflicts and issues.

Project Manager
ImageTrend’s Project/Implementation Managers are well-versed in our needs for an efficient and timely implementation. Our agile development environment is “hands-on”; utilizing project management tools (TFS and Microsoft Project) for tracking, documentation and status reports in a supporting role.

Client Roles
Although ImageTrend team members will provide the majority of the staff required for this implementation, it is recommended that the Client have a project manager, who should be assigned as an FTE during the initial phase of the project or similar staff member as the single point of contact. This person should participate in all meetings and help in the coordination of final requirements gathering, stakeholder input coordination, ongoing project status reviews, acceptance testing and training logistics coordination.

Quality Assurance
A Quality Plan is put in place at the onset of the project plan and followed throughout the entire development lifecycle and into implementation. The Quality Plan includes the quality goals for the project including schedule variance, effort variance and post defect density. For Off-Site customer support services, these goals also include turnaround time, first time right solution, process compliance, and effective communication.

Risk Management
A Risk Management Plan has been established based upon the National Institute of Standards and Technology “Risk Management Guide for Information Technology Systems”. In this plan the Software Development Life Cycle (SDLC) is separated into 4 sections for risk identification. These risks are then classified as high, medium or low. Further risk management evaluation can be included in the final project plan after contract, if desired.

Since this response involves a product based solution hosted at ImageTrend’s secure data center, the risks are minimized and readily identifiable, which is not the case in a project requiring full development services. The following risks have been identified:

- Availability of Required Stakeholders/Resources. With several stakeholders in the mix from ImageTrend and the County, coordinating calendars and schedules to achieve the objectives may be a challenge. It is important to identify known or potential team member departures and to be mindful of the possibility. Holidays and scheduled PTO may impact the availability of team members.
• **Business Process Reengineering.** As the implementation of the products occurs, the operational and technical entities will find efficiencies with the manner in which to operate the new system. These efficiencies may require changes in rule, local policies, or opinions about the efficacy of the reengineering.

• **Technical Integrations.** Several of the deliverable tasks involve integrations or conversion of data from other existing systems. Each of these systems has data schemas, user interfaces and other nuances that are particular to their use. Identifying the necessary information and the means and directions by which to transmit this data requires collaboration and cooperation of several stakeholders.

• **Data Security** must be clearly understood in its implications and who or what has the responsibility of compliancy. The hierarchical permissions generation provided in Elite EMS provides the environment for controlling the access necessary to provide data protection.

• **Workflow definitions** present a risk in that the process must be clearly understood to ensure proper configuration and streamlining for efficiency. ImageTrend works closely with your project manager to ensure comprehensive understanding and a successful implementation. This is a low risk, since the necessary changes to the elements and/or configuration need to be merely identified and executed.

• **Cost** can be identified as a low risk, since a fixed price contract with exact specifications for performance along with a product based solution, which is easily tested, provides a structure for exact cost estimates for funding.

• **Product Performance** is a manageable risk through detailed specifications and selection of a product based solution, which can be demonstrated prior to selection and also prototyped for the exact application, increasing solution confidence significantly. Additionally a system designed for scalability and hosted in a high volume data center will provide the necessary reliability.

• **Server Failure** is a confinable risk with Data Backup procedures and system redundancies. A staging server is used for application updates and changes, so that they are tested prior to installation on the production server. ImageTrend’s hosting environment also includes a backup server in geographically stable environment.

• **Improper System Access,** a high risk occurrence, is managed through an effective security plan, which details and offers effective enforcement options.

• **System Updates** are a potential risk to system usage, but are containable as they are tested in a staged environment that is a complete copy of the production environment. Additionally, ImageTrend notifies the clients in advance of all scheduled updates.

• **Disk Drive Failure** is covered as a function of a server failure with appropriate backup and redundant servers and SAN Storage units, but additionally the procedures dictate that the drive is physically destructed in order to ensure data privacy.

**Issue Tracking**
Reports of software issues should be sent to your Project Manager(s) during implementation. It is the expectation of Project Manager(s) to work with the City in assisting with the reporting and tracking of all reported software issues via Support Desk while the implementation is active.

**Ongoing Support/Support Desk**
The Image Support Desk ticket system is utilized to track and software issues. To report an issue you can:

- Phone: 888.469.7789 or 952.469.6132
- Support Desk: https://support.imagetrend.com/supportdesk/
- Email: support@imagetrend.com

Support tickets are entered into ImageTrend’s Support Desk where our team will review the item, route accordingly, and contact the County with the resolution. An automated response to the support ticket should be received upon submission to include an assigned support ticket number.

When inquiring about the status of a task, log in to Support Desk where ticket statuses are available, contact support directly referencing the ticket number and representative may be able to provide more detailed information on the status or contact your project manager(s).

For items requiring more involved development, it is placed in our TFS (Microsoft Team Foundation Server), where it is reviewed and determined as a defect, product enhancement, or out of scope. Those items that are determined as a defect of product enhancement will be placed in an internal ‘sprint’ process. Internal scheduling meetings occur weekly to determine which items will be in the sprint and their priority. Sprints are pushed out to clients accordingly in our standard updates. Clients are alerted prior to the update and provided with Release Notes.
EXHIBIT D – SERVICE LEVEL AGREEMENT
SOFTWARE AS A SERVICE (SaaS)
VERSION 4.0

This agreement exists for the purpose of creating an understanding between IMAGETRENDS and CLIENT
who elect to host the application on IMAGETRENDS's servers. It is part of our guarantee for exceptional
service levels for as long as the system annual support fee is contracted. The Service Level Agreement
guarantees your web application’s availability, reliability and performance. This Service Level Agreement
(SLA) applies to any site or application hosted on our network as SaaS.

1. Hosting at the ImageTrend’s Datacenter
IMAGETRENDS's hosting environment provides 99.9% availability and is comprised of state-of-the-art
Blade Servers and SAN storage that are configured with the no single point of failure through
software and infrastructure virtualization, blade enclosure redundancies and backup storage policies.
Our Compellent SAN has a fiber channel backend, currently hosts 8TB of storage, has dual storage
controllers with redundant power supplies and redundant paths to disk, and hot swappable drives. We
do offsite replication to disk on a second SAN. Scheduled maintenance and upgrades do not apply to
the system availability calculation and all CLIENTs are properly notified of such scheduled
occurrences to minimize accessibility interruptions.

Hardware
IMAGETRENDS server hardware is configured to prevent data loss due to hardware failure and
utilize the following to ensure a quick recovery from any hardware related problems.

- Independent Application and Database Servers
  - Microsoft SQL Server 2012
  - Microsoft Windows Server 2012
- Redundant Power Supplies
- Off-Site Idle Emergency Backup Servers (optional)
- Sonicwall VPN Firewall
- Redundant Disk configuration
- Disk Space allocation and Bandwidth as contracted

Physical Facility
The IMAGETRENDS hosting facilities are located in downtown Minneapolis and Chicago with
every industry standard requirement for hosting not only being met, but exceeded. Requirements
such as power supply and power conditioning, normal and peak bandwidth capacity, security and
fail over locations are all part of an overall strategy to provide the most reliable hosting facility
possible.

- Redundant, high-speed Internet connections over fiber optics.
- Power protection via an in-line 80kVa UPS with a 150 KW backup diesel generator
- Temperature controlled
- Waterless Fire Protection and Clean agent fire suppression
- Secured site access
- Steel Vault Doors
- 21” concrete walls and ceiling
Data Integrity
IMAGETREND applications are backed up daily allowing for complete recovery of data to the most recent backup:
- Daily Scheduled Database and Application Backups.
- Daily Scheduled backup Success/Failure notification to IMAGETREND staff

2. Application and Hosting Support
IMAGETREND provides ongoing support as contracted for their applications and hosting services, including infrastructure. This includes continued attention to product performance and general maintenance needed to ensure application availability. Support includes technical diagnosis and fixes of technology issues involving IMAGETREND software. IMAGETREND has a broad range of technical support services available in the areas of:
- Web Application Hosting and Support
- Subject Matter Expert Application Usage Support
- Web Application Development/Enhancement
- Database Administration/Support
- Project Management
- Systems Engineering/Architecture

IMAGETREND offers multi-level technical support, based on level-two user support by accommodating both the general inquiries of the administrators and those of the system users. We will give the administrators the ability to field support for the system as the first level of contact while providing them the option to refer inquiries directly to IMAGETREND.

IMAGETREND's Support Team is available Monday through Friday from 7:00 am to 6:00 pm CST via the Support Suite, email or telephone.
Support Suite: www.imagetrend.com/support
Email: support@imagetrend.com
Toll Free: 1-888-730-3255
Phone: 952-469-1589

Online Support
IMAGETREND offers an online support system which incorporates around-the-clock incident reporting of all submitted tickets to IMAGETREND's application support specialists. Once a CLIENT submits a support ticket, he or she can track the progress with a secure login to the support application. The system promotes speedy resolution by offering keyword-based self-help services and articles in the knowledgebase, should CLIENTS wish to bypass traditional support services. Ticket tracking further enhances the efforts of Support Desk personnel by allowing IMAGETREND to identify patterns which can then be utilized for improvements in production, documentation, education and frequently asked questions to populate the knowledgebase. The support ticket tracking system ensures efficient workflow for the support desk specialists while keeping users informed of their incident's status. Support patterns can be referenced to populate additional knowledgebase articles.

Incident Reporting Malfunctions
IMAGETREND takes all efforts to correct malfunctions that are documented and reported by the CLIENT. IMAGETREND acknowledges receipt of a malfunction report from a CLIENT and acknowledges the disposition and possible resolution thereof according to the chart below.

<table>
<thead>
<tr>
<th>Severity Level</th>
<th>Examples of each Severity Level:</th>
<th>Notification Acknowledgement: IMAGETREND Return Call to Licensee after initial notification of an Error</th>
<th>Action Expectation: Anticipated Error resolution notification after IMAGETREND Return Call to</th>
</tr>
</thead>
</table>

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| High/Site Down          | - Complete shutdown or partial shutdown of one or more Software functions  
|                        | - Access to one or more Software functions not available  
|                        | - Major subset of Software application impacted  | Within one (1) hour of initial notification during business hours or via support.imagetrend.com  | Six hours |
| Medium                 | - Minor subsystem failure  
|                        | - Data entry or access impaired on a limited basis – usually can be delegated to local client contact as a first level or response for resolution – usually user error (i.e. training) or forgotten passwords  | Within four (4) hours of initial notification  | 24 Business hours |
| Low                    | - System operational with minor issues; suggested enhancements as mutually agreed upon – typically covered in a future release as mutually agreed upon. | Same day or next business day of initial notification  | Future Release |

**Service Requests (enhancements)**  
Any service requests that are deemed to be product enhancements are detailed and presented to the development staff, where the assessment is made as to whether these should be added to the future product releases and with a priority rating. If an enhancement request is specific to one CLIENT and deemed to be outside of the original scope of the product, then a change order is written and presented to the CLIENT. These requests are subject to our standard rates and mutual agreement. CLIENTS review and approve the scope, specification and cost before work is started to ensure goals are properly communicated.

Product release management is handled by IMAGETREND using standard development tools and methodologies. Work items including, tasks, issues, and scenarios are all captured within the system. Releases are based on one or more iterations during a schedule development phase. This includes by not limited to: development, architecture, testing, documentation, builds, test and use cases. Submissions of issues or requests are documented within our Product Management system and from there workflow is created to track the path from initial request to resolution.

**Out of Scope**  
CLIENT may contract with IMAGETREND for Out of Scope services. This will require a separate Statement of Work and will be billed at I IMAGETREND’s standard hourly rate.

**Maintenance and Upgrades**  
System/product maintenance and upgrades, if applicable, are included in the ongoing support and warranty as contracted. These ensure continued attention to product performance and general maintenance. Scheduled product upgrades include enhancements and minor and major product changes. Customers are notified in advance of scheduled maintenance. It is the CLIENT’s responsibility to accept all offered updates and upgrades to the system. If the CLIENT does not accept these, CLIENT should be advised that IMAGETREND, at its discretion, may offer limited support for previous versions. All code releases also maintain the integrity of any CLIENT specific configurations (i.e. templates, addresses, staff information, active protocols, etc.) that have been implemented either by IMAGETREND’s implementation staff or the CLIENT’s administrative staff.
**Escalation**

Our support staff is committed to resolving your issues as fast as possible. If they cannot resolve your issue, they will identify the course of action that they will be taking and indicate when an answer will be available. They in turn will seek assistance from the designated developer. The next level of escalation goes to the Project Manager, who also addresses all operational issues on an ongoing basis and reviews the issue log regularly to assess product performance and service levels. Senior Management will handle issues requiring further discussion and resolution. Any issues to be determined to be of a critical nature are immediately escalated accordingly.
EXHIBIT E – HIPAA BUSINESS ASSOCIATE AGREEMENT

BUSINESS ASSOCIATE AGREEMENT

This Business Associate Agreement ("Agreement") dated __________________________, 2017 (the "Effective Date"), is entered into by and between Whatcom County, a Washington corporation (the "Covered Entity") and ImageTrend, Inc. a Minnesota corporation (the "Business Associate").

WHEREAS, Covered Entity and Business Associate have entered into, or are entering into, or may subsequently enter into, agreements or other documented arrangements (collectively, the "Business Arrangements") pursuant to which Business Associate may provide products and/or services for Covered Entity that require Business Associate to access, create and use health information that is protected by state and/or federal law; and

WHEREAS, pursuant to the Administrative Simplification provisions of the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"), the U.S. Department of Health & Human Services ("HHS") promulgated the Standards for Privacy of Individually Identifiable Health Information (the "Privacy Standards"), at 45 C.F.R. Parts 160 and 164, requiring certain individuals and entities subject to the Privacy Standards (each a "Covered Entity", or collectively, "Covered Entities") to protect the privacy of certain individually identifiable health information ("Protected Health Information", or "PHI"); and

WHEREAS, pursuant to HIPAA, HHS has issued the Security Standards (the "Security Standards"), at 45 C.F.R. Parts 160, 162 and 164, for the protection of electronic protected health information ("E PHI"); and

WHEREAS, in order to protect the privacy and security of PHI, including EPHI, created or maintained by or on behalf of the Covered Entity, the Privacy Standards and Security Standards require a Covered Entity to enter into a "business associate agreement" with certain individuals and entities providing services for or on behalf of the Covered Entity if such services require the use or disclosure of PHI or EPHI; and

WHEREAS, on February 17, 2009, the federal Health Information Technology for Economic and Clinical Health Act was signed into law (the "HITECH Act"), and the HITECH Act imposes certain privacy and security obligations on Covered Entities in addition to the obligations created by the Privacy Standards and Security Standards; and

WHEREAS, the HITECH Act revises many of the requirements of the Privacy Standards and Security Standards concerning the confidentiality of PHI and EPHI, including extending certain HIPAA and HITECH Act requirements directly to business associates; and

WHEREAS, Business Associate and Covered Entity desire to enter into this Business Associate Agreement;

NOW THEREFORE, in consideration of the mutual promises set forth in this Agreement and the Business Arrangements, and other good and valuable consideration, the sufficiency and receipt of which are hereby severally acknowledged, the parties agree as follows:

1. Business Associate Obligations. Business Associate may receive from Covered Entity, or create or receive on behalf of Covered Entity, health information that is protected under applicable state and/or federal law, including without limitation, PHI and EPHI. All capitalized terms not otherwise defined in this Agreement shall have the meanings set forth in the Privacy Standards, Security Standards or the HITECH Act, as applicable (collectively referred to hereinafter as the "Confidentiality Requirements"). All references to PHI herein shall be construed to include EPHI. Business Associate agrees not to use or disclose (or permit the use or disclosure of) PHI in a manner that would violate the Confidentiality Requirements if the PHI were used or disclosed by Covered Entity in
the same manner.

2. **Use of PHI.** Except as otherwise required by law, Business Associate shall use PHI in compliance with 45 C.F.R. § 164.504(e). Furthermore, Business Associate shall use PHI (i) solely for Covered Entity’s benefit and only for the purpose of performing services for Covered Entity as such services are defined in Business Arrangements, and (ii) as necessary for the proper management and administration of the Business Associate or to carry out its legal responsibilities, provided that such uses are permitted under federal and state law. Covered Entity shall retain all rights in the PHI not granted herein. Use, creation and disclosure of de-identified health information by Business Associate are not permitted unless expressly authorized in writing by Covered Entity.

3. **Disclosure of PHI.** Subject to any limitations in this Agreement, Business Associate may disclose PHI to any third party persons or entities as necessary to perform its obligations under the Business Arrangement and as permitted or required by applicable federal or state law. Further, Business Associate may disclose PHI for the proper management and administration of the Business Associate, provided that (i) such disclosures are required by law, or (ii) Business Associate: (a) obtains reasonable assurances from any third party to whom the information is disclosed that it 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 third party; (b) requires the third party to agree to immediately notify Business Associate of any instances of which it is aware that PHI is being used or disclosed for a purpose that is not otherwise provided for in this Agreement or for a purpose not expressly permitted by the Confidentiality Requirements. Additionally, Business Associate shall ensure that all disclosures of PHI by Business Associate and the third party comply with the principle of "minimum necessary use and disclosure," i.e., only the minimum PHI that is necessary to accomplish the intended purpose may be disclosed; provided further, Business Associate shall comply with Section 13405(b) of the HITECH Act, and any regulations or guidance issued by HHS concerning such provision, regarding the minimum necessary standard and the use and disclosure (if applicable) of Limited Data Sets. If Business Associate discloses PHI received from Covered Entity, or created or received by Business Associate on behalf of Covered Entity, to agents, including a subcontractor (collectively, “Recipients”), Business Associate shall require Recipients to agree in writing to the same restrictions and conditions that apply to the Business Associate under this Agreement. Business Associate shall report to Covered Entity any use or disclosure of PHI not permitted by this Agreement, of which it becomes aware, such report to be made within three (3) business days of the Business Associate becoming aware of such use or disclosure. In addition to Business Associate’s obligations under Section 9, Business Associate agrees to mitigate, to the extent practical and unless otherwise requested by Covered Entity in writing or as directed by or as a result of a request by Covered Entity to disclose to Recipients, any harmful effect that is known to Business Associate and is the result of a use or disclosure of PHI by Business Associate or Recipients in violation of this Agreement.

4. **Individual Rights Regarding Designated Record Sets.** If Business Associate maintains a Designated Record Set on behalf of Covered Entity, Business Associate shall (i) provide access to, and permit inspection and copying of, PHI by Covered Entity or, as directed by Covered Entity, an individual who is the subject of the PHI under conditions and limitations required under 45 CFR §164.524, as it may be amended from time to time, and (ii) amend PHI maintained by Business Associate as requested by Covered Entity. Business Associate shall respond to any request from Covered Entity for access by an individual within five (5) days of such request and shall make any amendment requested by Covered Entity within ten (10) days of such request. Any information requested under this Section 4 shall be provided in the form or format requested, if it is readily producible in such form or format. Business Associate may charge a reasonable fee based upon the Business Associate’s labor costs in responding to a request for electronic information (or a cost-based fee for the production of non-electronic media copies). Covered Entity shall determine whether a denial is appropriate or an exception applies. Business Associate shall notify Covered Entity within five (5) days of receipt of any request for access or amendment by an individual. Covered Entity shall determine whether to grant or deny any access or amendment requested by the individual. Business Associate shall have a process in place for requests for amendments and for appending such requests to the Designated Record Set, as requested by Covered Entity.
5. **Accounting of Disclosures.** Business Associate shall make available to Covered Entity in response to a request from an individual, information required for an accounting of disclosures of PHI with respect to the individual in accordance with 45 CFR §164.528, as amended by Section 13405(c) of the HITECH Act and any related regulations or guidance issued by HHS in accordance with such provision. Business Associate shall provide to Covered Entity such information necessary to provide an accounting within thirty (30) days of Covered Entity’s request or such shorter time as may be required by state or federal law. Such accounting must be provided without cost to the individual or to Covered Entity if it is the first accounting requested by an individual within any twelve (12) month period. For subsequent accountings within a twelve (12) month period, Business Associate may charge a reasonable fee based upon the Business Associate’s labor costs in responding to a request for electronic information (or a cost-based fee for the production of non-electronic media copies) so long as Business Associate informs the Covered Entity and the Covered Entity informs the individual in advance of the fee, and the individual is afforded an opportunity to withdraw or modify the request. Such accounting obligations shall survive termination of this Agreement and shall continue as long as Business Associate maintains PHI.

6. **Withdrawal of Authorization.** If the use or disclosure of PHI in this Agreement is based upon an individual’s specific authorization for the use of his or her PHI, and (i) the individual revokes such authorization in writing, (ii) the effective date of such authorization has expired, or (iii) the consent or authorization is found to be defective in any manner that renders it invalid, Business Associate agrees, if it has notice of such revocation or invalidity, to cease the use and disclosure of any such individual’s PHI except to the extent it has relied on such use or disclosure, or where an exception under the Confidentiality Requirements expressly applies.

7. **Records and Audit.** Business Associate shall make available to the U.S. Department of Health and Human Services or its agents, its internal practices, books, and records relating to the use and disclosure of PHI received from, created, or received by Business Associate on behalf of Covered Entity for the purpose of determining Covered Entity’s compliance with the Confidentiality Requirements or any other health oversight agency, in a time and manner designated by the Secretary. Except to the extent prohibited by law, Business Associate agrees to notify Covered Entity immediately upon receipt by Business Associate of any and all requests by or on behalf of any and all federal, state and local government authorities served upon Business Associate for PHI.

8. **Implementation of Security Standards: Notice of Security Incidents.** Business Associate will use appropriate safeguards to prevent the use or disclosure of PHI other than as expressly permitted under this Agreement. Business Associate will implement administrative, physical and technical safeguards that reasonably and appropriately protect the confidentiality, integrity and availability of the PHI that it creates, receives, maintains or transmits on behalf of Covered Entity. Business Associate acknowledges that the HITECH Act requires Business Associate to comply with 45 C.F.R. §§ 164.308, 164.310, 164.312, 164.314, and 164.316 as if Business Associate were a Covered Entity, and Business Associate agrees to comply with these provisions of the Security Standards and all additional security provisions of the HITECH Act. Furthermore, to the extent feasible, Business Associate will use commercially reasonable efforts to ensure that the technology safeguards used by Business Associate to secure PHI will render such PHI unusable, unreadable and indecipherable to individuals unauthorized to acquire or otherwise have access to such PHI in accordance with HHS Guidance published at 74 Federal Register 19006 (April 17, 2009), or such later regulations or guidance promulgated by HHS or issued by the National Institute for Standards and Technology ("NIST") concerning the protection of identifiable data such as PHI. Business Associate acknowledges and agrees that the HIPAA Omnibus Rule finalized January 25, 2013 at 78 Fed. Reg. 5506 requires Business Associate to comply with new and modified obligations imposed by that rule under 45 C.F.R. §164.306, 45 C.F.R. § 164.308, 45 C.F.R. § 163.310, 45 C.F.R. § 164.312, 45 C.F.R. § 164.316, 45 C.F.R. § 164.502, 45 C.F.R. § 164.504. Lastly, Business Associate will promptly report to Covered Entity any successful Security Incident of which it becomes aware. At the request of Covered Entity, Business Associate shall identify: the date of the Security Incident, the scope of the Security Incident, the Business Associate’s response to the Security Incident and the
identification of the party responsible for causing the Security Incident, if known. Business Associate and Covered Entity shall take reasonable measures to ensure the availability of all affirmative defenses under the HITECH Act, HIPAA, and other state and federal laws and regulations governing PHI and EPHI.

9. **Data Breach Notification and Mitigation.**

   a. **HIPAA Data Breach Notification and Mitigation.** Business Associate agrees to implement reasonable systems for the discovery and prompt reporting of any "breach" of "unsecured PHI" as those terms are defined by 45 C.F.R. §164.402 (hereinafter a "HIPAA Breach"). The parties acknowledge and agree that 45 C.F.R. §164.404, as described below in this Section 9.1, governs the determination of the date of a HIPAA Breach. In the event of any conflict between this Section 9.1 and the Confidentiality Requirements, the more stringent requirements shall govern. Business Associate will, following the discovery of a HIPAA Breach, notify Covered Entity immediately and in no event later than three (3) business days after Business Associate discovers such HIPAA Breach, unless Business Associate is prevented from doing so by 45 C.F.R. §164.412 concerning law enforcement investigations. For purposes of reporting a HIPAA Breach to Covered Entity, the discovery of a HIPAA Breach shall occur as of the first day on which such HIPAA Breach is known to the Business Associate or, by exercising reasonable diligence, would have been known to the Business Associate. Business Associate will be considered to have had knowledge of a HIPAA Breach if the HIPAA Breach is known, or by exercising reasonable diligence would have been known, to any person (other than the person committing the HIPAA Breach) who is an employee, officer or other agent of the Business Associate. No later than seven (7) business days following a HIPAA Breach, Business Associate shall provide Covered Entity with sufficient information to permit Covered Entity to comply with the HIPAA Breach notification requirements set forth at 45 C.F.R. §164.400 et seq. Specifically, if the following information is known to (or can be reasonably obtained by) the Business Associate, Business Associate will provide Covered Entity with: (i) contact information for individuals who were or who may have been impacted by the HIPAA Breach (e.g., first and last name, mailing address, street address, phone number, email address); (ii) a brief description of the circumstances of the HIPAA Breach, including the date of the HIPAA Breach and date of discovery; (iii) a description of the types of unsecured PHI involved in the HIPAA Breach (e.g., names, social security number, date of birth, address(es), account numbers of any type, disability codes, diagnostic and/or billing codes and similar information); (iv) a brief description of what the Business Associate has done or is doing to investigate the HIPAA Breach, mitigate harm to the individual impacted by the HIPAA Breach, and protect against future HIPAA Breaches; and (v) appoint a liaison and provide contact information for same so that the Covered Entity may ask questions or learn additional information concerning the HIPAA Breach. Following a HIPAA Breach, Business Associate will have a continuing duty to inform Covered Entity of new information learned by Business Associate regarding the HIPAA Breach, including but not limited to the information described in items (i) through (v), above.

   b. **Data Breach Notification and Mitigation Under Other Laws.** In addition to the requirements of Section 9.1, Business Associate agrees to implement reasonable systems for the discovery and prompt reporting of any breach of individually identifiable information (including but not limited to PHI, and referred to hereinafter as "Individually Identifiable Information") that, if misused, disclosed, lost or stolen, Covered Entity believes would trigger an obligation under one or more State data breach notification laws (each a "State Breach") to notify the individuals who are the subject of the information. Business Associate agrees that in the event any Individually Identifiable Information is lost, stolen, used or disclosed in violation of one or more State data breach notification laws, Business Associate shall promptly: (i) cooperate and assist Covered Entity with any investigation into any State Breach or alleged State Breach; (ii) cooperate and assist Covered Entity with any investigation into any State Breach or alleged State Breach conducted by any State Attorney General or State Consumer Affairs Department (or their respective agents); (iii) comply with Covered Entity's
determinations regarding Covered Entity’s and Business Associate’s obligations to mitigate to the extent practicable any potential harm to the individuals impacted by the State Breach; and (iv) assist with the implementation of any decision by Covered Entity or any State agency, including any State Attorney General or State Consumer Affairs Department (or their respective agents), to notify individuals impacted or potentially impacted by a State Breach.

c. **Breach Indemnification.** Business Associate shall indemnify, defend and hold Covered Entity and its officers, directors, employees, agents, successors and assigns harmless, from and against all reasonable losses, claims, actions, demands, liabilities, damages, costs and expenses (including costs of judgments, settlements, court costs and reasonable attorneys' fees actually incurred) (collectively, "Information Disclosure Claims") arising from or related to: (i) the use or disclosure of Individually Identifiable Information (including PHI) by Business Associate in violation of the terms of this Agreement or applicable law, and (ii) whether in oral, paper or electronic media, any HIPAA Breach of unsecured PHI and/or State Breach of Individually Identifiable Information by Business Associate. If Business Associate assumes the defense of an Information Disclosure Claim, Covered Entity shall have the right, at its expense and without indemnification notwithstanding the previous sentence, to participate in the defense of such Information Disclosure Claim. Business Associate shall not take any final action with respect to any Information Disclosure Claim without the prior written consent of Covered Entity. Covered Entity likewise shall not take any final action with respect to any Information Disclosure Claim without the prior written consent of Business Associate. To the extent permitted by law and except when caused by an act of Covered Entity or resulting from a disclosure to a Recipient required or directed by Covered Entity to receive the information, Business Associate shall be fully liable to Covered Entity for any acts, failures or omissions of Recipients in furnishing the services as if they were the Business Associate’s own acts, failures or omissions.

i. Covered Entity shall indemnify, defend and hold Business Associate and its officers, directors, employees, agents, successors and assigns harmless, from and against all reasonable losses, claims, actions, demands, liabilities, damages, costs and expenses (including costs of judgments, settlements, court costs and reasonable attorneys’ fees actually incurred) (collectively, “Information Disclosure Claims”) arising from or related to: (i) the use or disclosure of Individually Identifiable Information (including PHI) by Covered Entity, its subcontractors, agents, or employees in violation of the terms of this Agreement or applicable law, and (ii) whether in oral, paper or electronic media, any HIPAA Breach of unsecured PHI and/or State Breach of Individually Identifiable Information by Covered Entity, its subcontractors, agents, or employees.

ii. Covered Entity and Business Associate shall seek to keep costs or expenses that the other may be liable for under this Section 9, including Information Disclosure Claims, to the minimum reasonably required to comply with the HITECH Act and HIPAA. Covered Entity and Business Associate shall timely raise all applicable affirmative defenses in the event a violation of this Agreement, or a use or disclosure of PHI or EPHI in violation of the terms of this Agreement or applicable law occurs.

10. **Term and Termination.**

a. This Agreement shall commence on the Effective Date and shall remain in effect until terminated in accordance with the terms of this Section 10, provided, however, that termination shall not affect the respective obligations or rights of the parties arising under this Agreement prior to the effective date of termination, all of which shall continue in accordance with their terms.

b. Covered Entity shall have the right to terminate this Agreement for any reason upon thirty (30) days written notice to Business Associate.
c. Covered Entity, at its sole discretion, may immediately terminate this Agreement and shall have no further obligations to Business Associate if any of the following events shall have occurred and be continuing:
   i. Business Associate fails to observe or perform any material covenant or obligation contained in this Agreement for ten (10) days after written notice thereof has been given to the Business Associate by Covered Entity; or
   ii. A violation by the Business Associate of any provision of the Confidentiality Requirements or other applicable federal or state privacy law relating to the obligations of the Business Associate under this Agreement.

d. Termination of this Agreement for either of the two reasons set forth in Section 10.c above shall be cause for Covered Entity to immediately terminate for cause any Business Arrangement pursuant to which Business Associate is entitled to receive PHI from Covered Entity.

e. Upon the termination of all Business Arrangements, either Party may terminate this Agreement by providing written notice to the other Party.

f. Upon termination of this Agreement for any reason, Business Associate agrees either to return to Covered Entity or to destroy all PHI received from Covered Entity or otherwise through the performance of services for Covered Entity, that is in the possession or control of Business Associate or its agents. In the case of PHI which is not feasible to "return or destroy," Business Associate shall extend the protections of this Agreement to such PHI and limit further uses and disclosures of such PHI to those purposes that make the return or destruction infeasible, for so long as Business Associate maintains such PHI. Business Associate further agrees to comply with other applicable state or federal law, which may require a specific period of retention, redaction, or other treatment of such PHI.

11. **No Warranty.** PHI IS PROVIDED TO BUSINESS ASSOCIATE SOLELY ON AN "AS IS" BASIS. COVERED ENTITY DISCLAIMS ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, IMPLIED WARRANTIES OF MERCHANTABILITY, AND FITNESS FOR A PARTICULAR PURPOSE.

12. **Ineligible Persons.** Business Associate represents and warrants to Covered Entity that Business Associate (i) is not currently excluded, debarred, or otherwise ineligible to participate in any federal health care program as defined in 42 U.S.C. Section 1320a-7(b)(f) ("the Federal Healthcare Programs"); (ii) has not been convicted of a criminal offense related to the provision of health care items or services and not yet been excluded, debarred, or otherwise declared ineligible to participate in the Federal Healthcare Programs, and (iii) is not under investigation or otherwise aware of any circumstances which may result in Business Associate being excluded from participation in the Federal Healthcare Programs. This shall be an ongoing representation and warranty during the term of this Agreement, and Business Associate shall immediately notify Covered Entity of any change in the status of the representations and warranty set forth in this section. Any breach of this section shall give Covered Entity the right to terminate this Agreement immediately for cause.

13. **Miscellaneous.**
   a. **Notice.** All notices, requests, demands and other communications required or permitted to be given or made under this Agreement shall be in writing, shall be effective upon receipt or attempted delivery, and shall be sent by (i) personal delivery; (ii) certified or registered United States mail, return receipt requested; or (iii) overnight delivery service with proof of delivery. Notices shall be sent to the addresses below. Neither party shall refuse delivery of any notice hereunder.

     If to Covered Entity:

     Compliance Office
Whatcom County  
Attn: Tyler Schroeder  
311 Grand Ave, Suite 108  
Bellingham, WA 98225

If to Business Associate:

ImageTrend, Inc.  
Attn: Michael J. McBrady  
20855 Kensington Blvd.  
Lakeville, MN 55044

14. **Waiver.** No provision of this Agreement or any breach thereof shall be deemed waived unless such waiver is in writing and signed by the Party claimed to have waived such provision or breach. No waiver of a breach shall constitute a waiver of or excuse any different or subsequent breach.

15. **Assignment.** Neither Party may assign (whether by operation or law or otherwise) any of its rights or delegate or subcontract any of its obligations under this Agreement without the prior written consent of the other Party. Notwithstanding the foregoing, Covered Entity shall have the right to assign its rights and obligations hereunder to any entity that is an affiliate or successor of Covered Entity, without the prior approval of Business Associate.

16. **Severability.** Any provision of this Agreement that is determined to be invalid or unenforceable will be ineffective to the extent of such determination without invalidating the remaining provisions of this Agreement or affecting the validity or enforceability of such remaining provisions.

17. **Entire Agreement.** This Agreement constitutes the complete agreement between Business Associate and Covered Entity relating to the matters specified in this Agreement, and supersedes all prior representations or agreements, whether oral or written, with respect to such matters. In the event of any conflict between the terms of this Agreement and the terms of the Business Arrangements or any such later agreement(s), the terms of this Agreement shall control unless the terms of such Business Arrangements are more strict with respect to PHI and comply with the Confidentiality Requirements, or the parties specifically otherwise agree in writing. No oral modification or waiver of any of the provisions of this Agreement shall be binding on either Party; provided, however, that upon the enactment of any law, regulation, court decision or relevant government publication and/or interpretive guidance or policy that the Covered Entity believes in good faith will adversely impact the use or disclosure of PHI under this Agreement, Covered Entity may amend the Agreement to comply with such law, regulation, court decision or government publication, guidance or policy by delivering a written amendment to Business Associate which shall be effective thirty (30) days after receipt. No obligation on either Party to enter into any transaction is to be implied from the execution or delivery of this Agreement. This Agreement is for the benefit of, and shall be binding upon the parties, their affiliates and respective successors and assigns. No third party shall be considered a third-party beneficiary under this Agreement, nor shall any third party have any rights as a result of this Agreement.

18. **Governing Law.** This Agreement shall be governed by and interpreted in accordance with the laws of the state in which Business Associate is located, excluding its conflicts of laws provisions. Jurisdiction and venue for any dispute relating to this Agreement shall exclusively rest with the state and federal courts in the county in which Business Associate is located.

19. **Equitable Relief.** The parties understand and acknowledge that any disclosure or misappropriation of any PHI in violation of this Agreement will cause the other irreparable harm, the amount of which may be difficult to ascertain, and therefore agrees that the injured party shall have the right to apply to
a court of competent jurisdiction for specific performance and/or an order restraining and enjoining any such further disclosure or breach and for such other relief as the injured party shall deem appropriate. Such right is to be in addition to the remedies otherwise available to the parties at law or in equity. Each party expressly waives the defense that a remedy in damages will be adequate and further waives any requirement in an action for specific performance or injunction for the posting of a bond.

20. **Nature of Agreement; Independent Contractor.** 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, or (ii) a relationship of employer and employee between the parties. Business Associate is an independent contractor, and not an agent of Covered Entity. This Agreement does not express or imply any commitment to purchase or sell goods or services.

21. **Counterparts.** This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same document. In making proof of this Agreement, it shall not be necessary to produce or account for more than one such counterpart executed by the party against whom enforcement of this Agreement is sought. Signatures to this Agreement transmitted by facsimile transmission, by electronic mail in portable document format (".pdf") form, or by any other electronic means intended to preserve the original graphic and pictorial appearance of a document, will have the same force and effect as physical execution and delivery of the paper document bearing the original signature.

**IN WITNESS WHEREOF,** the parties have executed this Agreement as of the Effective Date.

**COVERED ENTITY:**

By: ________________________________

(Print or Type Name)

(Title)

Date: ______________________________

**BUSINESS ASSOCIATE:**

By: ________________________________

Michael J. McBrady

(Print or Type Name)

President

(Title)

Date: ______________________________

February 5, 2018
EXHIBIT F – INSURANCE CERTIFICATE

CERTIFICATE OF LIABILITY INSURANCE

DATE (MMDYYYY): 2/5/2018

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(s) 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
Associated Benefits and Risk Consulting
6000 Clearwater Drive
Minnetonka MN 55343

CONTACT:
NAME: Jenny Sayler
PHONE: (612) 947-2470
FAX: (612) 947-2783
EMAIL: jenny.sayler@associatebic.com

INSURER A: Federal Insurance Company/Chubb
NAIC #: 20281

INSURED:
ImageTrend, Inc.
20805 Kensington Blvd.
Lakewville MN 55044

INSURER B: ACE American Insurance Company
22667

INSURER C: Great Northern Insurance Co.
20303

INSURER D:

INSURER E:

CERTIFICATE NUMBER: 1319103092

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.

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

Network Security and Privacy Injury Liability are included in the Technology Errors & Omissions/Professional Liability. ADDL INSO (Additional Insured) and SUBR WO (Waiver of Subrogation) boxes checked above are included for names/projects listed below only as required by written contract or agreement.

Whatcom County is Additional Insured as required by written contract or agreement.

CERTIFICATE HOLDER

Whatcom County
311 Grand Ave, Suite 108
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

© 1988-2014 ACORD CORPORATION. All rights reserved.
EXHIBIT G – ePHI DATA EXPORT SIGN OFF TEMPLATE

ePHI Data Export
Between ImageTrend, Inc. ("ImageTrend"), a Minnesota Corporation located at 20855 Kensington Blv., and
_________________________ ("the Data Owner") residing at

for transmitting ePHI data to Transferee, ____________________________________________ residing at__________________________

Whereas: ImageTrend is a provider of data management services and a current Business Associate to the Data Owner and;

Whereas: the Data Owner wishes ImageTrend to share certain ePHI data from the Data Owner’s System, in ImageTrend's capacity as a Business Associate, with Data Owner in an extracted raw format.

1. Data Export Purpose
The purpose of this Data Export is to provide Data Owner’s data to Transferee to enable Transferee to provide services to Data Owner using ePCR data, per the terms of Transferee and Data Owner’s separate services agreement.

2. Data Export Setup
ImageTrend shall transmit to Transferee the selected PDF, NEMSIS, or other ImageTrend System supported export, as set-up and configured by Data Owner. It shall be Data Owner’s responsibility to ensure the correct export file type (and data fields) is selected during the initial configuration with ImageTrend and Transferee.

3. Authorization
Data Owner hereby authorizes ImageTrend to transmit and disclose the Identified Data, and to disclose and transmit other data reasonably necessary to achieve the data export’s purpose outlined in Section 1 above. This Agreement modifies any prior agreements of the parties only to the extent necessary to affect this agreement, and does not otherwise change the terms of any prior agreements between the parties. ImageTrend will only interact with the Authorized individuals as listed below, or as otherwise instructed in writing by Data Owner.

4. Right to Revoke or Terminate
Data Owner may terminate or revoke the right to transmit or disclose data granted to ImageTrend by this Agreement at any time by providing reasonable written notice to ImageTrend and providing a commercially reasonable period of time in which to effect the termination.

Authorized Individuals:

<table>
<thead>
<tr>
<th>Name:</th>
<th>Name:</th>
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<tbody>
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<td>Email:</td>
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<td>Role:</td>
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<td>Organization:</td>
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The Data Owner has read, understands, and has authority to agree to the terms of this Agreement.

"DATA OWNER"

By: ____________________________
Name: ____________________________
Title: ____________________________
Dated: ____________________________

20855 Kensington Blvd, Lakeville, MN 55044
Tel: (952) 459-1589 Toll Free: (888) 459-7769 Fax: (952) 985-5671
WHATCOM COUNTY COUNCIL AGENDA BILL

CLEARANCES

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<tr>
<th>Initial</th>
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<td>Jeff Gollen</td>
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<td>Dept. Head:</td>
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<td>Jon Hutchings</td>
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<td>Brad Bennett</td>
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<td>Jack Louws</td>
<td>9/6/18</td>
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TITLE OF DOCUMENT: Renewal of Interlocal Agreement between Whatcom County and City of Bellingham

ATTACHMENTS: Memo, Contract Information Sheet, Renewal Contract, and Facility Use 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.)

Approval for the County Executive to renew the Interlocal Agreement (WCC #201602026-1) between Whatcom County and the City of Bellingham, for the purposes of providing for the joint usage of the Vactor Waste Site Facility from January 1, 2018 through December 31, 2018 due to the rate increase from $54.36/ton to $147.56/ton.

COMMITTEE ACTION: 

COUNCIL ACTION:

02/13/2018: Request for approval for renewal with rate change.

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: Brad Bennett, AS Finance Manager
Through: Jon Hutchings, Public Works Director
From: Jeff Gollen, PW Maintenance & Operations Superintendent
Date: February 6, 2018
Re: Renewal of Interlocal Agreement - City of Bellingham
    Joint Usage of the Vactor Waste Transfer Facility (WCC 201602026-1)

- Requested Action
  Enclosed for your review and signature are two (2) Interlocal Agreement originals between
  Whatcom County Public Works and City of Bellingham.

- Background and Purpose
  Street wastes for all users of the City of Bellingham Vactor Waste Transfer Facility have
  increased due to NPDES/Stormwater environmental requirements and must be disposed
  in a sanitary facility given it being classified as a "special waste" which means "wastes
  collected from roadway and normal maintenance activities such as sweepings, cleanings
  from storm drainage systems and the like". In 2017, the Maintenance & Operations division
  disposed of a total of 1,336.83 tons of street and vactor waste (872.71 tons from M&O
  collection and 464.12 tons from contracted street-sweeping of Lake Whatcom and Lake
  Samish watershed areas).

  Whatcom County and the City of Bellingham first entered into an Interlocal Agreement,
  dated November 5, 2001 (Whatcom County Contract 200110028, City Contract 2001-
  0295) to establish the terms and conditions under which they mutually agreed to provide
  funding for the joint installation, maintenance and operation of a beneficial re-use facility
  for street waste over a ten-year period. A "beneficial re-use facility" per Section 2.01 of this
  2001 contract is defined as "a special waste handling facility designed for the specific
  intent of providing a place where street waste materials collected are processed, therein
  rendering the material suitable for re-use, recycling, or composting according to regulatory
  guidelines". Whatcom County contributed $150,000 and the City of Bellingham contributed
  $450,000 towards constructing the vactor waste facility.

  The latest agreement was approved on May 3, 2016 (Whatcom County Contract
  201602026) with subsequent contract renewals running through December 31, 2021. If
  approved, this will be the second of five contractually allowed annual renewals.

  The disposal rates for 2018 increased substantially from $54.36/ton in 2017 to $147.56/ton
  for 2018 due to increases in hauling and landfill rates, the Whatcom County solid waste
  excise tax, and facility operating costs.

- Differences from Previous Contract
  This renews Interlocal Agreement 201602026-1, which expired December 31, 2017.
During 2016-2017 there was no price increase from the City's $54.36/ton disposal rate. For 2018 rates, there is a price increase from $54.36/ton in 2017 to $147.56/ton in 2018. For the 2018 rate, the City determined that a rate increase was necessary based primarily on the current cost of hauling and outside disposal of the material. Whatcom County in 2017 spent approximately $47,441 for county forces generated waste and approximately $25,230 for the contracted street sweepers for Lake Whatcom and Lake Samish watersheds.

- **Funding Amount and Source**
  Adequate funding exists within the 2017-2018 County Road Fund budget.

- **Recommended Action**
  Whatcom County Public Works, the City of Bellingham Public Works, Whatcom County Health Department, and other interests are investigating alternative solutions to this substantially increased cost burden. In the interim, please approve this agreement and forward to the Executive and Council for approval. This Interlocal Agreement will be run concurrently between both jurisdictions for approval; signatures will be obtained when approved. Please contact Jeff Gollen at extension 6419, if you have any questions or concerns regarding the terms of this agreement.

Enclosures
### WHATCOM COUNTY CONTRACT INFORMATION SHEET

**Originating Department:** Public Works-Maintenance & Operations Div.

**Division/Program:** (i.e. Dept. Division and Program) 9060/906000

**Contract or Grant Administrator:** Jeff Gollen, Maintenance & Operations Super.

**Contractor’s / Agency Name:** City of Bellingham

**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 #:** 201602026

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

$ 54.36/ton rate

This Amendment Amount:

$ 147.56/ton rate

**Total Amended Amount:**

$ 147.56/ton rate

**Council approval required** for 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, and all property leases, 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 (supplies and equipment) approved by council in a capital budget appropriation ordinance.
3. 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:** Provide for the continued joint usage of the Vactor Waste Transfer Facility between Whatcom County and the City of Bellingham through December 31, 2018. The price for the service for 2018 will increase from $54.36 per ton in 2017 to $147.56 per ton in 2018 due to the increased cost of outside disposal of the material.

**Term of Contract:** One (1) Year, 2nd renewal of 5

**Expiration Date:** December 31, 2018

**Contract Routing:**

1. Prepared by: Julia Bilderback
2. Attorney signoff: Daniel L. Gibson
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:

**Date:** 1/24/18
**Date:** 1/24/18
**Date:** 1/30/18
**Date:**
**Date:** 2-2-18

**Last edited 10/31/16**
INTERLOCAL AGREEMENT

CITY OF BELLINGHAM – WHATCOM COUNTY
VACTOR WASTE FACILITY USE

MEMORANDUM FOR ANNUAL RENEWAL
City of Bellingham Interlocal Agreement #2016-0297
Whatcom County Interlocal Agreement 201602026
Vector Waste Facility Use - January 1, 2018 through December 31, 2018

WHEREAS, the City of Bellingham and the Whatcom County are parties to that certain City of Bellingham Interlocal Agreement #2016-0297/Whatcom County Interlocal Agreement 201602026, effective January 1, 2016, for vector waste facility use; and

WHEREAS, the Interlocal Agreement included an initial one-year term, expiring December 31, 2016, plus five one-year renewal options exercisable upon written agreement of both parties; and

WHEREAS, both parties desire to exercise the second renewal option, with the second renewal period commencing on January 1, 2018 and terminating on December 31, 2018.

NOW, THEREFORE, the parties hereby agree as follows:

The parties hereby exercise the second one (1) year renewal option. This second renewal term shall commence on January 1, 2018 and terminate on December 31, 2018 ("Second Renewal Term"). Cost of service will increase to $147.56/ton during the Second Renewal Term. See Exhibit “A” attached and incorporated herein. All other terms and conditions, shall remain unchanged and in full force and effect.

WHATCOM COUNTY

Dated this ______ day of ___________________, 2018.

Jack Louws, County Executive

Department Approval:

Public Works Director

Approved as to Form:

Daniel L. Gibson
Chief Civil Deputy Prosecuting Attorney

CITY OF BELLINGHAM

Dated this ______ day of ___________________, 2018.

Kelli Linville, Mayor

Department Approval:

Attest:

Public Works Director

Finance Director

Approved as to Form:

Office of the City Attorney
EXHIBIT A

2018 Vactor Waste Facility Use Permit

In consideration for the use of the City of Bellingham’s ("City") Vactor Waste Facility ("Facility"), located at __________________________________________ (hereinafter the "User"), covenants and agrees to comply with the following terms and conditions of this Use Permit ("Permit"): 

User’s:
Contact Person: __________________________________________

Phone Number: __________________________________________

Email Address: __________________________________________

Section 1 – Purpose

The purpose of this Permit is to allow non-public, private sector use of the Facility. As further described herein, User’s ability to use the Facility requires full compliance with this Permit’s terms and conditions, including but not limited to:

- Dumping only “ACCEPTABLE WASTE” (Section 2 – ACCEPTABLE WASTE)
- Dumping in an appropriate manner (Section 3 – DUMPING OPERATION)
- Obtaining Training (Section 4 – REQUIRED TRAINING)
- Complying with Safety Rules and Regulations (Section 5 – SAFETY)
- Payment (Section 6 – COST OF SERVICE)
- Such other terms and conditions as contained herein.

Section 2 – Acceptable Waste

2.1 User shall be solely responsible to insure that only Acceptable Waste is deposited at the facility. For purposes of this Permit “Acceptable Waste” is defined herein as:

- Street sweepings are wastes collected by utilizing a street sweeper to collect grit, dirt, vegetative waste and litter from roadway surfaces.
- Vactor wastes includes, grit, dirt and vegetative waste collected by an eductor truck during the cleaning of storm water catch basins.

2.2 Any materials that are odorous or are from a chemical spill are specifically not considered Acceptable Waste products and shall not be deposited at the Facility.

2.3 In the event unacceptable waste or materials are dumped at the Facility, the responsible party shall pay all costs associated with the proper removal and deposition of the contaminated materials. Removal and deposing of unacceptable waste or materials shall be in accordance with the approved practices and regulations of the State of Washington, including but not limited to the Washington State Department of Ecology, and the Whatcom County Health Department.
2.4 The City reserves the right to find any waste or material unacceptable in its sole discretion. Disposing of unacceptable materials may result in the loss of the privilege to use the Facility.

**Section 3 – Dumping Operation**

3.1 The Facility has a limited capacity to accept Acceptable Waste products and User acknowledges that the City, State of Washington and Whatcom County, as public users, have preference over non-public, private users. In the event that the Facility capacity should become an issue, non-public, private users will be directed to cease usage of the site. The City shall have no obligation or duty to provide advance warning of this circumstance or to provide alternate dumping facilities. This contract is in no way a guarantee of service. The City of Bellingham may at any time and for any reason cease to offer this service to any and all users.

3.2 When depositing Acceptable Waste at the Facility, User agrees to follow the following “dumping operation”:

3.2.1 Eductor vehicles shall back into the Facility to decant excess water into the settling trough;

3.2.2 After excess water is removed, the truck shall be weighed to obtain the net weight of the material. A copy of the weight slip shall be placed in the drop box of every load dumped at the facility. Weight slips shall clearly identify: gross weight, tare weight, and billable weight. Weight slips will be checked against the gate entry log. If there is no slip, the customer will be charged for a full load based upon the capacity of the vehicle. Users are not to use the site other than to dump. Gate access shall be monitored for billing purposes. If a user accesses the facility and there is no weight slip present for that access the user will be billed for a full load of the vehicle assigned to that access card; AND

3.2.3 After weighing the remaining portion of the load, it shall be dumped, as far back in the facility as is practical to limit the amount of material that may spew out into the parking lot.

3.3 In addition to any other remedies that may be available to the City, the City may terminate this Permit and bar User from any future use of the Facility for failure to follow the procedures outlined in Section 3.2.

**Section 4 – Required Training**

In order to insure the proper and safe use of the Facility, training is required prior to use of the Facility. Training consists of a walkthrough of the Facility with a representative of the City to explain how the Facility operates and what is expected from those who use the Facility. The City shall issue a letter of fulfillment (“Letter”) that documents that the User has completed the training requirement. User shall not be allowed to use the Facility until completing this training and receiving the Letter. Further, User shall not allow any of its employees or agents to use the Facility without receiving the training and Letter required hereunder.
Section 5 – Safety

All personal injury, including first aid incidents, or damage to vehicles or buildings must be reported immediately to the Safety Specialist at Bellingham Public Works (360-778-7700). Users shall follow all Washington State safety policies and regulations while inside the Facility. It is encouraged that a ground guide be used whenever operating a vehicle inside the Facility. The City shall not be responsible in any manner for User’s use of the Facility, except to the extent of the City’s sole negligence.

Section 6- Cost for Service

The cost of depositing one ton of Acceptable Wastes is $147.56 for 2018. This amount is subject to change at the end of the term of the Permit. The User will be billed monthly and User agrees to pay the bill in full within 30 calendar days of the date of the bill. Late payments will be charged a late fee of $25 and returned checks are subject to a $20 fee. In addition to any other remedies that may be available, User’s failure to pay the bill after 60 calendar days shall automatically terminate this Permit and cause User to forfeit the privilege to use the Facility.
# 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>
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<tr>
<td>Originator:</td>
<td>TA</td>
<td>01/19/18</td>
<td></td>
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<tr>
<td>Division Head:</td>
<td></td>
<td>1/29/18</td>
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<td>Dept. Head:</td>
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<tr>
<td>Executive:</td>
<td></td>
<td>2/6/18</td>
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**TITLE OF DOCUMENT:** Interagency Agreement between Whatcom County and North Sound Behavioral Health Organization

**ATTACHMENTS:**
1. Info Sheet
2. Executive Memo
3. 2 copies of contract

<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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<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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</table>

This contract provides Whatcom County with administrative services funding to support the County’s behavioral health program and to support regional behavioral health activities. This contract also provides funding to support housing assistance for individuals with mental illness.

**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

**Contract No.:** 201802001

<table>
<thead>
<tr>
<th>Originating Department:</th>
<th>Health</th>
</tr>
</thead>
<tbody>
<tr>
<td>Contract Administrator:</td>
<td>Anne Deacon</td>
</tr>
<tr>
<td>Contractor's / Agency Name:</td>
<td>North Sound Behavioral Health Organization</td>
</tr>
</tbody>
</table>

### General Information

- **Is this a New Contract?** Yes X No __
- **Does contract require Council Approval?** Yes X No __ If No, include WCC ____________
- **Is this a grant agreement?** Yes _ No _ If yes, grantor agency contract number(s) Admin-18 CFDA # n/a
- **Is this contract grant funded?** Yes _ No X If yes, associated Whatcom County grant contract number(s) ____________
- **Is this contract the result of a RFP or Bid process?** Yes _ No X If yes, RFP and Bid number(s) ____________ Cost Center: 671200 123400
- **Is this service agreement excluded from E-Verify?** Yes X No _ If yes, indicate exclusion(s) below:
  - Professional services agreement for certified/licensed professional
  - Contract less than $100,000.
  - Interlocal Agreement (between Govt's)
  - Contract for Commercial off the shelf items (COTS)
  - Work related subcontract less than $25,000.
  - Public Works - Local Agency/Federally Funded FHWA

### Contract Information

- **Contract Amount:** (sum of orig contract amt and any prior amendments) $957,459
- **This Amendment Amount:** $ ________
- **Total Amended Amount:** $ ________

If a Professional Services Agreement is more than $15,000 or a Bid is more than $35,000, please submit an Agenda Bill for Council approval and a supporting memo. Any amendment that provides either a 10% increase in amount or more than $10,000, whichever is greater, must also go to Council and will need an agenda bill and supporting memo. If less than these thresholds, just submit to Executive with supporting memo for approval.

### Scope of Services:

- **Insert language from contract (Exhibit A) or summarize; expand space as necessary.**
  - This contract provides Whatcom County with funding to support the County’s behavioral health program administration and participation in regional mental health activities. It also includes funding to support housing for individuals with mental illness.

### Term of Contract: 1 Year

<table>
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<td><strong>Contract Routing Steps &amp; Signoff:</strong> [sign or initial] [indicate date transmitted]</td>
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<td>1. Prepared by: pp</td>
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<td>2. Attorney reviewed:</td>
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<td>3. AS Finance reviewed:</td>
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<td>4. IT reviewed if IT related</td>
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<td>5. Corrections made:</td>
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<td>6. Attorney signoff:</td>
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<tr>
<td>7. Contractor signed:</td>
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<tr>
<td>8. Submitted to Exec Office: __</td>
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<tr>
<td>9. Council approved: (if necessary)</td>
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<tr>
<td>10. Executive signed:</td>
</tr>
<tr>
<td>11. Contractor Original Returned to dept;</td>
</tr>
<tr>
<td>12. County Original to Council</td>
</tr>
</tbody>
</table>

Date 1/9/18 [electronic]
Date 1-24-18 [electronic]
Date 1-30-18 [electronic]
Date [electronic] hard copy printed
Date [summary via electronic; hardcopies]
MEMORANDUM

TO: Jack Louws, County Executive
FROM: Regina A. Delahunt, Director
RE: NS BHO Administration Contract 2018
DATE: February 2, 2018

Enclosed are two (2) originals of a contract between the North Sound Behavioral Health Organization (NS BHO) and Whatcom County for your review and signature.

- **Background and Purpose**
  This contract provides Whatcom County Health Department with funding to support the County’s behavioral health program administration and participation in regional behavioral health activities. It also includes funding to support housing for people living with mental illness.

- **Funding Amount and Source**
  The contract provides $957,459 for 2018. It includes $458,592 which will be deferred to calendar year 2019 from NS BHO’s Medicaid and State mental health contracts. This funding covers County administrative costs, which includes funding for transition planning and support for integrated managed health care activities. Council approval is required per RCW 39.34.020(2) 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
Contract Administrator: Anne Deacon
Contractor's / Agency Name: North Sound Behavioral Health Organization

Is this a New Contract? Yes X No __
If not, is this an Amendment or Renewal to an Existing Contract? Yes ___ No ___

Does contract require Council Approval? Yes X No ___ If No, include WCC _______

Is this a grant agreement? Yes X No ___ If yes, grantor agency contract number(s) _______
CFDA # n/a

Is this contract grant funded? Yes ___ No X __ If yes, associated Whatcom County grant contract number(s) _______

Is this the result of a RFP or Bid process? Yes ___ No X __ If yes, RFP and Bid number(s) _______
Contract Cost Center: 671200 12400

Is this a service agreement excluded from E-Verify? Yes X No ___ If yes, indicate exclusion(s) below:
☐ Professional services agreement for certified/licensed professional
☐ Contract less than $100,000.
☐ Contract work is all performed outside U.S.
☐ Contract for Commercial off the shelf items (COTS)
☐ Work related subcontract less than $25,000.
☐ Interlocal Agreement (between Gov't's)
☐ Public Works - Local Agency/Federally Funded FHWA

Contract Amount (Sum of orig contract amount and any prior amendments): $ 957,459
This Amendment Amount: $ _______
Total Amended Amount: $ _______

Scope of Services: [Insert language from contract (Exhibit A) or summarize; expand space as necessary]
This contract provides Whatcom County with funding to support the County's behavioral health program administration and participation in regional mental health activities. It also includes funding to support housing for individuals with mental illness.

Term of Contract: ___ Year Expiration Date: 12/31/2018

Contract Routing Steps & Signoff: [Sign or initial] [Indicate date transmitted]
2. Attorney reviewed: __________ 1/24/18 [electronic]
3. AS Finance reviewed: __________ 1/26/18 [electronic]
4. IT reviewed if IT related __________
5. Corrections made: __________
6. Attorney signoff: __________
7. Contractor signed: __________
8. Submitted to Exec Office __________ 2/2/18 [summary via electronic; hardcopies]
9. Council approved (if necessary) __________
10. Executive signed: __________
11. Contractor Original Returned to dept: __________
12. County Original to Council __________
NORTH SOUND
BEHAVIORAL HEALTH ORGANIZATION

INTERAGENCY AGREEMENT

WITH

WHATCOM COUNTY

CONTRACT #NORTHSOUND BHO-WHATCOM-ADMIN-18

JANUARY 1, 2018 TO DECEMBER 31, 2018
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EXHIBITS

Exhibit A – Tribal Coord of Implementation of Svc Plan-P&P-QM Plan-links

Exhibit B – Budget

Exhibit C – Ombuds Services

Exhibit D – Deliverables

Exhibit E – Business Associate Agreement
INTERAGENCY AGREEMENT

THIS INTERAGENCY AGREEMENT (the “Agreement”), pursuant to RCW Chapter 71.24 and all relevant and associated statutes, as amended, is made and entered into by and between the NORTH SOUND REGIONAL SUPPORT NETWORK, dba THE NORTH SOUND BEHAVIORAL HEALTH ORGANIZATION, LLC (North Sound BHO), 301 Valley Mall Way, Suite 110, Mt. Vernon, WA 98273, and WHATCOM COUNTY (Contractor), 509 Girard Street 37, Bellingham, WA 98225.

This Agreement incorporates the Exhibits to the Agreement and other documents incorporated by reference.

The effective date of this Agreement is January 1, 2018, through December 31, 2018.

A. DEFINITIONS
As used anywhere within this Agreement or Attachments, the following terms have the indicated meanings:

Access to Care Standards (ACS) means the Division of Behavioral Health and Recovery (DBHR) Minimum Eligibility Requirements for Medicaid Adults & Medicaid Older Adults Guidelines reflect the most restrictive eligibility criteria that can be applied. North Sound BHO may expand coverage based on availability of local resources.

Accountability means responsibility of Contractor for achieving defined outcomes, goals, and contract obligations.

Act is the Social Security Act.

Administrative costs mean costs for the general operation of the public behavioral health system. These activities cannot be identified with a specific direct or direct services support function.

Advance Directive means a written instruction, such as a living will or durable power of attorney for health care, recognized under State law (whether statutory or as recognized by the courts of the State), relating to the provision of health care (including behavioral health care) when the individual is incapacitated.

Aging and Long-Term Support Administration (ALTSA) means the Department of Social and Health Services (DSHS) governing public health care, behavioral health care and substance abuse services (SUD) and its employees and authorized agents.

Agreement means this Agreement, including all documents attached or incorporated by reference.

Allied Systems means State or local services which provide individuals with assistance to reduce the impact of disabilities, functional impairments, or skill deficits, and which promote stable community living.
Annual revenue means all revenue received by Contractor pursuant to the contract for January of any year through December of the next year.

Arbitration: means the process by which the parties to a dispute submit their differences to the judgment of an impartial person or group appointed by mutual consent or statutory provision.

Assessment means a process, which provides sufficient information to determine medical necessity for behavioral health services covered under this Agreement.

Behavioral Health Agency (BHA) means BHAs that are subcontracted by Prepaid Inpatient Health Plan (PIHP) and licensed to provide behavioral health/chemical dependency services.

Behavioral Health Organization (BHO) means a county authority or group of county authorities or other entity recognized by the Secretary that contracts for behavioral health services, SUD treatment services within a defined Regional Service Area, doing business as (dba) North Sound BHO.

Behavioral Health Professional (BHP) means as defined in RCW 71.34.020(13) for children and RCW 71.05.020(12) for adults (WAC 388-865-0150).

BHO Advisory Board means the behavioral health advisory board appointed by each BHO, which reviews and provides comments on plans and policies related to service delivery and outcomes. The BHO must promote active engagement with persons with behavioral disorders, their families and service providers by soliciting and using their input to improve its services and appoints a BHO Advisory Board to fulfill this purpose.

Benefit Period means the period of service authorization, typically a one (1) year period. The individual may be open (actively receiving services) or closed during this period of time.


Chemical Dependency Professional (CDP) means an individual licensed through the Washington State Department of Health (DOH). A CDP is the individual with primary responsibility for implementing an individualized plan for SUD treatment services.

Chemical Dependency Professional Trainee (CDPT) means an individual working toward the education and experience requirements for certification as a CDP and who has been credentialed as a CDPT.

Child means a person under the age of 18 years. For persons eligible for the Medicaid program, child means a person who is under the age of 21 years.
Code of Federal Regulations (CFR) means all references in the Agreement to CFR chapters or sections shall include any successor, amended, or replacement regulation.

Complaint means a verbal or written statement by an individual or enrollee that expresses dissatisfaction with some aspect of services covered under this Agreement, the Primary Care Provider, or Contractor.

Coordinated Quality Improvement Program (CQIP) Health care institutions and medical facilities, other than hospitals, that are licensed by the department, professional societies, or organizations, health care service Contractors, health maintenance organizations, health carriers approved pursuant to RCW Chapter 48.43, and any other person or entity providing health care coverage under RCW Chapter 48.42 that is subject to the jurisdiction and regulation of any state agency or any subdivision thereof may maintain a CQIP for the improvement of the quality of health care services rendered to patients and the identification and prevention of medical malpractice as set forth in RCW 70.41.200.

Corrective Action/Compliance Review means when findings from a North Sound BHO/DBHR review or other monitoring efforts or audits show there are apparent violations of this Agreement, Contractor shall implement corrective action within specified timeframes determined by North Sound BHO/DBHR/Department’s other auditors.

Corrective Action Plan (CAP) means a written plan specifying what Contractor is required to do to be in compliance. This includes required improvements and a timeline for such action(s) to be accomplished.

Crisis means crisis may be self-defined or a situation where an individual is acutely mentally ill or experiencing serious disruption in cognitive, volitional, psychosocial/neurophysiological functioning.

Crisis Intervention means intervention activities of duration less than 24 hours (with a 24-hour period) to stabilize an individual in a psychiatric emergency (Health Care Procedural Coding System [HCPCS] procedure codes).

Crisis Services means face-to-face evaluation and treatment of behavioral health emergencies and crises to non-enrolled, as well as, enrolled individuals experiencing a crisis as defined by the WAC. Crisis services shall be available on a 24-hour basis with the goal of stabilizing the individual in crisis and providing immediate or short-term treatment and support in the least restrictive environment available. Crisis services may be provided prior to an intake evaluation/assessment.

Crisis Stabilization Services means services provided to individuals who are experiencing a behavioral health emergency or crisis. This service is provided through telephone/face-to-face in-vivo services.

Cross-System Team meetings and consultations means participation and involvement with systems beyond the behavioral health system, who are also providing behavioral health services (i.e., Division of Child and Family Services (DCFS), Developmental Disabilities Administration (DDA), Juvenile Rehabilitation Administration (JRA), Department of Corrections (DOC), schools, etc.), to ensure communication, and integrated, coordinated treatment planning and provision.
Cultural Competency is a set of congruent behaviors, attitudes and policies that come together in a system or agency and enable that system or agency to work effectively in cross-cultural situations. A culturally competent system of care acknowledges and incorporates at all levels the importance of language and culture, cultural differences, expansion of cultural knowledge and adaptation of services to meet culturally unique needs (WAC 388-865-0150).

The ability to serve individuals with mental illness of all ages, all ethnic groups (including American Indians) and who identify as a sexual minority, in a manner which is responsive to their age and unique cultural background.

Delegation Plan means a document or an identified set of documents that show the Contractor’s compliance with the Subcontracts Section of this Agreement.

Disaster Outreach is persons contacted in their place of residence or in non-traditional settings for the purpose of:

1. Assessing their behavioral health or social functioning following a disaster; or
2. Increasing their utilization of human services and resources.

There are two (2) basic approaches to outreach:

1. Mobile (ongoing to person to person); and
2. Community settings (e.g., temporary shelters, disaster assistance sites, disaster information forums).

Regardless of the approach, the outreach process has four (4) important components:

1. Locating persons in need of disaster relief services;
2. Assessing their needs;
3. Engaging or linking persons to an appropriate level of support or disaster relief services; and
4. Providing follow-up behavioral health services when clinically indicated.

Disaster outreach can be performed by trained volunteers, peers/persons hired under a Federal Crisis Counseling Grant. These persons should be trained in disaster outreach, which is different than traditional behavioral health crisis intervention.

Emergent Care means services provided for a person, that if not provided, would likely result in the need for crisis intervention or hospital evaluation due to concerns of potential danger to self, others, or grave disability according to RCW 71.05.

Exempt American Indians means Medicaid eligible and non-eligible American Indians as defined by 25 USC 1603 that have received an exemption, which permits Medicaid reimbursed services to be delivered by Indian health service programs or tribal clinics.
Fair Hearing means a Grievance hearing before the Washington State Office of Administrative Hearings.

Fraud means an intentional deception or misrepresentation made by a person with the knowledge that the deception could result in some unauthorized benefit to him or some other person. It includes any act that constitutes fraud under applicable Federal or State law (Medicaid Managed Care Fraud and Abuse Guidelines).

Geographic Area means North Sound BHO Service Area consisting of the following geographic areas:

1. Island County
2. San Juan County
3. Skagit County
4. Snohomish County
5. Whatcom County

Gravely Disabled as defined in RCW 71.34.020(8) for children, and 71.05.020(1) in the case of adults.

Grievance means an expression of dissatisfaction about any matter other than the action as “action” is defined above. The term is also used to refer to the overall process that includes grievance and appeals handled at the PIHP level and access to the State Fair Hearing process. Possible subjects for grievances include, but are not limited to, the quality of care or services provided, and aspects of interpersonal relationships, such as, rudeness, or failure to respect the enrollee’s rights.

Health Insurance Portability and Accountability (HIPAA) Act of 1996

Indirect Costs are costs incurred for activities other than those that qualify as direct costs. Indirect costs include, but are not limited to, activities, staff, tools, depreciation and equipment, transportation, education or training related to financial, facilities, or data management, quality management, resource management (except for direct costs incurred pursuant to RCW 71.24.025) and RSN/PIHP or subcontractor administration. Indirect costs do not include capital items or unexpended reserves.

Individual means a person with lived experience who is now or has in the past received behavioral health services.

Local Funds Eligible for Match are sources of revenue that are eligible to be used as Federal match are broad based taxes at the County or other local taxing authority level that are spent and have been certified by the local authority as public funds for behavioral health services allowable under this Agreement. Funds used for Federal match under this Agreement may not be used as match for any other Federal program. It can be State or local funds that have not been previously matched with Federal funds at any point. Local funds do not include donations. Although State funds (non-Medicaid) can be used for local match, these funds are intended to be used for non-Medicaid services and non-Medicaid individuals and can only be used as match once these obligations are met.
Management Information System (MIS) means a computer system designed to provide management personnel with up-to-date information on an organization’s performance.

Mental Health Care Provider (MHCP) means the individual with primary responsibility for implementing an individualized plan for mental health rehabilitation services. Minimum qualifications are B.A. level education in a related field or A.A. level education with two (2) years’ experience in the mental health or related fields.

North Sound Behavioral Health Organization, LLC (North Sound BHO)

Ombuds means an individual performing an Ombuds service as defined at WAC 388-865-0250 as existing or hereafter amended.

Public Funds are State, Federal, or local government funds gained by a taxing authority.

Regional Support Network (RSN) means a county authority or group of county authorities recognized and certified by the Secretary of DSHS which enter into joint operating agreements to contract with the Secretary pursuant to RCW 71.24 to operate a single managed system of services for persons with mental illness living in the Service Area covered by the county or group of counties. The RSN shall assume all duties assigned to county authorities by RCW 71.24, 71.34, and 71.05.

Revised Code of Washington (RCW) is all references in the Agreement to RCW chapters or sections shall include any successor, amended, or replacement statute.

Substance Use Disorder (SUD) means a problematic pattern of alcohol/drug use leading to clinically significant impairment or distress as categorized in the DSM 5.

Subcontract is any written agreement between Contractor and subcontractor or between Contractor, subcontractor, and another subcontractor to provide services or activities otherwise performed under this Agreement.

Subcontractor is an individual or entity performing all or part of the services under this Agreement under a separate contract with Contractor or its subcontractors.

Title 42 is the CFR Public Health Service.

Title XIX is grants with states for Medical Assistance Program.

Title XXI is State Children’s Health Insurance Program.

Transition Age Youth is anyone age 17-21.
Tribal Coordination of Implementation of Service Plan (formerly 7.01 Plan) is North Sound BHO’s Board approved plan, which outlines North Sound BHO’s commitment to planning and service delivery for American Indian governments and communities (Exhibit A).

Underserved are persons who are minorities, children, elderly, disabled and low-income (see WAC 388-865-0150).

Washington Administrative Code (WAC) is all references in the Agreement to WAC chapters or sections shall include any successor, amended, or replacement regulation.

Waiver is the document by which DSHS/DBHR requests sections of the Social Security Act be waived in order to operate a capitated managed care system to provide services to enrolled recipients. Section 1915(b) of the Act, authorizes the Secretary to waive the requirements of sections 1902 of the Act to the extent he/she finds proposed improvements or specified practices in the provision of services under Medicaid to be cost-effective, efficient and consistent with the objectives of the Medicaid program.

Youth is anyone age 13-17.
B. DELEGATED FUNCTIONS

Contractor shall furnish the necessary personnel and services and do all things necessary for the performance of the delegated functions set forth herein as presently written or as may be later amended.

1. REGIONAL ADVISORY BOARD (PIHP, BHSC)

Contractor shall appoint individuals with lived experience/advocate representatives to the North Sound BHO Regional Advisory Board in accordance with the Interlocal Agreement forming North Sound BHO, the Prepaid Inpatient Health Plan (PIHP) and State Behavioral Health Contracts (BHSC) and in accordance with WAC 388-865-0222, or any successor.

Contractor shall appoint individuals with Behavioral Health lived experience (mental health, substance use disorder, and/or co-occurring disorders) through their own experiences and/or their experiences as family members. Contractor shall appoint individuals whose experiences reflect the breadth of experience of individuals affected by Behavioral Health Disorders.

Contractor shall appoint representatives that reflect the demographic character of the county which shall include, but not be limited to, representatives of individuals, families, and law enforcement. Composition and length of terms of board members may differ between counties. Regional membership shall be comprised of at least 51% individuals with lived experience or family members as defined in WAC 388-865-0222.

2. GOVERNING BOARD (PIHP; BHSC)

Member Counties shall establish a Governing Body responsible for oversight of the Regional Support Network in compliance with the Interlocal Agreement and the State PIHP and BHSC Agreements. The Governing Body can be an existing executive or legislative body within a county government. Each member of the Governing Body must be free from conflicts of interest and from any appearance of conflicts of interest between personal, professional and fiduciary interests. Members of the Governing Body must act within the best interests of North Sound BHO, individuals and/or families with lived experiences. Contractor shall participate with North Sound BHO in the development and creation of an LLC and any appropriate policies.

3. QUALITY MANAGEMENT SUPPORT (PIHP; BHSC)

Contractor shall invite enrolled and non-enrolled individuals and their families that are representative of the community being served, including all age groups, to participate in planning activities and in the implementation and evaluation of the public behavioral health system. Contractor must be able to demonstrate how this requirement is implemented.

Member Counties shall encourage local efforts to provide services that are integrated and coordinated with other formal/informal service delivery systems.
a. Contractor's County Coordinator shall assist North Sound BHO in conducting quality management programs and activities, in accordance with Exhibit A. Activities include regularly participating in North Sound BHO’s Quality Management Oversight Committee and other quality management processes as appropriate, which are designed to allow North Sound BHO to:

i. Assess the degree to which Behavioral Health Services and planning is driven by and incorporates individual and family voice;

ii. Assess the degree to which behavioral health services are age, culturally, and linguistically competent;

iii. Assess the degree to which behavioral health services are provided in the least restrictive environment;

iv. Assess the degree to which uninterrupted linkages occur that move the individual toward recovery and resiliency;

v. Assess the continuity in service linkages and integration with other formal/informal systems and settings; and

vi. Assess the strengths and barriers of resource management mechanism, access standards and the utilization management activities.

b. Quality management activities specified in this Quality Management Support section shall be subject to requirements of North Sound BHO, including requirements to maintain confidentiality of information in accordance with federal and state privacy laws and requirements applicable to North Sound BHO for maintaining protection of confidentiality under its coordinated quality improvement program (CQIP).

4. ALLIED SYSTEM COORDINATION (PIHP)

Contractor shall coordinate with North Sound BHO in the following area to ensure individuals in the community are receiving continuity of care.

Contractor shall develop in collaboration with North Sound BHO a new or update an existing allied system coordination plan with the Criminal Justice (courts, jails, law enforcement, public defender, Department of Corrections [DOC]) and Chemical Dependency and Substance Abuse (CD/SA) service providers in their respective county at least every three (3) years or as requested by North Sound BHO, DSHS or as necessary. The allied system coordination plan must contain all the following elements:

a. Contractor shall work with North Sound BHO to identify the need for local resources, including initiatives to address those needs. This will include a process to evaluate progress in cross-system coordination and integration of services.

b. Contractor shall work with North Sound BHO on a process for facilitation of community integration from out-of-home placements, Children’s Long-term inpatient facilities, Juvenile Rehabilitation facilities, foster care, nursing homes and acute inpatient settings for individuals of all ages.
c. Contractor shall facilitate the Community Treatment Team made up of service providers from the county. This group coordinates services for individuals with behavioral health issues involved in multi-systems.

d. Contractor shall, when requested, provide information, referral and training to the community in how to access the public behavioral health system.

5. COMMUNITY COORDINATION (BHSC)
Contractor shall coordinate and participate with North Sound BHO in all disaster preparedness activities and respond to emergency/disaster events (e.g., natural disasters, acts of terrorism) when requested by North Sound BHO. Contractor shall work with North Sound BHO in the event of a disaster to ensure the following activities are implemented:

a. Collaborate in the development of the regional transition services plan;

b. Collaborate in the regional expansion of medication assisted treatment (MAT);

c. Coordinate with North Sound BHO on community integration for parenting women;

d. Participate in local emergency/disaster planning activities when county Emergency Operation Centers and local public health jurisdictions request collaboration;

e. Locating persons in need of disaster relief services;

f. Engaging or linking persons to an appropriate level of support or disaster relief services;

g. Conduct post-disaster outreach to determine the need for disaster related crisis counseling and assess the availability of local resources in meeting those needs;

h. Partner in disaster preparedness and response activities with DBHR and other DSHS entities, the State Emergency Management Division, Federal Emergency Management Administration (FEMA), the American Red Cross and other volunteer organizations;

i. Participation when requested in local and regional disaster planning and preparedness activities; and

j. Coordination of disaster outreach activities following an event.

6. HOUSING AND RECOVERY THROUGH PEER SUPPORTS (HARPS) HOUSING SUBSIDIES (BHSC EXHIBIT J)
Contractor shall provide time-limited financial assistance to individuals and families who are homeless and in need of short-term assistance to acquire and/or sustain housing. This funding is part of a DBHR grant received by North Sound BHO for housing support services and financial housing assistance. For the purposes of this Agreement, the funding is to be used exclusively for financial assistance to individuals and families who are homeless. No administrative costs may be paid out of the HARPS housing assistance allocation.

a. The priority population for the housing assistance is as follows:

i. Individuals with Behavioral Health Disorders (mental health, SUD and/or COD) who meet Access to Care Standards (ACS), or
ii. Individuals who experience behavioral health issues and who meet ACS, or
iii. Individuals who experience substance abuse issues and who do not meet ACS.

b. Who are released from:
   i. Psychiatric Inpatient settings, or
   ii. SUD Treatment Inpatient settings.

c. Who are homeless/at risk of homelessness:

   Broad definition of homeless (couch surfing included).

d. Allowable expenses for the subsidies:

   i. Monthly rent and utilities and any combination of first and last months’ rent for up to three (3) months. Rent may only be paid one (1) month at a time, although rental arrears, pro-rated rent and last month’s may be included with the first month’s payment.

   ii. Rental and/or utility arrears for up to three (3) months. Rental and/or utility arrears may be paid if the payment enables the household to remain in the housing unit for which the arrears are being paid or allows the household to move to another unit.

   iii. Security deposits and utility deposits for a household moving into a new unit.

   iv. HARPS rental assistance may be used for move-in costs including, but not limited to, deposits and first month’s rent associated with housing, including project- or tenant-based housing.

   v. Application fees, background and credit check fees for rental housing.

   vi. Lot rent for RV or manufactured home.

   vii. Costs of parking spaces when connected to a unit.

   viii. Landlord incentives (provided there are written policies and/or procedures explaining what constitutes landlord incentives, how they are determined and who has approval and review responsibilities).

   ix. Reasonable storage costs.

   x. Reasonable moving costs, such as, truck rental and hiring a moving company.

   xi. Hotel/Motel expenses for up to 30 days if unsheltered households are actively engaged in housing search and no other shelter option is available.

   xii. Temporary absences, if a household must be temporarily away from his or her unit, but is expected to return (e.g., participant violates conditions of their DOC supervision and is placed in confinement for 30 days or re-hospitalized), Contractor may pay for the household’s rent for up to 60 days.
The funding is flexible depending on the specific individual/family situation, with the ultimate goal of procuring placement in permanent housing. The funding may be used in a lump sum or over a period of time in increments.

The funding is not to be used for Residential Treatment Facilities, Adult Family Homes, or housing that is contingent on treatment compliance.

Contractor shall accept referrals for housing subsidy from the HARPS team for individuals and families residing in their respective county.

Contractor shall report monthly on housing subsidies on the HARPS Housing Subsidy template found at the following link:

7. CRIMINAL JUSTICE TREATMENT ACCOUNT (CJTA)
Contractor will continue to establish working relationships with the local CJTA Panel to ensure an active and collaborative working relationship in developing the plan and CJTA requirements as provided by the BHO.

Contractor shall act as liaison on behalf of the BHO with county drug courts, funding sources and providers.

Contractor shall host meetings and workgroups as needed to develop an agreed upon local CJTA plan within the state allocation of the designated County CJTA committee members.

Contractor shall provide the County CJTA biennial plan to the BHO as scheduled.

Contractor shall promote and sustain successful working relationships between designated Drug Court and CJTA community SUD providers and the County Drug Court personnel to meet the state goals of CJTA, as well as, defined local goals RCW 70.96A.350.

The plan must:

a. Describe in detail how SUD treatment and support services will be delivered within the region;

b. Address the CJTA Account Match Requirement by providing a local participation match of all DSHS-provided criminal justice awards;

c. Include details on special projects, such as, best practices/treatment strategies, significant underserved population(s), or regional endeavors, including the following:

   i. Describe the project and how it will be consistent with your strategic plan;
   ii. Describe how the project will enhance treatment services for offenders;
   iii. Indicate the number of offenders who were served using innovative funds; and
   iv. Detail the original goals and objectives of the project.
C. CONTRACTOR RESPONSIBILITIES
Contractor shall furnish the necessary personnel and services and do all things necessary for the performance of the work set forth herein as presently written or as may be later amended.

1. APPOINTMENT OF COUNTY COORDINATOR
Contractor Program Manager will act as or appoint a County Coordinator and the County Coordinator or designee will participate in North Sound BHO County Coordinator meetings, provide regular reports to North Sound BHO Advisory Board on county specific activities, and facilitate delivery of the services required under this section. In addition to those outlined in this section, responsibilities of County Coordinators include regularly participating in ad hoc committees, advising North Sound BHO of county-specific areas of concern or need and participation in disaster response preparedness activities.

Participate in strategic planning and other ad hoc planning initiatives for resource management and the ongoing evaluation of services provision with recommendations based on results. Provide county data to the BHO for regional and state behavioral health planning/reporting upon request.

2. RESOURCE MANAGEMENT SUPPORT
Contractor’s County Coordinator shall assist North Sound BHO in conducting resource management. Activities include regular participation in strategic planning and other ad hoc planning initiatives, and the ongoing evaluation of service provision in the county and the provision of recommendations to North Sound BHO based on the results. Coordinate locally funded services with the BHO’s publicly-funded core treatment service delivery system to assure coordination of care for County residents where appropriate to meet the behavioral health needs of the residents.

3. LOCAL OVERSIGHT COMMITTEE
Contractor and North Sound BHO shall convene this committee a minimum of twice per year with the function and purpose as outlined below:

a. This membership will be broad and include all identified stakeholder groups;
b. Will be Co-Chaired by North Sound BHO and the County Coordinator or their designee;
c. Meeting will be facilitated by the County Coordinator or their designee;
d. Will be scheduled by the County Coordinator, but coordinated with North Sound BHO;
e. Will be called on an as needed basis, but at least twice per year; and
f. Will cover the following areas:
   i. Public behavioral health system complaints or concerns;
   ii. Identifying gaps in the local public behavioral health system, such as; but not limited to outpatient, emergency, or inpatient behavioral health services;
iii. Designing county specific protocols, which coordinate services with other
community resources, county services and alternative systems of care; and
iv. Provide a venue for community input and cross system networking.

4. **COORDINATED QUALITY IMPROVEMENT PROGRAM (CQIP) COMMITTEE**
   Contractor and North Sound BHO shall convene this committee on an as needed basis with
   the function and purpose as outlined below:

   This is a protected CQIP meeting intended solely for the purpose of assuring Continuous
   Quality Improvement and Quality Assurance by North Sound BHO, its providers and
   component Counties. The CQIP program is strictly confidential to the fullest extend
   allowed by RCW 43.70.510 and WAC 246.50.

   a. Membership is limited to North Sound BHO and the county;
   b. Other participants will be limited to those community stakeholders that are/or
      have been involved with the specific case being reviewed;
   c. Will be Co-Chaired by North Sound North Sound BHO and the County Coordinator
      or their designee;
   d. Meeting will be facilitated by North Sound BHO;
   e. Will be scheduled by North Sound BHO as requested by the County Coordinator
      and North Sound BHO, but coordinated with North Sound BHO; and
   f. Will cover the following areas:

      i. Advise North Sound BHO, County Coordinator, Outpatient and Integrated
         Crisis Response System (ICRS) management on issues, review of critical
         incidents, exceptional circumstances and integrated crisis response or
         outpatient needs that require correcting; and
      ii. Address contract non-compliance and available remedies including, but not
         limited to, fiscal penalties.

5. **DELIVERABLES**
   Contractor shall ensure deliverables are submitted in accordance with Exhibit D.

6. **BUSINESS ASSOCIATE AGREEMENT**
   Contractor shall abide by the provisions of North Sound BHO/Whatcom County Business
   Associates Agreement (Exhibit E).
D. FINANCIAL TERMS AND CONDITIONS

1. GENERAL FISCAL ASSURANCES
   Contractor shall comply with all applicable laws and standards, including Generally
   Accepted Accounting Principles and maintain, at a minimum, a financial management
   system that is a viable, single, integrated system with sufficient sophistication and
   capability to effectively and efficiently process, track and manage all fiscal matters and
   transactions. The parties’ respective fiscal obligations and rights set forth in Article D shall
   continue after termination of this agreement until such time as the financial matters
   between the parties resulting from this agreement are completed.

2. FINANCIAL ACCOUNTING REQUIREMENTS
   Contractor shall:

   a. Establish and maintain operating reserves at prudent levels sufficient to ensure
      Contractor has the ability to pay for all expenses incurred during this Agreement
      period, including those whose disposition occurs after the Agreement has been
      terminated, and to cover the risk of financial loss resulting in the event that the
      cost of providing services pursuant to this Agreement exceeds the revenues
      derived therefrom;

   b. Ensure all funds, including interest earned, provided pursuant to this Agreement
      are used to support the public behavioral health system within the Service Area;
      and

   c. Contractor shall produce annual audited financial statements within 180 days of
      fiscal year end and make such reports available to North Sound BHO upon request.

3. FINANCIAL REPORTING
   Contractor shall provide the following reports to North Sound BHO:

   a. Within 15 days from the effective date of this Agreement, a program-specific
      budget that demonstrates to North Sound BHO’s reasonable satisfaction,
      compliance with direct service and indirect cost requirements; and

   b. Report Contractor’s revenue and expenditure information to North Sound BHO on
      a quarterly basis. Reports must comply with the provisions in the BARS
      Supplemental Instructions for Behavioral Health Services promulgated by the
      Washington State Auditor’s Office. Reports are due within 35 days of the biennial
      quarter end (December, and June of each year). A final report for 2018 is due
      February 5, 2019 (applies to all contracts).

4. RULES COMPLIANCE
   Contractor shall:

   a. Ensure funds provided to Contractor are used to provide specific administrative
      services on behalf of North Sound BHO and not used for direct services, except for,
      funds provided for housing supports;
b. Submit the amount spent throughout the Service Area on specific items at the
request of North Sound BHO, Centers for Medicare and Medicaid Services (CMS),
the legislature, or DSHS in the timeframe specified;

c. Account for public behavioral health expenditures under this Contract in
accordance with 2 CFR 200 and State requirements in accordance with BARS
Manual and BARS Supplemental Instructions or any successor; and

d. Ensure State or Federal funds are not used to replace local funds from any source,
which were being used to finance behavioral health services in the constituent
county/ counties in the calendar year prior to January 1, 1990. Contractor shall not
use State or Federal funds to replace local funds used to administer the Involuntary
Treatment Program in the constituent county/ counties in the calendar year prior
to January 1, 1974.

5. FINANCIAL PROVISIONS – REIMBURSEMENT REQUIREMENTS
The consideration to be paid by North Sound BHO for the work to be provided by
Contractor pursuant to this Agreement shall consist of the available amount from primary
funding sources as described in Exhibit B of this Agreement, for a maximum consideration
of $957,459.00.

a. The consideration by North Sound BHO to Contractor pursuant to this Agreement
shall be paid monthly within 10 working days of North Sound BHO’s receipt of
payment by DSHS/DBHR.

b. Payment Methodology: North Sound BHO shall pay to Contractor monthly all
allowable and allocable costs incurred as evidenced by proper invoice of
Contractor as submitted to the extent those costs do not exceed each funding
source maximum as set forth in Exhibit B.

c. Maximum consideration for this contract shall not exceed $957,459.00.
E. OVERSIGHT, REMEDIES AND TERMINATION

1. OVERSIGHT AUTHORITY
North Sound BHO, DSHS, Office of the State Auditor, the Department of Health and Human Services (DHHS), CMS, the Comptroller General, or any of their duly-authorized representatives (e.g., External Quality Review Organizations), have the authority to conduct announced and unannounced: a) surveys; b) audits; c) reviews of compliance with licensing and certification requirements and compliance with this Agreement; d) audits regarding the quality, appropriateness, and timeliness of behavioral health services of Contractor and subcontractors; and e) audits and inspections of financial records of Contractor and subcontractors. Contractor shall notify North Sound BHO when an entity other than North Sound BHO performs any audit described above related to any activity contained in this Agreement.

In addition, North Sound BHO will conduct reviews in accordance with its oversight of resource, utilization and quality management, as well as to ensure that Contractor have the clinical, administrative and fiscal structures to enable them to perform in accordance with the terms of the contract. Such reviews may include, but are not limited to encounter data validation, utilization reviews, clinical record reviews, and reviews of administrative structures, fiscal management and contract compliance. Reviews may include desk reviews, requiring Contractor to submit requested information. North Sound BHO will also review activities delegated under this contract to Contractor.

Contractor shall cooperate with and allow access to North Sound BHO Ombuds to conduct surveys and review activities in accordance with the terms of this contract, in accordance with Exhibit C. Contractor shall cooperate with Skagit County Community Action Agency in resolving any disputes that arise in the provision of Ombuds services.

Findings as a result of North Sound BHO conducted reviews may result in remedial action as outlined below. Federal and State agencies may impose remedial action or financial penalties either directly upon Contractor or through North Sound BHO. Contractor shall comply with the terms of such remedial action and be responsible for the payment of financial penalties.

2. REMEDIAL ACTION
North Sound BHO may require Contractor to plan and execute corrective action. Corrective action plans (CAP) developed by Contractor must be submitted for approval to North Sound BHO within 30 calendar days of notification. CAPs must be provided in a format acceptable to North Sound BHO. North Sound BHO may extend or reduce the time allowed for corrective action depending upon the nature of the situation as determined by North Sound BHO.
a. CAPs must include:
   i. A brief description of the finding; and
   ii. Specific actions to be taken, a timetable, a description of the monitoring to be performed, the steps taken and responsible individuals that will reflect the resolution of the situation.

b. CAPs may:

   Require modification of any policies or procedures by Contractor relating to the fulfillment of its obligations pursuant to this Agreement.

c. CAPs are subject to approval by North Sound BHO, which may:

   i. Accept the plan as submitted;
   ii. Accept the plan with specified modifications;
   iii. Request a modified plan; or,
   iv. Reject the plan.

Contractor agrees North Sound BHO may initiate remedial action with or without a CAP as outlined in subsection below if North Sound BHO determines any of the following situations exist:

   i. A problem exists that negatively impacts enrollees;
   ii. Contractor has failed to perform any of the behavioral health services required in this Agreement, including delegated functions, which includes the failure to maintain the required capacity as specified by North Sound BHO to ensure that enrollees receive medically necessary services;
   iii. Contractor has failed to develop, produce/deliver to North Sound BHO any of the statements, reports, data, data corrections, accountings, claims/documentation described herein, in compliance with all the provisions of this Agreement;
   iv. Contractor has failed to perform any administrative function required under this Agreement, including delegated functions. For the purposes of this section, “administrative function” is defined as any obligation other than the actual provision of behavioral health services; or
   v. Contractor has failed to implement corrective action required by the state and within North Sound BHO prescribed time frames.

North Sound BHO may impose any of the following remedial actions in response to findings of situations as outlined above:

   i. Withhold one (1%) percent of the next monthly payment and each monthly payment thereafter until the corrective action has achieved resolution.
      North Sound BHO, at its sole discretion, may return a portion or, all of, any payments withheld once satisfactory resolution has been achieved;
ii. Compound withholdings identified above by an additional one-half of one percent for each successive month during which the remedial situation has not been resolved;

iii. Revoke delegation of any function delegated under this contract;

iv. Deny any incentive payment to which Contractor might otherwise have been entitled under this Agreement or any other arrangement by which the DBHR provides incentives; or

v. Termination for Default, as outlined in this Agreement.

3. ADDITIONAL FINANCIAL PENALTIES – DBHR IMPOSED SANCTIONS
Financial penalties imposed by DBHR or other regulatory agency due to the action or inaction of Contractor may be paid by North Sound BHO on behalf of Contractor and the amount will be withheld from North Sound BHO’s payments to Contractor.

4. TERMINATION DUE TO CHANGE IN FUNDING
In the event 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, North Sound BHO may terminate this Agreement, subject to re-negotiations.

5. TERMINATION DUE TO CHANGE IN 1915(B) BEHAVIORAL HEALTH SERVICES WAIVER
In the event changes to the terms of the 1915(b) (Medicaid) Behavioral health Services Waiver render this Agreement invalid in any way after the effective date of this Agreement and prior to its normal completion, North Sound BHO may terminate this Agreement, subject to re-negotiation, if applicable, under those new special terms and conditions.

6. TERMINATION FOR CONVENIENCE
Except, as otherwise provided in this Agreement, a party may terminate this Agreement upon 90 days written notification by certified mail to the other party. The effective date of termination shall be the 90 days after receipt of written notification to the other party or the last day of the calendar month in which the 90 days occurs, whichever is later.

7. TERMINATION FOR DEFAULT
North Sound BHO’s Program Manager and his/her designee may terminate this Agreement for default, in whole or in part, by written notice to Contractor if North Sound BHO or DSHS has a reasonable basis to believe that Contractor has:

   a. Failed to meet or maintain any requirement for contracting with DSHS;
   b. Failed to perform under any provision of this Agreement;
   c. Violated any law, regulation, rule, or ordinance applicable to the services provided under this Agreement; and/or
   d. Otherwise breached any provision or condition of this Agreement.
Before North Sound BHO’s Program Manager may terminate this Agreement for default, in whole or in part, North Sound BHO shall provide Contractor with written notice of Contractor’s noncompliance with this Agreement which notice shall provide Contractor a reasonable time period to correct its/their noncompliance. If Contractor does not correct the noncompliance within the period of time specified in the written notice of noncompliance, the Program Administrator may then terminate this Agreement. The Program Administrator may terminate this Agreement for default without such written notice and without opportunity for correction, if North Sound BHO has a reasonable basis to believe that a client’s health or safety is in jeopardy, and/or:

a. Contractor has violated any law, regulation, rule or ordinance applicable to services provided under this agreement, or
b. Continuance of this Agreement with Contractor poses a material risk of injury or harm to any person.

Contractor may terminate this Agreement in whole or in part, by written notice to North Sound BHO, if Contractor has a reasonable basis to believe that North Sound BHO has:

a. Failed to meet or maintain any requirement for contracting with Contractor;
b. Failed to perform under any provision of this Agreement;
c. Violated any law, regulation, rule, or ordinance applicable to work performed under this Agreement; and/or
d. Otherwise breached any provision or condition of this Agreement.

8. TERMINATION PROCEDURE

The following provisions shall survive and be binding on the parties in the event this Agreement is terminated:

a. Contractor and any applicable subcontractors shall cease to perform any services required by this Agreement as of the effective date of termination and shall comply with all reasonable instructions contained in the notice of termination which are related to the transfer of clients, distribution of property, and termination of services. Each party shall be responsible only for its performance in accordance with the terms of this Agreement rendered prior to the effective date of termination. Contractor and any applicable subcontractors shall assist in the orderly transfer/transition of the individuals and families served under this Agreement. Contractor and any applicable subcontractors shall promptly supply all information necessary for the reimbursement of any outstanding Medicaid claims.

b. Contractor and any applicable subcontractors shall immediately deliver to North Sound BHO Program Manager or to his/her successor, all DSHS and North Sound BHO assets (property) in Contractor and any applicable subcontractor’s possession and any property produced under this Agreement. Contractor and any applicable subcontractors grant North Sound BHO and DSHS the right to enter upon Contractor and any applicable subcontractor’s premises for the sole purpose of recovering any North Sound BHO or DSHS property that Contractor and any applicable subcontractor fails to return within 10 working days of termination of
this Agreement. Upon failure to return North Sound BHO/DSHS property within 10 working days of the termination of this Agreement, Contractor and any applicable subcontractors shall be charged with all reasonable costs of recovery, including transportation and attorney’s fees. Contractor and any applicable subcontractors shall protect and preserve any property of North Sound BHO/DSHS that is in the possession of Contractor and any applicable subcontractors pending return to North Sound BHO/DSHS.

c. North Sound BHO shall be liable for and shall pay for only those services authorized and provided through the date of termination. North Sound BHO may pay an amount agreed to by the parties for partially completed work and services, if work products are useful to or usable by North Sound BHO. Should the contract be terminated by either party, North Sound BHO will require the spend-down of all remaining reserves and fund balances within the termination period. Funds will be deducted from the final months’ payments until reserves and fund balances are spent.
F. GENERAL TERMS AND CONDITIONS FOR CONTRACTOR

1. BACKGROUND
North Sound BHO is an entity formed by inter-local agreement between Island, San Juan, Skagit, Snohomish and Whatcom Counties, each a county authority recognized by the Secretary of Department of Social and Health Services (Secretary). These counties entered into an inter-local agreement to allow North Sound BHO to contract with the Secretary pursuant to RCW 71.24.025(13), to operate a single managed system of services for persons with mental illness living in the service area covered by Island, San Juan, Skagit, Snohomish and Whatcom Counties (Service Area). North Sound BHO is party to an interagency agreement with the Secretary, pursuant to which North Sound BHO has agreed to provide integrated community support, crisis response, and inpatient management services to people needing such services in its service area. North Sound BHO, through this Agreement, is subcontracting with Contractor for the provision of specific behavioral health services as required by the agreement with the Secretary. Contractor, by signing this Agreement, attests that it is willing and able to provide such services in the Service Area.

2. MUTUAL COMMITMENTS
The parties to this Agreement are mutually committed to the development of an efficient, cost effective, integrated, person-driven, age specific recovery and resilience model approach to the delivery of quality community behavioral health services. To that end, the parties are mutually committed to maximizing the availability of resources to provide needed behavioral health services in the Service Area, maximizing the portion of those resources used for the provision of direct services and minimizing duplication of effort.

3. ASSIGNMENT
Except as otherwise provided within this Agreement, this Agreement may not be assigned, delegated, or transferred by Contractor without the express written consent of North Sound BHO, and any attempt to transfer or assign this Agreement without such consent shall be void. The terms “assigned”, “delegated”, or “transferred” shall include change of business structure to a limited liability company, of any Contractor Member or Affiliate Agency.

4. AUTHORITY
Concurrent with the execution of this Agreement, Contractor shall furnish North Sound BHO with a copy of the explicit written authorization of its governing body to enter into this Agreement and accept the financial risk and responsibility to carry out all terms of this Agreement including the ability to pay for all expenses incurred during the contract period. Likewise, concurrent with the execution of this Agreement, North Sound BHO shall furnish Contractor with a written copy of the motion, resolution, or ordinance passed by North Sound BHO Board of Directors (North Sound BHO Board) authorizing North Sound BHO to execute this Agreement.
5. **COMPLIANCE WITH APPLICABLE LAWS, REGULATIONS AND OPERATIONAL POLICIES**

Contractor and its subcontractors shall comply with all applicable federal and state statutes, regulations, and operational policies, as applicable to this Agreement, whether or not, a specific citation is identified in various sections of this Agreement, and all amendments thereto that are in effect when the Agreement is signed, or that come into effect during the term of the Agreement, which may include but are not limited to, the following ("Federal/State Law"): 

a. Title XIX and Title XXI of the Social Security Act and Title 42 of the CFR;

b. All applicable Office of the Insurance Commissioner (OIC) statutes and regulations;

c. All local, State, and Federal professional and facility licensing and certification requirements/standards that apply to services performed under the terms of this Agreement;

d. All applicable standards, orders, or requirements issued under Section 306 of the Clean Air Act (42 US 1857(h)), Section 508 of the Clean Water Act (33 US 1368), Executive Order 11738, and Environmental Protection Agency (EPA) regulations (40 CFR Part 15), which prohibit the use of facilities included on the EPA List of Violating Facilities. Any violations shall be reported to DSHS, DHHS, and the EPA;

e. Any applicable mandatory standards and policies relating to energy efficiency, which are contained in the State Energy Conservation Plan, issued in compliance with the federal Energy Policy and Conservation Act;

f. Those specified for laboratory services in the Clinical Laboratory Improvement Amendments (CLIA);

g. Those specified in RCW Title 18 for professional licensing;

h. Reporting of abuse as required by RCW 26.44.030;

i. Industrial insurance coverage as required by RCW Title 51;

j. RCW 38.52, 70.02, 71.05, 71.24, and 71.34;

k. WAC 388-865;

l. 42 CFR 438, including 42 CFR 438.58 (conflict of interest) and 42 CFR 438.106 (physician incentive plans);

m. The State of Washington Medicaid State Plan and 1915(b) Medicaid Behavioral Health Waiver, or their successors, which documents are incorporated by reference;

n. DBHR Quality Strategy;

o. The State Medicaid Manual (SMM), the Budgeting, Accounting, and Reporting System (BARS) Manual, and BARS Supplemental Behavioral Health Instructions;

p. Any applicable federal and state laws that pertain to Medicaid enrollee or individual rights. Contractor shall ensure its staff takes those rights into account when furnishing services;

q. 42 USC 1320a-7 and 1320a-7b (Section 1128 and 1128 (b) of the Social Security Act), which prohibits making payments directly or indirectly to physicians or other providers as an inducement to reduce or limit behavioral health services provided to individuals and/or families;
r. Any policies and procedures developed by Medical Assistance Administration for compliance with WAC 388-519-0110, which governs the spend-down of client assets;

s. Contractor and any subcontractors must comply with 42-USC 1396u-2 and must not knowingly have a director, officer, partner, or person with a beneficial ownership of more than 5% of Contractor, BHA or subcontractor’s equity, or an employee, Contractor, or consultant who is significant or material to the provision of services under this Agreement, who has been, or is affiliated with someone who has been, debarred, suspended, or otherwise excluded by any federal agency;

t. Federal and State non-discrimination laws and regulations;

u. HIPAA, 45 CFR parts 160-164;

v. DBHR-CIS Data Dictionary and its successors; and/or

w. Federal funds must not be used for any lobbying activities.

If Contractor is in violation of a federal law or regulation, and Federal Financial Participation is recouped from North Sound BHO, Contractor shall reimburse the federal amount to North Sound BHO within 20 days of such recoupment.

Upon notification from DSHS, North Sound BHO shall notify Contractor in writing of changes/modifications in CMS policies and DSHS/DBHR contract requirement changes, if applicable to this Agreement.

6. COMPLIANCE WITH NORTH SOUND BHO OPERATIONAL POLICIES

Contractor shall comply with all North Sound BHO operational policies that pertain to the delivery of services under this Agreement that are in effect when the Agreement is signed or that come into effect during the term of the Agreement.

Along with all North Sound BHO stakeholders, Contractor will be included in the process for developing relevant operational policies and procedures. North Sound BHO’s Provider Policy & Procedure Grid and successors contain a list of North Sound BHO’s policies and their applicability to Contractor in accordance with Exhibit A. The Grid and North Sound BHO’s policies and procedures are posted on North Sound BHO’s website. North Sound BHO shall notify Contractor of new and revised policies through its numbered memoranda. Training shall be provided on policies that impact providers.

North Sound BHO will make best efforts to maintain currency of policies with applicable federal or state law, regulation or policy. In the event of a conflict, federal or state laws, regulations or policies supersede North Sound BHO policies and procedures.

7. CONFIDENTIALITY OF CLIENT INFORMATION

Pursuant to 42 CFR 431.301 and 431.302, information concerning applicants and recipients may be disclosed for purposes directly concerning the administration of this Agreement. Purposes include, but are not limited to:
a. Establishing eligibility;
b. Determining the amount of medical assistance;
c. Providing services for recipients;
d. Conducting or assisting in investigation, prosecution, or civil or criminal proceeding related to the administration of the plan;
e. Assuring compliance with Federal and State laws, regulations, with terms and requirements of this Agreement; and/or
f. Improving quality.

Contractor shall protect all information, records and data collected from unauthorized disclosure in accordance with 42 CFR 431.300 through 431.307, RCW’s 70.02, 71.05, and 71.34, HIPAA and for service recipients receiving alcohol and drug abuse services, in accordance with 42 CFR Part 2. Contractor shall have a process in place to ensure all components of its BHA and system understand and comply with confidentiality requirements for publicly funded behavioral health services.

Contractor shall ensure access to the information is restricted to persons or agency representatives who are subject to standards of confidentiality that are comparable to those of North Sound BHO and DSHS.

The parties acknowledge that coordination, planning, screening, and referral require the sharing of information among the various treatment providers. Disclosure of information to verify eligibility, determine the amount of assistance, and to provide medically necessary behavioral health services are all “purposes directly connected with the administration of the Agreement”, and are all appropriate justifications for sharing information.

Contractor shall ensure all staff and subcontractors providing services under this Agreement receive annual training on confidentiality policies and procedures. In addition, Contractor shall ensure all staff and subcontractors providing services under this Agreement sign an annual Oath of Confidentiality statement. Signed copies of the Oath of Confidentiality shall be kept in Contractor’s personnel files.

8. CONTRACT PERFORMANCE/ENFORCEMENT
North Sound BHO shall be vested with the rights of a third-party beneficiary, including the "cut through" right to enforce performance should Contractor be unwilling or unable to enforce action on the part of its subcontractor(s). In the event Contractor dissolves or otherwise discontinues operations, North Sound BHO may, at its sole option, assume the right to enforce the terms and conditions of this Agreement directly with Contractor’s subcontractors; provided, that North Sound BHO shall keep Contractor reasonably informed concerning such enforcement. Contractor shall include this clause in its contracts with its subcontractors. In the event of the dissolution of Contractor, North Sound BHO’s rights in indemnification shall survive.
9. **COOPERATION**
The parties to this Agreement shall cooperate in good faith to effectuate the terms and conditions of this Agreement.

10. **DEBARMENT CERTIFICATION**
Contractor, by signature to this Agreement, certifies Contractor and any Owners are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded by any Federal department or agency from participating in transactions (Debarred) and is not listed in the Excluded Parties List System in the System for Award Management (SAM) website. Contractor shall immediately notify North Sound BHO if, during the term of this Contract, Contractor becomes debarred.

11. **DECLARATION THAT CLIENTS UNDER THE MEDICAID AND OTHER BEHAVIORAL HEALTH PROGRAMS ARE NOT THIRD-PARTY BENEFICIARIES UNDER THIS CONTRACT**
Although North Sound BHO, Contractor, and subcontractors mutually recognize that services under this Agreement may be provided by Contractor and subcontractors to clients under the Medicaid program, RCW 71.05 and 71.34, and the Community Behavioral health Services Act, RCW 71.24, it is not the intention of either North Sound BHO, or Contractor, that such individuals, or any other persons, occupy the position of intended third-party beneficiaries of the obligations assumed by either party to this Agreement. Such third parties shall have no right to enforce this Agreement.

12. **EXECUTION, AMENDMENT AND WAIVER**
This Agreement shall be binding on all parties only upon signature by authorized representatives of each party. This Agreement, or any provision, may be amended during the contract period, if circumstances warrant, by a written amendment executed by all parties. Only North Sound BHO Program Manager or North Sound BHO Program Manager's designee has authority to waive any provision of this Agreement on behalf of North Sound BHO.

13. **HEADINGS AND CAPTIONS**
The headings and captions used in this Agreement are for reference and convenience only, and in no way define, limit, or decide the scope or intent of any provisions or sections of this Agreement.

14. **INDEMNIFICATION**
Contractor shall be responsible for and shall indemnify and hold North Sound BHO harmless (including all costs and attorney fees) from all claims for personal injury, property damage and/or disclosure of confidential information, including claims against North Sound BHO for the negligent hiring, retention and/or supervision of the Contractor and/or from the imposition of governmental fines or penalties resulting from the acts or omissions of Contractor and its subcontractors related to the performance of this contract. North Sound BHO shall be responsible and shall indemnify and hold Contractor harmless (including all costs and attorney fees) from all claims for personal injury,
property damage and disclosure of confidential information and from the imposition of
governmental fines or penalties resulting from the acts or omissions of North Sound BHO.
Each party agrees to be responsible and assume liability for its own 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 agree to save, indemnify, defend, and hold the
other party harmless from any such liability. For the purposes of these indemnifications,
the Parties specifically and expressly waive any immunity granted under the Washington
Industrial Insurance Act, RCW Title 51. This waiver has been mutually negotiated and
agreed to by the Parties. The provision of this section shall survive the expiration or
termination of the Agreement.

15. INDEPENDENT CONTRACTOR FOR NORTH SOUND BHO
The parties intend that an independent Contractor relationship be created by this
contract. Contractor acknowledges that neither Contractor nor its employees or
subcontractors are officers, employees, or agents of North Sound BHO. Contractor shall
not hold Contractor or any of Contractor’s employees and subcontractors out as, nor claim
status as, officers, employees, or agents of North Sound BHO. Contractor shall not claim
for Contractor or Contractor’s employees or subcontractors any rights, privileges, or
benefits which would accrue to an employee of North Sound BHO. Contractor shall
indemnify and hold North Sound BHO harmless from all obligations to pay or withhold
Federal or State taxes or contributions on behalf of Contractor or Contractor’s employees
and subcontractors unless specified in this Agreement.

16. INSURANCE
North Sound BHO certifies it is a member of Washington Governmental Entity Pool for all
exposure to tort liability, general liability, property damage liability and vehicle liability, if
applicable, as provided by RCW 43.19.

Contractor shall maintain Commercial General Liability Insurance (CGL). If Contractor is
not a member of a risk pool, Contractor shall carry CGL to include coverage for bodily
injury, property damage, and contractual liability, with the following minimum limits:
Each Occurrence - $1,000,000; General Aggregate - $2,000,000. Any risk pool shall provide
coverage with the same minimum limits. Any policy (non-risk pool and risk pool) shall
include liability arising out of premises, operations, independent contractors, personal
injury, advertising injury, and liability assumed under an insured contract. Contractor shall
provide evidence of such insurance to North Sound BHO within 15 days of execution of
this Agreement and 15 days post renewal date thereafter. All non-risk pool policies shall
name North Sound BHO as a covered entity under said policy(s).

17. INTEGRATION
This Agreement, including Attachments 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.
18. MAINTENANCE OF RECORDS

During the term of this Agreement and for six (6) years following termination or expiration of this Agreement, or if any audit, claim, litigation, or other legal action involving the records set forth below is started before expiration of the six (6) year period, the records shall be maintained until completion and resolution of all issues arising therefrom or until the end of the six (6) year period, whichever is later. Contractor shall maintain records sufficient to:

a. Maintain the content of all Medical Records in a manner consistent with utilization control requirements of 42 CFR 456, 434.34 (a), 456.111 and 456.211;
b. Document performance of all acts required by law, regulation, or this Agreement;
c. Substantiate Contractor statement of its organizations' structures, tax status, capabilities, and performance;
d. Demonstrate accounting procedures, practices, and records, which sufficiently and properly document Contractor invoices to North Sound BHO and all expenditures made by Contractor to perform as required by this Agreement;
e. Contractor and its subcontractors shall cooperate in all reviews, including but not limited to, surveys, and research conducted by North Sound BHO, DSHS or other Washington State Departments; and
f. Evaluations shall be done by inspection or other means to measure quality, appropriateness, and timeliness of services performed under this Agreement, and to determine whether Contractor and its subcontractors are providing service to individuals in accordance with the requirements set forth in this Agreement and applicable state and federal regulations as existing or hereafter amended.

19. NO WAIVER OF RIGHTS

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

Waiver of any breach of any provision of this Agreement shall not be deemed to be a waiver of any subsequent breach and shall not be construed to be a modification of the terms and conditions of this Agreement.

20. ONGOING SERVICES

Contractor and its subcontractors shall ensure in the event of labor disputes or job actions, including work slowdowns, so called “sick outs”, or other activities, within its service BHA network, uninterrupted services shall be available as required by the terms of this Agreement.
21. ORDER OF PRECEDENCE
In the event of an inconsistency in the terms of this Agreement, or any inconsistency between the terms of this Agreement and any applicable statute, rule or contract, unless otherwise provided herein, the conflict shall be resolved by giving precedence in the following order, to:

a. The applicable Medicaid 1915(b) Waiver, Provisions of Title XIX of the Social Security Act and Federal regulations concerning the operations of Prepaid Inpatient Health Plans;

b. State statutes and regulations concerning the operation of the community behavioral health programs;

c. Federal and State Law;

d. North Sound BHO-DSHS agreement, or its successors, that covers the provision of the behavioral health services covered under this Agreement, which shall include any document or material incorporated by reference. North Sound BHO shall promptly notify Contractor of any amendment to North Sound BHO-DSHS agreement which affects any term or condition herein; and

e. This Agreement.

22. OVERPAYMENTS
In the event Contractor fails to comply with any of the terms and conditions of this Agreement and that failure results in an overpayment, North Sound BHO may recover the amount due DSHS, CMS or other federal or state agency, subject to dispute resolution as set forth in the contract. In the case of overpayment, Contractor shall cooperate in the recoupment process and return to North Sound BHO the amount due upon demand.

23. OWNERSHIP OF MATERIALS
Materials created by Contractor and its subcontractors and paid for by North Sound BHO as a part of this Agreement shall be owned by North Sound BHO and shall be, "works for hire" as defined by the U.S. Copyright Act of 1976. This material includes but is not limited to: books, computer programs, documents, films, pamphlets, reports, sound reproductions, studies, surveys, tapes/training materials. Material which Contractor and its subcontractors use to perform this Agreement, but which is not created for or paid for by North Sound BHO, is owned by Contractor or relevant subcontractors; however, North Sound BHO and DSHS shall have a perpetual license to use this material for DSHS internal purposes at no charge to DSHS.

24. PERFORMANCE
Contractor shall furnish the necessary personnel, materials/behavioral health services and otherwise do all things for, or incidental to, the performance of the work set forth here and as attached. Unless specifically stated, Contractor is responsible for performing or ensuring all fiscal and program responsibilities required in this contract. No subcontract will terminate the legal responsibility of Contractor to perform the terms of this Agreement.
25. RESOLUTION OF DISPUTES

The parties wish to provide for prompt, efficient, final, and binding resolution of disputes and controversies that may arise under this Agreement and therefore establish this dispute resolution procedure. All claims, disputes, and other matters in question between the parties arising out of, or relating to, this Agreement shall be resolved exclusively by the following dispute resolution procedure unless the parties mutually agree in writing otherwise:

a. The parties shall use their best efforts to resolve issues prior to giving written Notice of Dispute;

b. Within 10 working days of receipt of the written Notice of Dispute, the parties (or a designated representative) shall together or, if both parties agree, with a mediator meet, confer, and attempt to resolve the claim; and

c. The terms of the resolution of all claims concluded in meetings shall be memorialized in writing and signed by each party.

Arbitration: If the claim is not resolved within 30 days, the parties shall proceed to arbitration as follows:

a. Demand for arbitration shall be made in writing to the other party. The parties shall select one person as arbitrator;

b. If there is a delay of more than 10 days in the naming of the arbitrator, either party can ask the presiding judge of Skagit County to name the arbitrator;

c. The prevailing party shall be entitled to recover from the other party all costs and expenses, including reasonable attorney fees. The arbitrators shall determine which party, if any, is the prevailing party;

d. The parties agree that the arbitrators’ decision shall be binding, final and appealable to Skagit County Superior Court only as provided in RCW Chapter 7.04A;

e. Unless the parties agree in writing otherwise, the unresolved claims in each notice of dispute shall be considered at an arbitration session which shall occur in Skagit County no later than 30 days after the close of the meeting described in paragraph (b) at the top of this page;

f. The Provisions of this section shall, with respect to any controversy or claim, survive the termination or expiration of this Agreement;

g. Nothing contained in this Agreement shall be deemed to give the arbitrator the power to change any of the terms and conditions of this Agreement in any way;

h. The prevailing party in any action to compel arbitration or to enforce an arbitration award shall be awarded its costs, including attorney fees. Venue for any such action is exclusively Skagit County Superior Court; and

i. This Agreement shall be governed by laws of the State of Washington, both as to interpretation and performance. Washington statutes of limitation apply to arbitration proceedings under this agreement.
26. SEVERABILITY AND CONFORMITY
The provisions of this Agreement are severable. If any provision of this Agreement, including any provision of any document incorporated by reference, is held invalid by any court, that invalidity shall not affect the other provisions of this Agreement and the invalid provision shall be considered modified to conform to existing law.

27. SINGLE AUDIT ACT
If Contractor or its subcontractor is a subrecipient of Federal awards as defined by 2 CFR 200.501, Contractor and its subcontractors shall maintain records that identify all Federal funds received and expended. Such funds shall be identified by the appropriate 2 CFR 200.501 titles and numbers, award names and numbers, award years if awards are for research and development, as well as, names of the Federal agencies. Contractor and its subcontractors shall make Contractor and its subcontractors’ records available for review or audit by officials of the Federal awarding agency, the General Accounting Office and DSHS. Contractor and its subcontractors shall incorporate 2 CFR 200.501 audit requirements into all contracts between Contractor and its subcontractors who are subrecipients. Contractor and its subcontractors shall comply with any future amendments to 2 CFR 200.501 Subpart F and any successor or replacement regulation.

If Contractor/its subcontractors are a subrecipient and expends $750,000 or more in Federal awards from any/all sources in any fiscal year, Contractor and applicable subcontractors shall procure and pay for a single or program-specific audit for that fiscal year. Upon completion of each audit, Contractor and applicable subcontractors shall submit to North Sound BHO’s Program Administrator the data collection form and reporting package specified in 2 CFR 200.501, reports required by the program-specific audit guide, if applicable, and a copy of any management letters issued by the auditor.

For purposes of “sub recipient” status under the rules of 2 CFR 200.330 Medicaid payments to a sub recipient for providing patient care services to Medicaid eligible individuals are not considered Federal awards expended under this part of the rule unless a State requires the fund to be treated as Federal awards expended because reimbursement is on a cost-reimbursement basis.

28. SUBCONTRACTS
Contractor may subcontract services to be provided under this Agreement subject to the following requirements.

a. Contractor shall be responsible for the acts and omissions of any subcontractor;
b. Contractor must ensure the subcontractor neither employs any person nor contracts with any person or BHA excluded from participation in federal health care programs under either 42 USC 1320a-7 (§§1128 or 1128A Social Security Act) or debarred or suspended per this Agreement’s General Terms and Conditions;
c. Contractor shall require subcontractors to comply with all applicable federal and state laws, regulations, and operational policies as specified in this Agreement;
d. Contractor shall require subcontractors to comply with all applicable North Sound BHO operational policies as specified in this Agreement;
e. Contractor shall ensure a process is in place to demonstrate that all third-party resources are identified and pursued;

f. Contractor shall oversee, be accountable for, and monitor all functions and responsibilities delegated to a subcontractor for conformance with any applicable statement of work in this Agreement on an ongoing basis including written reviews;

g. Contractor will monitor performance of the subcontractors on an annual basis and notify North Sound BHO of any identified deficiencies or areas for improvement requiring corrective action by Contractor; and

h. Contractor shall ensure all subcontracts are in writing and subcontracts specify all duties, reports, and responsibilities delegated under this Agreement. Those written subcontracts shall:

i. Require subcontractors to hold all necessary licenses, certifications/permits as required by law for the performance of the services to be performed under this Agreement;

ii. Include clear means to revoke delegation, impose corrective action, or take other remedial actions if the subcontractor fails to comply with the terms of the subcontract;

iii. Require that the subcontractor correct any areas of deficiencies in the subcontractor’s performance that are identified by Contractor, North Sound BHO/DBHR; and

iv. Require best efforts to provide written or oral notification within 15 working days of termination of a Mental Health Care Provider (MHCP) to individuals currently open for services who had received a service from the affected MHCP in the previous 60 days. Notification must be verifiable in the client medical record at the subcontractor.

29. SURVIVABILITY
The terms and conditions contained in this Agreement that by their sense and context are intended to survive the expiration of this Agreement shall so survive. Surviving terms include, but are not limited to: Financial Terms and Conditions, Single Audit Act, Order of Precedence, Contract Performance and Enforcement, Confidentiality of Client Information, Resolution of Disputes, Indemnification, Oversight Authority, Maintenance of Records, Ownership of Materials, Contract Administration, Warranties and Survivability.

30. TREATMENT OF CLIENT PROPERTY
Unless otherwise provided in this Agreement, Contractor shall ensure any adult individual receiving services from Contractor under this Agreement has unrestricted access to the individual’s personal property. Contractor shall not interfere with any adult individual’s ownership, possession, or use of the individual’s property unless clinically indicated. Contractor shall provide individuals under age 18 with reasonable access to their personal property that is appropriate to the individual’s age, development, and needs. Upon termination of this Agreement, Contractor shall immediately release to the individual/the individual’s guardian or custodian all of the individual’s personal property.
31. WARRANTIES
The parties’ obligations are warranted and represented by each to be individually binding, for the benefit of the other party. Contractor warrants and represents it is able to perform its obligations set forth in this Agreement and that such obligations are binding upon Contractor and other subcontractors for the benefit of North Sound BHO.

32. RATIFICATION
This contract will go into effect and shall be fully enforceable when signed by authorized representatives of all parties involved. This contract is subject to ratification after it becomes effective. This contract will be submitted for ratification at the next scheduled meeting of the North Sound BHO County Authorities Executive Committee (“the Committee”). If not ratified by the Committee the North Sound BHO will terminate the contract either immediately or, at the discretion of North Sound BHO, within a reasonable amount of time.

33. CONTRACT ADMINISTRATION
The Program Manager for each of the parties shall be responsible for and shall be the contact person for all communications and billings regarding the performance of this Agreement.

   The Program Manager for North Sound BHO is:

   Joe Valentine, Executive Director
   North Sound Behavioral Health Organization
   301 Valley Mall Way, Suite 110
   Mount Vernon, WA 98273

   The Program Manager for Contractor is:

   Anne Deacon, LICSW
   Human Services Manager
   509 Girard Street
   Bellingham, WA 98225

Changes in Program Managers or addresses shall be provided to the other party in writing within 10 working days.
THIS AGREEMENT, consisting of 38 Pages, plus Attachments, is executed by the persons signing below who warrant that they have the authority to execute this Agreement.

NORTH SOUND BHO

Joe Valentine
Executive Director

Approved as to Form for North Sound BHO

Basic Form approved by Brad Furlong  10/1/01
Name & Title  Date

WHATCOM COUNTY

Regina Delahunt
Director

Date

Date
WHATCOM COUNTY

JACK LOUWS
County Executive

STATE OF WASHINGTON  
COUNTY OF WHATCOM  

On this _____ day of ____________________, 2016, before me personally appeared Jack Louws, to me known to be the Executive of Whatcom County and who executed the above instrument and who acknowledged to me the act of signing and sealing thereof.

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

My Commission expires: ____________________

APPROVED AS TO FORM

Royce Buckingham, Deputy Prosecuting Attorney

Date
NORTH SOUND BEHAVIORAL HEALTH ORGANIZATION

Tribal Coordination of Implementation of Service Plan
P&P Grid – 2017 QM Plan – links

The North Sound BHO Tribal Coordination of Implementation of Service Plan Policy (formerly 7.01 Policy) is available on the North Sound BHO Website at:
http://northsoundbho.org/policies/Sections/6000/6001.00.pdf

The North Sound BHO Policy and Procedure Grid is available on the North Sound BHO Website at:
http://northsoundbho.org/policies/

The North Sound BHO Quality Management Plan is available on the North Sound BHO Website at:
### EXHIBIT B

North Sound Behavioral Health Organization Whatcom County Administrative Contract for 2018

#### SOURCES OF FUNDS

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#### USES OF FUNDS

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*HARPS funds 12 months at $6,712.50 a month for a total of $80,550. 7/1/17 to 6/30/18.

*HARPS funds for 7/1/18 to 12/31/18 will be added when the North Sound gets the HARPS Contract form the state.
NORTH SOUND MENTAL HEALTH ADMINISTRATION

OMBUDS SERVICES

I. PURPOSE

Ombuds, when requested, investigate and advocate on behalf of consumers while working to resolve any complaint regarding mental health services for service recipients.

WHATCOM COUNTY shall ensure:

   a. Ombuds have access to WHATCOM COUNTY and all subcontractors regarding:

      i. The quality of care provided to public mental health consumers;
      ii. The degree to which services are service recipient focused/directed;
      iii. WHATCOM COUNTY quality management activities;
      iv. The extent of development of alternatives to hospitalizations, cross-system coordination and range of treatment options; and

   b. Ombuds shall have the authority to enter into an WHATCOM COUNTY facility for purposes of outreach, fact finding, assessing systemic customer service issues, and to resolve individual complaints or systemic issues related to the contracted services, provided that reasonable time, notice, and confidentiality requirements are met.
   c. Ombuds shall have access to WHATCOM COUNTY personnel for purposes of outreach, fact-finding, assessing systemic consumer service issues, and to resolve individual complaints or systemic issues related to the contracted services, provided that reasonable time, notice, and confidentiality requirements are met.
   d. Ensure Ombuds have the ability to perform their duties free of retaliation and demonstrate effective intervention on behalf of Ombuds should retaliation issues arise.

II. PROCEDURE

Ombuds submit semi-annual reports for broad distribution to at least the following stakeholders:

   a. WHATCOM COUNTY Administrator/Governing Board/Advisory Board
   b. Local consumer/family advocate groups
   c. Service Area mental health advisory boards
   d. Public mental health providers
   e. DBHR

WHATCOM COUNTY and all subcontractors shall consider Ombuds findings and reports in good faith. WHATCOM COUNTY and subcontractors shall demonstrate how Ombuds reports, recommendations and findings are analyzed, and how decisions are made regarding follow-up activities and interventions, as well as, demonstrate how issues are addressed and incorporated into ongoing operations, including but not limited to, contracting activities and other management decisions.
WHATCOM COUNTY  
CONTRACT #NORTH SOUND BHO-WHATCOM-ADMIN-18  
January 1, 2018 – December 31, 2018  

CONTRACT DELIVERABLES

<table>
<thead>
<tr>
<th>DESCRIPTION</th>
<th>DUE DATES</th>
<th>Contract Reference</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Concurrent with the execution of this Agreement, Whatcom County shall</td>
<td>1/15/18</td>
<td>F.4</td>
</tr>
<tr>
<td>furnish North Sound BHO with a copy of the explicit written authorization</td>
<td></td>
<td></td>
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<tr>
<td>of their governing bodies to enter into this Agreement and accept the</td>
<td></td>
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<tr>
<td>financial risk and responsibility to carry out all terms of this Agreement</td>
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<tr>
<td>including the ability to pay for all expenses incurred during the contract</td>
<td></td>
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<tr>
<td>period.</td>
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<tr>
<td>2. Contractor shall provide North Sound BHO with a report on the following</td>
<td>When</td>
<td>B.5</td>
</tr>
<tr>
<td>measures:</td>
<td>requested</td>
<td></td>
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<tr>
<td>a. Contractor will work with North Sound BHO regional facilities planning;</td>
<td></td>
<td></td>
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<tr>
<td>b. County will work with North Sound BHO Advisory Board to annually</td>
<td></td>
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<tr>
<td>appoint new members to the Board;</td>
<td></td>
<td></td>
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<tr>
<td>c. Contractor will identify areas to coordinate locally funded services</td>
<td></td>
<td></td>
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<tr>
<td>with publicly funded services to enhance services in the County and</td>
<td></td>
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<tr>
<td>avoid redundancy and provide them monthly at the county coordinators</td>
<td></td>
<td></td>
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<tr>
<td>meeting.</td>
<td></td>
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<tr>
<td>d. Contractor shall provide annual updates on Delegated Functions to</td>
<td></td>
<td></td>
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<tr>
<td>include Community and Allied System Coordination activities.</td>
<td></td>
<td></td>
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<tr>
<td>e. County will provide county-specific data for regional behavioral</td>
<td></td>
<td></td>
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<tr>
<td>health planning upon request.</td>
<td></td>
<td></td>
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<tr>
<td>3. If the Contractor is not a member of a risk pool, the Contractor shall</td>
<td>1/15/18</td>
<td>F.16</td>
</tr>
<tr>
<td>carry CGL to include coverage for bodily injury, property damage, and</td>
<td></td>
<td></td>
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<tr>
<td>contractual liability, with the following minimum limits: Each Occurrence</td>
<td></td>
<td></td>
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<tr>
<td>- $1,000,000; General Aggregate - $2,000,000.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>All non-risk pool policies shall name North Sound BHO as a covered</td>
<td></td>
<td></td>
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<tr>
<td>entity under said policy(s).</td>
<td></td>
<td></td>
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<tr>
<td>4. Contractor shall report revenue and expenditure information to North</td>
<td>Within 35</td>
<td>D.3.b</td>
</tr>
<tr>
<td>Sound BHO on a quarterly basis. Reports must comply with the provisions in</td>
<td>days of the</td>
<td></td>
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<tr>
<td>the BARS Supplemental Instructions for Mental Health Services promulgated</td>
<td>quarter end</td>
<td></td>
</tr>
<tr>
<td>by the Washington State Auditor’s Office.</td>
<td>(March, June and September)</td>
<td></td>
</tr>
<tr>
<td>5. Contractor shall report monthly on housing subsidies on the HARPS</td>
<td>Due by the</td>
<td>B.6</td>
</tr>
<tr>
<td>Housing Assistance template found at the following link:</td>
<td>end of business on the 15th day following the end of the reporting period.</td>
<td></td>
</tr>
<tr>
<td><a href="http://northsoundbho.org/contracts/">http://northsoundbho.org/contracts/</a></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
BUSINESS ASSOCIATE AGREEMENT

This Business Associate Agreement (this “Agreement”) is made effective the 1st day of January 2018 ("Effective Date") by and between NORTH SOUND BEHAVIORAL HEALTH ORGANIZATION, LLC (North Sound BHO) and WHATCOM COUNTY (Contractor) (individually, a “Party” and, collectively, the “Parties”).

A. WHEREAS, the Parties wish to enter into this Agreement to comply with the administrative simplification section of the Health Insurance Portability and Accountability Act of 1996 and its implementing regulations, as amended (collectively, "HIPAA").

B. WHEREAS, the Parties have entered into one or more written or verbal arrangements (collectively, the “Service Contract”) under which Contractor will provide certain services to North Sound BHO that may involve Contractor creating, receiving, maintaining, or transmitting PHI, as defined below, and Contractor may be considered a “Business Associate” of North Sound BHO under HIPAA and a “Qualified Service Organization” under the Confidentiality of Alcohol and Drug Abuse Patient Records regulations at 42 CFR Part 2 ("Part 2").

NOW, THEREFORE, in consideration of the Parties’ continuing obligations under the Service Contract, their compliance with HIPAA and Part 2, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree to the provisions of this Agreement.

I. DEFINITIONS. Except as otherwise defined in this Agreement, capitalized terms in this Agreement shall have the definitions set forth in HIPAA. “Individual” shall have the same meaning 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). “Part 2 Information” means alcohol abuse, drug abuse, or substance use disorder information covered by Part 2. “PHI” shall have the same meaning as the term “Protected Health Information” that is created, received, maintained, or transmitted by Contractor from or on behalf of North Sound BHO. PHI includes, without limitation, Electronic PHI and Part 2 Information. “PII” means personally identifiable information as defined under Washington law.

II. PERMITTED USES AND DISCLOSURES BY CONTRACTOR.

2.1 Performance of Service Contract. Contractor may use and disclose PHI and PII to perform functions, activities, or services for, or on behalf of, North Sound BHO as specified in the Service Contract as long as the use or disclosure would not violate HIPAA, Part 2, and state and federal laws (collectively, “Law”), if done by North Sound BHO.

2.2 Management; Administration; Legal Responsibilities. Contractor may use PHI and PII for its proper management and administration and to fulfill its legal responsibilities, as long as the uses are permitted under Law for both North Sound BHO and Contractor.

2.3 Required by Law. Except as otherwise limited in this Agreement, Contractor may disclose PHI and PII as Required by Law. Contractor shall: (i) to the extent permitted by Law, immediately notify North Sound BHO prior to the disclosure; (ii) cooperate with North Sound BHO in making any disclosures Required by Law, including efforts to challenge or limit the disclosure; and (iii) provide a copy of all information disclosed relating to this Agreement or the Service Contract.

2.4 De-identified Information. Contractor may not use or disclose PHI or PII to create de-identified information or Limited Data Sets or to otherwise anonymize or aggregate PHI or PII for its own use or disclosure, without prior, express, written approval from North Sound BHO.
2.5 **Minimum Necessary.** Contractor shall make all reasonable efforts to access, use, disclose, or request only the minimum necessary amount of PHI or PII to accomplish the intended, permitted purpose of the access, use, disclosure, or request. Contractor shall comply with North Sound BHO’s policies and procedures concerning minimum necessary requirements. The Parties shall collaborate in determining what quantum of information constitutes the “minimum necessary” amount for Contractor to accomplish its intended purposes.

III. OBLIGATIONS AND ACTIVITIES OF CONTRACTOR.

3.1 **Compliance with this Agreement.** Notwithstanding anything to the contrary, Contractor agrees to not use or further disclose PHI or PII other than as permitted or required by this Agreement or as Required by Law.

3.2 **Safeguards.** Contractor agrees to: (i) use appropriate safeguards to prevent use or disclosure of PHI and PII other than as provided for by this Agreement; (ii) implement the administrative, physical, and technical safeguards of the Security Standards for the Protection of Electronic Protected Health Information (the “Security Rule”) that reasonably and appropriately protect the confidentiality, integrity, and availability of any PHI; and (iii) comply with those requirements under the Security Rule that apply to Business Associates.

3.3 **Notification.**

3.3.1 **Impermissible Use or Disclosure.** Contractor shall report to North Sound BHO any use or disclosure of PHI or PII not permitted under this Agreement, regardless of whether the use or disclosure rises to the level of a Breach.

3.3.2 **Security Incident.** Contractor shall report to North Sound BHO any Security Incident of which Contractor becomes aware, regardless of whether the Security Incident rises to the level of a Breach. This Agreement constitutes notification of “unsuccessful” Security Incidents that do not present a risk to PHI such as: (i) “pings” on an information system firewall; (ii) port scans; and (iii) attempts to log on to an information system or enter a database with an invalid password or user name.

3.3.3 **Breach Notification.** Contractor shall report any Breach of Unsecured PHI, as required by the Notification of a Breach of Unsecured Protected Health Information Standards.

3.3.4 **Reporting Requirements.** Contractor shall make the report as soon as practical and in any event within five (5) business days of Contractor’s discovery of one of the above described events (an “Event”). Contractor shall supplement the information provided in the report as it becomes available. An Event shall be treated as discovered by Contractor as of the first day on which the Event is known to Contractor or, through the exercise of reasonable diligence, would have been known to Contractor.

3.3.5 **Content of Notification.** Contractor shall provide information to fully inform North Sound BHO of each Event and any additional information requested by North Sound BHO. At a minimum, the report of an Event shall include, to the extent possible:

(i) The identification of each Individual whose PHI or PII has been, or is reasonably believed by Contractor to have been, accessed, acquired, used, or disclosed during the Event;

(ii) A brief description of what happened, including the date of the Event and the date of discovery of the Event;
(iii) A description of the types of PHI or PII involved in the Event (such as whether full name, Social Security number, date of birth, home address, account number, diagnosis, disability code, or other types of information were involved);

(iv) Any steps Individuals should take to protect themselves from potential harm resulting from the Event;

(v) A brief description of what Contractor is doing to investigate the Event, to mitigate harm to Individuals, and to protect against any further Events; and

(vi) Contact procedures for North Sound BHO or Individuals to ask questions or learn additional information, which shall include a toll-free telephone number, an e-mail address, Web site, or postal address.

3.4 **Subcontractors.** Contractor shall ensure any Subcontractor whom Contractor permits to create, receive, maintain, or transmit PHI or PII on behalf of North Sound BHO, agrees in writing: (i) to the same restrictions and conditions that apply through this Agreement to Contractor; and (ii) to comply with the requirements of the Security Rule that apply to Business Associates.

3.5 **Restrictions.** Contractor agrees to comply with any requests for restrictions on certain uses and disclosures of PHI or PII of which North Sound BHO informs Contractor.

3.6 **Access.** At the request of North Sound BHO, within ten (10) business days, unless a shorter time period is requested, in the manner, form, and format requested by North Sound BHO, Contractor shall make available PHI and PII so that North Sound BHO may respond to an Individual’s request for access to PHI and PII in accordance with the Standards for Privacy of individually identifiable Health Information (the “Privacy Rule”) and other Law. In the event an Individual request from Contractor access to PHI or PII, Contractor, to the extent permitted by Law, shall forward the request to North Sound BHO within two (2) business days.

3.7 **Amendment.** At the request of North Sound BHO, in a reasonable time and manner and in the form and format requested by North Sound BHO, Contractor shall make amendments to PHI and PII so that North Sound BHO may respond to an Individual’s request for an amendment by North Sound BHO in accordance with the Privacy Rule and other Law. In the event an Individual request from Contractor any amendments, Contractor shall forward the request to North Sound BHO within two (2) business days.

3.8 **Accounting of Disclosures.** Contractor shall document any disclosures that are required to be in an accounting of disclosures under the Privacy Rule and, upon request, shall provide information required to be included in an accounting of disclosures to North Sound BHO to permit North Sound BHO to comply with the Privacy Rule and other Law. In the event an Individual request from Contractor, an accounting of disclosures, to the extent permitted by law, Contractor shall forward the request to North Sound BHO within two (2) business days.

3.9 **Disclosures to the Secretary.** Contractor agrees that it will make its internal practices, books, and records available to the Secretary of the United States Department of Health and Human Services (the “Secretary”), for the purpose of determining North Sound BHO’s and Contractor’s compliance with HIPAA, and to North Sound BHO for the purpose of determining Contractor’s compliance with this Agreement and HIPAA, in a time and manner designated by the Secretary or North Sound BHO. Contractor: (i) immediately shall notify North Sound BHO of any requests from the Secretary pertaining to an investigation of Contractor’s or North Sound BHO’s compliance with HIPAA; (ii) cooperate with North Sound BHO in responding to the Secretary’s request; and (iii) provide to North Sound BHO a copy of all documents provided to the Secretary.
3.10 **Part 2 Information.** To the extent that, in performing services for or on behalf of North Sound BHO under the Service Contract, Contractor uses, discloses, maintains, or transmits Part 2 Information, Contractor acknowledges and agrees that: (a) in creating, receiving, maintaining, transmitting, using, or disclosing Part 2 information, it is fully bound by Part 2; and (b) if necessary, it will resist in judicial proceedings any efforts to obtain access to Part 2 Information except as permitted by Part 2. Contractor acknowledges that any unauthorized disclosure of Part 2 Information may be a federal criminal offense.

3.11 **Covered Entity Obligations.** To the extent that Contractor is to carry out one or more of North Sound BHO obligations under the Privacy Rule, Contractor shall comply with the requirements of the Privacy Rule that apply to North Sound BHO in the performance of the obligations.

3.12 **On-Site Services.** Contractor agrees that, while present at any North Sound BHO facility and/or when accessing North Sound BHO’s computer network(s), it and all of its Workforce, agents, and Subcontractors at all times will comply with any network access and other security practices, policies, and procedures established by North Sound BHO including, without limitation, those established pursuant to HIPAA.

3.13 **No Sale of PHI.** Contractor agrees that it will not directly or indirectly receive remuneration in exchange for any PHI or PII without the written authorization of each applicable Individual, except when expressly permitted by the Privacy Rule.

3.14 **No Impermissible Marketing or Fundraising Communication.** Contractor agrees that it will not engage in Marketing or fundraising communications that would not be permitted by North Sound BHO under HIPAA.

3.15 **Mitigation.** Contractor agrees to mitigate, to the extent practicable, any harmful effect that is known to Contractor of a use or disclosure of PHI or PII by Contractor in breach of this Agreement, failure to comply with applicable Law, and any Event, as defined in Section 3.3.

3.16 **Compliance with Applicable Law.** Contractor shall comply with applicable Law. Contractor shall not act or fail to act in a manner that causes North Sound BHO to not be in compliance with applicable Law.

IV. **OBLIGATIONS OF NORTH SOUND BHO.** North Sound BHO shall not request Contractor to act in a manner that is not permissible under HIPAA.

V. **TERM AND TERMINATION.**

5.1 **Term.** The term of this Agreement shall be effective as of the Effective Date and shall terminate upon the expiration or termination of the Service Contract.

5.2 **Termination.** Upon North Sound BHO’s knowledge of a material breach by Contractor of its obligations under this Agreement, North Sound BHO may notify Contractor, and Contractor shall have thirty (30) days from receipt of that notice to cure the breach or end the violation. Notwithstanding anything to the contrary in the Service Contract, if Contractor fails to cure the breach or end the violation within the designated time period, then North Sound BHO immediately may terminate the Service Contract upon notice.
5.3 Effect of Termination.

5.3.1 Return or Destruction. Except as provided in 5.3.1, upon termination of this Agreement, Contractor, within ten (10) days, shall return or destroy all PHI and PII. Any destruction shall be in a manner consistent with HIPAA and related guidance. This provision also shall apply to PHI and PII that is in the possession of Subcontractors or agents of Contractor. Neither Contractor nor its Subcontractors or agents shall retain copies of the PHI. Upon request, Contractor shall provide a certificate of appropriate destruction of the PHI and PII.

5.3.2 Continued Protections. In the event that Contractor determines that returning or destroying the PHI and PII is infeasible, Contractor shall provide within ten (10) days to North Sound BHO notification of the conditions that make return or destruction infeasible of PHI and PII. Upon mutual agreement of the Parties that return or destruction of PHI is infeasible and to the extent Contractor retains knowledge of the PHI and PII, Contractor shall extend the protections of this Agreement to the PHI and PII and limit further uses and disclosures of the PHI and PII to those purposes that make the return or destruction infeasible, as for as long as Contractor maintains, or retains knowledge of, the PHI or PII.

VI. MISCELLANEOUS.

6.1 Indemnification Obligation. Notwithstanding anything to the contrary in the Service Contract, Contractor will indemnify, defend at North Sound BHO's request, and hold harmless North Sound BHO, its Workforce, County Authorities Executive Committee, Advisory Board, partners, agents, and Subcontractors, (collectively “North Sound BHO Indemnified Parties”) from and against any and all claims, actions, investigations, proceedings, losses, liability, damages, costs, and expenses (including attorneys' fees, costs of defense, and costs of investigation, mitigation, remediation, and notification) incurred or suffered by an North Sound BHO Indemnified Party (collectively, “Damages”) that arise out of or result from the following: (i) Contractor's breach of this Agreement, including any breach of any representation or warranty; (ii) any Event reported by Contractor under this Agreement; (iii) any violation of Law by or caused by Contractor or its Workforce, agents, or Subcontractors; or (iv) any negligent act or omission, willful misconduct, strict liability, or fraud by or of Contractor or its Workforce, agents, or Subcontractors.

6.2 No Limitations on Liability. Notwithstanding any other provision of this Agreement or the Service Contract, in no event will any exclusions, disclaimers, waivers, or limitations of any nature whatsoever apply to any damages, liability, rights, or remedies arising from or in connection with: (i) Contractor's indemnification and defense obligations under this Agreement; (ii) Contractor's breach of this Agreement, including any breach of any representation or warranty; (iii) any Event reported by Contractor; (iv) any violation of Law by or caused by Contractor or its Workforce, agents, or Subcontractors; or (v) any negligent act or omission, willful misconduct, strict liability, or fraud by or of Contractor or its Workforce, agents, or Subcontractors.

6.3 Ownership of Information. The Parties agree that Contractor shall not have an ownership interest in PHI or PII or any derivations of the PHI or PII.
6.4 Third Party Beneficiaries. Notwithstanding anything to the contrary in the Service Contract or this Agreement, individuals who are service recipients of North Sound BHO shall be third party beneficiaries to this Agreement. Subject to the foregoing, nothing in this Agreement shall confer upon any person other than the Parties and their respective successors or assigns, any rights, remedies, obligations, or liabilities whatsoever.

6.5 Interpretation. This Agreement shall be interpreted in a manner consistent with the Parties' intent to comply with HIPAA, Part 2, and other Law. Any ambiguity of this Agreement shall be resolved in favor of a meaning that permits the Parties to comply with HIPAA, Part 2, and other Law. In the event of an inconsistency between the provisions of this Agreement and mandatory provisions of HIPAA, HIPAA shall control. In the event of any inconsistency between this Agreement and the Service Contract or any other agreement between the Parties, the terms of this Agreement shall control. Nothing in this Agreement shall be construed as a waiver of any legal privilege or protection, including for trade secrets or confidential commercial information.

6.6 Survival. The obligations of Contractor under Sections 3.3, 3.6, 3.8, 3.10, 3.13, 3.15, 5.3, 6.1, 6.2, 6.3, and 6.4 of this Agreement shall survive the expiration, termination, or cancelation of this Agreement, the Service Contract, and/or the business relationship of the Parties, and shall continue to bind Contractor, its Workforce, agents, employees, subcontractors, successors, and assigns as set forth in this Agreement.

6.7 Amendment. This Agreement may be amended or modified only in a writing signed by the Parties. The Parties agree that they will negotiate amendments to this Agreement to conform to any changes in HIPAA and Part 2.

6.8 Assignment. Neither Party may assign its respective rights and obligations under this Agreement without the prior written consent of the other Party.

6.9 Independent Contractor. None of the provisions of this Agreement are intended to create, nor will they be deemed to create, any relationship between the Parties other than that of independent parties contracting with each other solely for the purposes of effecting the provisions of this Agreement and any other agreements between the Parties evidencing their business relationship. No agency relationship is deemed created by this Agreement.

6.10 Governing Law. To the extent this Agreement is not governed exclusively by HIPAA, Part 2, or other Law, it will be governed by and construed in accordance with the laws of the State of Washington.

6.11 No Waiver. No change, waiver, or discharge of any liability or obligation under this Agreement on any one or more occasions shall be deemed a waiver of performance of any continuing or other obligation, or shall prohibit enforcement of any obligation, on any other occasion.

6.12 Severability. In the event that any provision of this Agreement is held by a court of competent jurisdiction to be invalid or unenforceable, the remainder of the provisions of this Agreement will remain in full force and effect.

6.13 Notice. Any notification required in this Agreement shall be made in writing to the representative of the Party who signed this Agreement or the person currently serving in that representative's position with the other Party.

6.14 Entire Agreement. This Agreement constitutes the entire understanding of the Parties with respect to its subject matter and supersedes all prior agreements, oral or written.
IN WITNESS WHEREOF, the Parties have executed, through representatives with the authority to bind each Party, this Agreement effective as of the Effective Date day and year written above.

NORTH SOUND BHO

By: 

Title: Executive Director

Date: 1/3/18

WHATCOM COUNTY

By:  

Title: Director

Date: 1/3/18
**CLEARANCES** | **Initial** | **Date** | **Date Received in Council Office** | **Agenda Date** | **Assigned to:**
---|---|---|---|---|---
Originator: | | 1/5/17 | | 2/13/18 | Finance / Council
Division Head: | | | | 
Dept. Head: | | | | 
Prosecutor: | | 1/5/18 | | 
Purchasing/Budget: | | 1/9/18 | | 
Executive: | | 2/6/18 | | 

**TITLE OF DOCUMENT:** Amendment #1 - Lease Agreement w/Cornwall Center

**ATTACHMENTS:**
Proposed Lease Agreement Amendment #1

**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 Amendment #1 - Lease Agreement #201409008 is between Whatcom County and Cornwall Center, Inc for the purpose of extending the expiration date to December 31, 2018 for leasing raw land at the Civic Center Building Site.

Lots 8 – 12, inclusive, Block 3, “Plat of Whatcom, Whatcom County, W.T.,” now part of the consolidated City of Bellingham, Whatcom County, Washington, recorded in Book 1 of Plats, page 32, in the Auditor’s Office of said County and State.

**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

MEMO TO:        Jack Louws, County Executive

FROM:           Rob Ney, Projects & Operations Manager

DATE:           February 1, 2018

RE:             Lease Agreement for Civic Center Parking Lot – Amendment #1

Attached are two (2) originals of the proposed Amendment #1 Ground Lease Agreement #201409008 for the Civic Center Annex Parking Lot between Whatcom County and Cornwall Center, Inc. for your review and signature.

- **Background and Purpose**
  This agreement will provide the County with Parking Spaces for County Employees and Visitors at the Civic Center Annex.

  Lots 8 through 12, inclusive, Block 3, Plat of Central Whatcom, Whatcom County, W.T., “now part of the consolidated City of Bellingham, Whatcom County, Washington,” as per the map thereof, recorded in Book 1 of Plats, page 32, in the Auditor’s Office of said County and State.

- **Funding Amount and Source**
  Amount for this year’s Lease Agreement is for $731.58 per month - Funding for this agreement is in the current 2017-2018 budget - $8779/yr - 4026.6870.

- **Differences from Previous Contract**
  This project is a one-time agreement.

Please contact Rob Ney at extension 5387, if you have any questions or concerns regarding the terms of this agreement.

Thank you
**WHATCOM COUNTY CONTRACT INFORMATION SHEET**

<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>Facilities Management</td>
</tr>
<tr>
<td>Contractor’s / Agency Name:</td>
<td>Cornwall Center</td>
</tr>
</tbody>
</table>

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

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 #: 201409008

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

$ 32,632.29

**This Amendment Amount:** $ 8,778.96

**Total Amended Amount:** $ 41,411.25

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

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

**Summary of Scope:** This Rental Agreement is between Whatcom County and Cornwall Center, Inc. for the rental of Civic Center Parking; purpose of 9 parking spots. The amendment is to extend the expiration date to December 31, 2018; this reflects the increase of 3% annual rental.

**Term of Contract:** 1. Prepared by: Dee Ebergson Date: 1/5/18

2. Attorney signoff: Date: 1/5/18

3. AS Finance reviewed: Date: 1/9/18

4. IT reviewed (if IT related): Date: 1/9/18

5. Contractor signed: Date: 1/27/18

6. Submitted to Exec.: Date: 2/2/18

7. Council approved (if necessary): Date: 2/2/18

8. Executive signed: Date: 2/2/18

9. Original to Council: Date: 2/2/18

Last edited 10/31/16
LEASE AGREEMENT AMENDMENT #1
Cornwall Center

This AMENDMENT is to the Lease Agreement made between Whatcom County and Cornwall Center, Inc. dated March 15, 2014 and designated "Whatcom County Lease Agreement No. 201409008." In consideration of the mutual benefits to be derived, the parties agree to the following:

This Amendment fulfills the original Lease Agreement option and extends the expiration date to December 31, 2018.

Unless specifically amended by this agreement all other terms and conditions of the original contract shall remain in full force and effect.

This Amendment takes effect as stated.

IN WITNESS WHEREOF, the parties have executed this Agreement this 27th day of January, 2018.

CONTRACTOR:

[Signature]
William R. Eiford, Jr., President

STATE OF
Washington

COUNTY OF
Whatcom

ss.

On this 27th day of January, 2018, before me personally appeared William R Eiford, Jr., to me known to be the President of Cornwall Center, Inc. and who executed the above instrument and who acknowledged to me the act of signing and sealing thereof.

[Signature]
CLIVER M ESCOBAR
My Appointment Expires Sep 2, 2019

NOTARY PUBLIC in and for the State of Washington, residing at , My commission expires
WHATCOM COUNTY:
Approved as to form:

Prosecuting Attorney  Date

Approved:
Accepted for Whatcom County:

By: ____________________________
    Jack Louws, Whatcom County Executive

STATE OF WASHINGTON    )
COUNTY OF Whatcom       ) ss

On this _______ day of ________________, 2018, 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:

Cornwall Center, Inc.

Address:
818 Racine Street
Bellingham WA 98229

Remittance Address:
818 Racine Street
Bellingham WA 98229

Contact Name:
William R Eiford, Jr. President
Betty Miller, Contact

Contact Phone:
(360) 676-9380
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**TITLE OF DOCUMENT:**
Departmental updates to Council

**ATTACHMENTS:**

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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.)

2/13/18: Public Works

**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).*
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**Dept. Head:**

**Prosecutor:**

**Purchasing/Budget:**

**Executive:**

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**TITLE OF DOCUMENT:**

Update from HomesNOW - volunteer efforts to provide homes & shelter for homeless

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**ATTACHMENTS:**

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**SEPA review required?**

- ( ) Yes
- ( ) NO

**SEPA review completed?**

- ( ) Yes
- ( ) NO

**Should Clerk schedule a hearing?**

- ( ) Yes
- (X) NO

**Requested Date:**

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**SUMMARY STATEMENT OR LEGAL NOTICE LANGUAGE:**

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Update from HomesNOW on volunteer efforts to provide homes and shelter for the homeless in Whatcom County

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**COMMITTEE ACTION:**

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**COUNCIL ACTION:**

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**Related County Contract #:**

**Related File Numbers:**

**Ordinance or Resolution Number:**

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HomesNOW! – 6 Tiny Homes with Service Building Pilot Project

HomesNOW! is a 501c3 non-profit that has the goal of ending homelessness in Whatcom County permanently by 2020. Finding properties that the city owns that are not being used would provide an ideal first step toward achieving these goals.

Liability and Insurance:
HomesNOW! would be responsible for providing insurance for the property. A local Farmers Insurance agency is willing to insure the property and tiny homes.

Employment and/or Income:
The first residents for the home will be individuals who are homeless but have some income, either through full-time or part-time employment or through Social Security/disability payments or Veteran’s benefits. Many homeless individuals are hardworking and just need a hand up and a little help because they can’t afford rent at current market values for rent in Bellingham. HomesNOW! is aware of the level of funding needed to house
people who are without work or without income and need long-term support, and that is why for this first project as a first step, we are seeking homeless individuals who are employed or have income coming in to make this self-sustaining in the long-run without relying solely on charity or donations. We have 5 people on our waiting list already who have jobs or income who can be helped immediately.

Long-term though, to help those in need who are also unemployed, HomesNOW! plans to open a non-profit thrift shop at a nearby location where goods, furniture and supplies can be donated, organized, stored and sold to fund operations and future home development for those in need. This shop will be used to employ future residents who are unemployed, to help them get on their feet. Minimum wage will be $15-20/hr (part time or full time) depending on the level of experience of a homeless individual who needs work. This is done to empower the homeless to become self-sufficient and independent.

**Property and Structure Layout:**

HomesNOW! is asking for a basic pilot project of six tiny homes and a service building. The service building would provide a community area as well as bathrooms and kitchen. The tiny homes will be 10’ x 10’, and the service building will be 12’ x 24’.
Bills and Rental Costs:

Bills will be paid for on the property through rent, which will be charged on a non-profit basis. This rent will keep initial costs low for start-up to get people housed. Rent will be based on ability to pay, and will be 20% of their income or $250/mo, whichever number is lower. This rent will be used to pay all bills for the tiny homes such as electrical, water/sewer, garbage, internet as well as supplies for the homes such as toilet paper, soap and other household products. Also, utilities are included in this rent, so the percentage is effectively lower than the industry standard of 30%. This model is being used for 2 reasons. One is that we will be able to self-sustain and self-fund operations and maintenance without relying solely on donations, the other is that residents will transition to regular housing easier since it will be similar to the model they will encounter once they no longer need housing assistance from HomesNOW but just doesn’t require nearly as much income. This gives the person time to save up some money, get the help they need (whether mental health or drug treatment) and move on. The long-term goal is to get residents transitioned to regular housing within a few months to make room for more people who need help. When one person moves out it leaves a unit for somebody new who needs help. Over time this will create progress by reducing the number of people who are homeless on a continuous basis.

Home Repairs and Builds:

HomesNOW! would take responsibility for any repairs for the tiny homes. The repairs would be paid for through donations and reserve funds. The labor to do any needed repairs on the structure would be volunteer labor. This would also provide an opportunity to empower residents to learn a skilled trade through volunteering with a skilled professional in the areas such as Information Technology, Carpentry, Construction, Plumbing and Electrical. HomesNOW! would have the homes inspected and certified to ensure that the structure is up to code and safety regulations.

Transportation:

Some of our potential employed residents are currently living in their car or van. These residents will be able to transport themselves around town and provide rides for others. For those who do not have a vehicle, we would hope to find a location that is near a bus stop. Also (if possible) within walking distance of a grocery store. This is ideal for not having to drive a long distance to pick up basic necessities or to look for employment.

Security:

If the city or county accepts our proposal, the homes will be under 24/7 surveillance. 720P HD Security cameras will be placed around the perimeter of the approved property and will monitor all activity happening outside the homes. This is done to protect both the residents and the neighbors from any potential problems that could arise (legally or otherwise). Location will also be able to be monitored remotely through an app on the phone and PC. Security Cameras will not be installed inside the houses, to preserve the privacy of the residents in their own bedrooms.
Support Services:

HomesNOW! wants to set up each resident with a case worker to determine which specific areas of help that the resident would benefit from. Some residents might require job training, others might require mental health counselling or drug/alcohol treatment. The case worker/social worker will decide which support services a resident will need (if any) based on evaluating each individual, while helping them in a surgical way based on their individual needs to empower them to get back on their feet to become independent.

Home Management (Daily Life):

HomesNOW! will have weekly group house meetings with all the residents and at least one member of the board from HomesNOW. One of our residents will be designated as home manager and will be a line of communication between the HomesNOW members and residents to ensure smooth and effective operations and management of the home. All residents must be approved by management and go through the application process. Every resident will take turns cleaning the house (dishes, bathrooms, rooms, living room, etc.). All residents must be engaged in services where necessary and pay rent. Residents will not be permitted consume any controlled substances which are illegal under Washington State Law or if case worker determines substance abuse treatment is necessary (for legal substances). Drug testing will be required by request of HomesNOW. Residents will not be drug tested unless there is suspicion of consuming an illegal controlled substance through secondary signs such as erratic behavior, mood swings, increase in mental instability, anger management issues or other reasonable concerns that would warrant a drug test.

City/County Future Land Use:

In the meantime, the tiny homes can be used to house people who are homeless and who have some income. If the city or county needs to allow a property to be demolished, HomesNOW can vacate the property with a 3-month notice (flexible). Since we would be leasing it from the city or county, the city/county could allow us to use the land until it determines that what HomesNOW is doing is the best use of the property or until it can determine an alternative use for the property. In the meantime, it can be used to help those in need. Building tiny homes allows the dwellings to be moved later if the situation changes.

Contact Information:

1. Jim Peterson – President
   360-319-2150
   jim@homesnow.org

2. Doug Gustafson – Technical Director
   360-224-3727
   doug@homesnow.org
### WHATCOM COUNTY COUNCIL AGENDA BILL

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**TITLE OF DOCUMENT:**
Veterans Program Presentation to Health Committee

**ATTACHMENTS:**
Memo, PowerPoint

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The Whatcom County Veterans Program will be updating County Council on the program and proposing change to the program income eligibility standard.

**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, WHATCOM COUNTY EXECUTIVE

FROM: Regina A. Delahunt, Director

DATE: February 2, 2018

RE: VETERANS PROGRAM UPDATE TO COUNTY COUNCIL

The Veterans Program will update the County Council on the Veterans Program at the February 13, 2018 Health Committee.

The Veterans Program will also bring forth a proposed Resolution to annually set the Veterans Program Eligibility Standard. The proposed Resolution is attached.

The Resolution utilizes RCW 73.08.005.B, which authorizes County Council to set the Financial Eligibility Guidelines for the Veterans Program. The proposed Resolution states that County Council will annually set the Income Eligibility Standard for the Veterans Program. In addition, the proposed County standard for 2018 shall be based on Average Median Income, a localized standard, rather than Federal Poverty Level, a national standard that does not reflect the local economic climate.

The purpose of this Resolution is to more accurately meet the needs of our local veteran population.

Please contact Liz Harmon-Craig at ext. 6050 if you have any questions.
RESOLUTION NO. __________

Whatcom County Veterans Assistance Program Eligibility Income Standard

WHEREAS, Whatcom County Veterans represent approximately ten percent of the population;

WHEREAS, Whatcom County Veterans have served us honorably and deserve an opportunity to have their basic needs met;

WHEREAS, too many Whatcom County Veterans are struggling to meet basic needs such as affordable housing, food, healthcare, childcare and necessary transportation;

WHEREAS, Washington State law, RCW 73.08.080, authorizes counties to impose property tax collection for the purpose of aiding local Veterans;

WHEREAS, Whatcom County collects property tax millage with a portion dedicated to establishing a Veterans Assistance Fund to aid local indigent Veterans;

WHEREAS, Washington State law, RCW 73.08.005.B, assigns the county legislative authority, and Whatcom County Code, Chapter 2.150, assigns the County Council and the County Executive the authority to set the eligibility income guidelines of the Veterans Assistance Fund;

WHEREAS, The higher cost of living in Whatcom County is such that the Veterans Assistance Program current eligibility income guideline of 150% of Federal Poverty Level is too low to meet the basic needs of local lower income Veterans;

WHEREAS, Veterans with an income greater than 150% of Federal Poverty Level and less than Area Median Income are financially unable to cover unique but basic necessary expenses;

WHEREAS, The inability to cover such critical expenses leaves lower income Veterans vulnerable to job, education, and housing instability;

WHEREAS, An eligibility income level based on 60% of Area Median Income more accurately reflects the income eligibility level required to meet basic needs of local low income Veterans.
WHEREAS, the Whatcom County Veterans Advisory Board, formally established in Whatcom County Code, Chapter 2.150, supports the increase of the Veterans Assistance Program eligibility income level from 150% of Federal Poverty Level to the locally adjusted, regionally specific and annually set guideline in order to meet the needs of local lower income Veterans;

WHEREAS, the Whatcom County Veterans Advisory Board, formally established in Whatcom County Code, Chapter 2.150, supports the increase of the Veterans Assistance Program eligibility income level to 60% of Area Median Income in order to meet the needs of local lower income Veterans;

NOW, THEREFORE, BE IT RESOLVED by the Whatcom County Council that Veterans Assistance Program eligibility income guideline shall be based on Area Median Income and set on an annual basis.

NOW, THEREFORE, BE IT RESOLVED by the Whatcom County Council that Veterans Assistance Program eligibility income guideline shall be set at 60% of Area Median Income for 2018.

ADOPTED this ____ day of __________, 2018.

ATTEST:

WHATCOM COUNTY COUNCIL
WHATCOM COUNTY, WASHINGTON

Dana Brown-Davis, Clerk of the Council

(Rud Browne), Council Chair

APPROVED AS TO FORM:

Civil Deputy Prosecutor
County Veteran Specialist

Liz Harmon-Craig

Whatcom County Veteran Program
Agenda

- Introduction
- Regulations
- Evolution of the Program
- System of Care
- Existing programs and services
- Budget
- Looking forward
- Discussion

"Serving those who served us so honorably"

community programs that benefit veterans and their
meet identified basic needs for individuals, as well as
identified services shall include those that
Veterans. Programs and services shall aid whatcom
comprehensive system of services to aid whatcom County

Treating, implementing and administering a
assistance program is hereby established for the purpose of
pursuant to RCW 73.08.010 a whatcom County veterans

2.152.010 Veterans' Assistance Program

Whatcom County Code

Veterans Assistance Program
Appropx. $300K annually in revenue

allowed by state law (Ord. 2011-033 EXH. A)
services to nonindigent Whatcom County Veterans as
veterans' assistance program and may be used to provide
veterans' assistance program and may also support the
veterans. Funding from other sources may also support the
and services delivered to Whatcom County Indigent
by RCW 73.08.080 will provide support for the programs
The resources of the veterans' assistance fund, authorized
2.152.020 Program Funding.

Funding
Veterans Assistance Program
transportation because his or her available funds are insufficient.
(c) Unable to pay reasonable costs for shelter, food, utilities, and
income established by the county legislative authority; or
or receiving an annual income not exceeding a higher qualifying
fifty percent or less of the current federally established poverty level,
(b) Receiving an annual income, after taxes, of up to one hundred
medical care services, or supplemental security income;
transferred electronically, refugee resettlement benefits, medical,
related veterans’ benefits, food stamps, or food stamp benefits
assistance benefits, pregnant women assistance benefits, poverty-
temporary assistance for needy families, aged, blind, or disabled
(4) Receiving one of the following types of public assistance:
lelegislative authority using one or more of the following definitions:
Indigent means a person who is defined as such by the county
RCW 73.08.005.3
Program Background and Evolution
Many more community organizations

Whatcom Community Detox
The Whatcom Volunteer Center
Whatcom State National Guard
Bellingham Vet Center
Mt. Vernon Community Based Outreach Clinic
The Salvation Army
Worksource
Law Advocates
Whatcom Alliance for Healthcare Access
DSHS
Northwest Regional Council
Combat Veterans International
Disabled American Veterans
Whatcom Homeless Service Center
Opportunity Council

Community Partners
System of Care
Programs and Services
Temporary Financial Assistance

Eviction Prevention contracted services

Homeless housing contracted services
Blending and leveraging of resources and services

Contracted housing legal services
Project Homeless Connect Veterans’ Services
Awarded 2014 The National Association of Counties and Cities Health Officials Department of the Year for efforts in ending veteran homelessness

“Serving those who served us so honorably.”
Homelessness

• Reached functional zero in Veterans Funding Sources

205 Veterans were served by non-Veteran
300 Veterans’ Funded Homeless Rehousings
384 Veterans’ Funded Eviction Preventions

Council (2012-2018)

889 Veteran Household served by Opportunity

Housing
"Serving those who served us so honorably"

- Love Inc
- Whatcom Dream
- FLARE
- Education
- Referral to outside agencies for skill building and
  sufficiency
- Focus on promoting independence and self-
  provided by our office

Financial Counseling
Dental

• Direct Assistance
• Project Smile
• Enroll Veterans in VA Dental Insurance
• Contract with WANA phased out by ACA
Day Van to Seattle VA

Connection to other services

WTA bus passes for workers and students

32 volunteers drivers

935 trips

54 veterans served

(EST 2012)

Coordinated by the Whatcom Volunteer Center

Whatcom Veterans Transportation Program

Transportation
Behavorial Health

- VA Medical Programs
- Bellingham Vet Center
- Behavioral Health Access Program
- Connection to Community Services
- Interplay Counseling
- Animals as Natural Therapy
- Equine Assisted Growth and Learning
Benefits/Legal Assistance

- Housing
- Barriers to Employment
- Proof of Identity
- SSI
- SSDI
- Concerns
- Contract with LAW Advocates to assist with non-criminal legal
- Discharge upgrades
- Education benefits
- Burial/death benefits
- Disability pensions and compensation
- Medical
- Veteran Service Officers to coordinate veterans with the VA
- DHS Child Support Officer monthly in office outreach
Debene and Larsen’s Veteran Boards
County representation on Representatives'
Advocacy with Federal Representatives
Treatment
Connection to VA and local substance use disorder
Regardless of income or discharge status
Case Management, Information and Referral
Burial assistance in accordance with RCW 73.08.070
Childcare assistance (new for 2018)
Community Outreach
VA work-study program
Reentry services for incarcerated veterans

Other Programs and Services
### Direct Assistance

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### Temporary Financial Assistance

- **Total Dolorum**: Used
- **% of New Use**: 40%
- **Average Amount per Year**: $578.07
- **Total of Years**: 2017

**Serving those who served us honorably**
<table>
<thead>
<tr>
<th>Contracted Services:</th>
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<tr>
<td>Animals &amp; Natural Therapy</td>
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<tr>
<td>$1,000,000</td>
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**Ending Fund Balance:**

- Over/Under for the Year
- **Total Expenses**
- Direct Assistance
- Program Support (Indudes SS & IT)
- General Ledger
- Total Revenue

**Beginning Fund Balance From:**

- 2005
- 2006
- 2007
- 2008
- 2009

---

**Current Budget**
Looking Forward

- Recently defined child care as a basic need
- Increase income eligibility levels in order to meet the need of local veterans
4. Prevention Programs

- Stable housing: utility and housing deposits
- Unexpected catastrophic costs: medical costs, ADA housing
- Childcare
- Working families and individuals

Veterans we hope to serve
### Income Standards

<table>
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<tr>
<th>2017 Monthly Qualifying Standard</th>
<th>Regulation</th>
<th>HUD Section 8 Housing Voucher (WVAP)</th>
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<td>80% AMI</td>
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<td>Washington State Temporary Assistance Program (WSTAP)</td>
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<td>70% AMI</td>
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<td>Women, Infants, and Children (WIC)</td>
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<td>65% AMI</td>
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<td>Free School Meals for School Children</td>
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<td>60% AMI</td>
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<td>VA Pension</td>
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<td>50% AMI</td>
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<td>LIHEAP Medical</td>
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<td>30% AMI</td>
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<td>LIHEAP Category 7 VA Care</td>
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<td>20% AMI</td>
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<td>Supportive Services for Veterans Families</td>
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<td>10% AMI</td>
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<td>VA State Supplemental Nutrition Assistance Program</td>
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### 2017 Program Income Standards

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<th>65% AMI</th>
<th>60% AMI</th>
<th>50% AMI</th>
<th>30% AMI</th>
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<td>$4,962</td>
<td>$6,016</td>
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<td>$9,488</td>
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**Note:** The table above outlines the income standards for various assistance programs, categorized by percentage of the Area Median Income (AMI). It includes specific thresholds for SNAP, Section 8, WIC, VA Pension, LIHEAP, and other relevant programs, adjusted for various income levels and percentages.
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<th>Single Adult</th>
<th>2 Adults, 1 Infant</th>
<th>1 Preschooler</th>
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<td>Alice in Whatcom</td>
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Employed Households

Alice: Asset Limited, Income Limited, Constrained,

Whatcom County Survival Budget

(2013)
Individually vs. Family Budget
location
Percent ALine and by

"Serving those who served us so honorably"
<table>
<thead>
<tr>
<th>Persons in Family Unit</th>
<th>Current Income Standard (50% AMI)</th>
<th>60% AMI</th>
<th>80% AMI</th>
<th>120% AMI</th>
<th>150% AMI</th>
<th>200% FPL</th>
<th>250% FPL</th>
<th>300% FPL</th>
<th>330% FPL</th>
<th>400% FPL</th>
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<th>540% FPL</th>
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*Note: The table above represents the 2017 program income standards for various family unit sizes, with standards for 60%, 80%, and 120% of Area Median Income (AMI) and additional income levels for different family sizes.*

**Definitions:**
- **AMIs:** Area Median Incomes for different family sizes.
- **Income Levels:** Current income standards for various income levels up to 1000% of FPL.
- **Programs:** Includes HUD Section 8 Housing Voucher (VHAP), Washington State Temporary Assistance Program (WSTAP), Women Infant and Child (WIC), Supportive Services for Veteran Families (SSVF), and more.

**Resources:**
- Local Health and Human Services Programs
- 2017 Monthly Qualifying Standard
- United States Code:
  - Title 42, Part 62, 42 USC 8630
  - Title 42, Part 62, 42 USC 8630
  - Title 42, Part 62, 42 USC 8630
  - Title 42, Part 62, 42 USC 8630

**Contact Information:**
For more information, please contact the local health and human services programs.
Creekside Level
509 Girard Street
Whitcom Veterans Program Office
Please come visit us!
Resolution relating to Whatcom County Veterans Assistance Program eligibility income standards

<table>
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<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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**TITLE OF DOCUMENT:**
Resolution relating to Whatcom County Veterans Assistance Program eligibility income standards

**ATTACHMENTS:**
Resolution

**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 Whatcom County Veterans Program proposes change to program income eligibility standards.

**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, WHATCOM COUNTY EXECUTIVE

FROM: Regina A. Delahunt, Director

DATE: February 2, 2018

RE: VETERANS PROGRAM UPDATE TO COUNTY COUNCIL

The Veterans Program will update the County Council on the Veterans Program at the February 13, 2018 Health Committee.

The Veterans Program will also bring forth a proposed Resolution to annually set the Veterans Program Eligibility Standard. The proposed Resolution is attached.

The Resolution utilizes RCW 73.08.005.B, which authorizes County Council to set the Financial Eligibility Guidelines for the Veterans Program. The proposed Resolution states that County Council will annually set the Income Eligibility Standard for the Veterans Program. In addition, the proposed County standard for 2018 shall be based on Average Median Income, a localized standard, rather than Federal Poverty Level, a national standard that does not reflect the local economic climate.

The purpose of this Resolution is to more accurately meet the needs of our local veteran population.

Please contact Liz Harmon-Craig at ext. 6050 if you have any questions.
RESOLUTION NO. _______

Whatcom County Veterans Assistance Program Eligibility Income Standard

WHEREAS, Whatcom County Veterans represent approximately ten percent of the population;

WHEREAS, Whatcom County Veterans have served us honorably and deserve an opportunity to have their basic needs met;

WHEREAS, too many Whatcom County Veterans are struggling to meet basic needs such as affordable housing, food, healthcare, childcare and necessary transportation;

WHEREAS, Washington State law, RCW 73.08.080, authorizes counties to impose property tax collection for the purpose of aiding local Veterans;

WHEREAS, Whatcom County collects property tax millage with a portion dedicated to establishing a Veterans Assistance Fund to aid local indigent Veterans;

WHEREAS, Washington State law, RCW 73.08.005.B, assigns the county legislative authority, and Whatcom County Code, Chapter 2.150, assigns the County Council and the County Executive the authority to set the eligibility income guidelines of the Veterans Assistance Fund;

WHEREAS, The higher cost of living in Whatcom County is such that the Veterans Assistance Program current eligibility income guideline of 150% of Federal Poverty Level is too low to meet the basic needs of local lower income Veterans;

WHEREAS, Veterans with an income greater than 150% of Federal Poverty Level and less than Area Median Income are financially unable to cover unique but basic necessary expenses;

WHEREAS, The inability to cover such critical expenses leaves lower income Veterans vulnerable to job, education, and housing instability;

WHEREAS, An eligibility income level based on 60% of Area Median Income more accurately reflects the income eligibility level required to meet basic needs of local low income Veterans.
WHEREAS, the Whatcom County Veterans Advisory Board, formally established in Whatcom County Code, Chapter 2.150, supports the increase of the Veterans Assistance Program eligibility income level from 150% of Federal Poverty Level to the locally adjusted, regionally specific and annually set guideline in order to meet the needs of local lower income Veterans;

WHEREAS, the Whatcom County Veterans Advisory Board, formally established in Whatcom County Code, Chapter 2.150, supports the increase of the Veterans Assistance Program eligibility income level to 60% of Area Median Income in order to meet the needs of local lower income Veterans;

NOW, THEREFORE, BE IT RESOLVED by the Whatcom County Council that Veterans Assistance Program eligibility income guideline shall be based on Area Median Income and set on an annual basis.

NOW, THEREFORE, BE IT RESOLVED by the Whatcom County Council that Veterans Assistance Program eligibility income guideline shall be set at 60% of Area Median Income for 2018.

ADOPTED this _____ day of __________, 2018.

ATTEST:

WHATCOM COUNTY COUNCIL
WHATCOM COUNTY, WASHINGTON

Dana Brown-Davis, Clerk of the Council

(Rud Browne), Council Chair

APPROVED AS-TO-FORM:

Civil Deputy Prosecutor

Page 2
**WHATCOM COUNTY COUNCIL AGENDA BILL**

<table>
<thead>
<tr>
<th>CLEARANCES</th>
<th>Initial</th>
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**TITLE OF DOCUMENT:**
An emergency interim ordinance repealing Ordinance No. 2017-057 and adopting amendments to the Whatcom County Comprehensive Plan and the Whatcom County Code Title 15 Buildings and Construction, Title 20 Zoning, Title 21 Land Division Regulations, and Title 24 Health Code, relating to water resources and implementing ESSB 6091.

**ATTACHMENTS:**
- Memorandum
- Draft Ordinance
- ESSB 6091

**SEPA review required?**  (x) Yes  ( ) NO  
**SEPA review completed?**  (x) Yes  ( ) NO

**Should Clerk schedule a hearing?**  (x) Yes  ( ) NO  
**Requested Date:** 2/13/2018

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

An emergency interim ordinance repealing Ordinance No. 2017-057 and adopting amendments to the Whatcom County Comprehensive Plan and the Whatcom County Code Title 15 Buildings and Construction, Title 20 Zoning, Title 21 Land Division Regulations, and Title 24 Health Code, relating to water resources and implementing ESSB 6091.

**COMMITTEE ACTION:**
1/30/2018: Discussed

**COUNCIL ACTION:**
1/30/2018: Substitute Adopted 6-1, Donovan Opposed, Ordinance 2018-001

**Related County Contract #:** AB2016-309 *

**Related File Numbers:**

**Ordinance or Resolution Number:** Ord. 2018-001

**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. 2018-001

AN EMERGENCY INTERIM ORDINANCE REPEALING ORDINANCE NO. 2017-057 AND ADOPTING AMENDMENTS TO THE WHATCOM COUNTY COMPREHENSIVE PLAN AND THE WHATCOM COUNTY CODE TITLE 15 BUILDINGS AND CONSTRUCTION, TITLE 20 ZONING, TITLE 21 LAND DIVISION REGULATIONS, AND TITLE 24 HEALTH CODE, RELATING TO WATER RESOURCES

WHEREAS, RCW 36.70A.070(1), requires that the land use element of a county comprehensive plan "shall provide for protection of the quality and quantity of groundwater used for public water supplies"; and,

WHEREAS, RCW 36.70A.070(5)(c)(iv) requires that the rural element of a county comprehensive plan "shall include measures that apply to rural development and protect the rural character of the area, as established by the County, by: ... protecting critical areas...and surface water and groundwater resources"; and,

WHEREAS, RCW 19.27.097(1) requires that applicants for building permits of buildings necessitating potable water provide evidence of an adequate water supply for the intended use of the building; and,

WHEREAS, RCW 58.17.110(2) requires that "A proposed subdivision and dedication shall not be approved unless the... county legislative body makes written findings that... appropriate provisions are made for... potable water supplies..."; and,

WHEREAS, Whatcom County Code (WCC) Chapter 15.04 specifies information required for a complete building permit application; and,

WHEREAS, WCC Chapter 20.97 provides definitions of terms used in the code; and

WHEREAS, WCC Chapters 21.04 and 21.05 contain requirements for water supply in short subdivisions and long subdivisions, respectively; and,

WHEREAS, WCC Chapter 24.11 contains requirements for potable water; and,

WHEREAS, Whatcom County adopted Ordinance 2012-032, amending its Comprehensive Plan to adopt by reference existing development regulations regulating groundwater withdrawals, adding Policy 2DD-2.C.3.6, which adopts by reference WCC 21.04.090 and 21.05.080, and Policy 2DD-2.C.3.7, which adopts by reference WCC 24.11.050 and 24.11.060; and,

WHEREAS, because Comprehensive Plan Policy 2DD-2.C.3.6 adopts by reference WCC 21.04.090 and 21.05.080, and Policy 2DD-2.C.3.7 adopts by reference WCC 24.11.050 and 24.11.060, any amendments to these WCC provisions are also amendments to the Comprehensive Plan; and,

WHEREAS, the Growth Management Hearings Board (Board) found the amended Comprehensive Plan lacked the required measures to protect water resources (GMHB Case No. 12-2-0013); and,

WHEREAS, on October 6, 2016, the Washington State Supreme Court (Court), in reversing a Court of Appeals decision, upheld the Board’s decision that the County’s Comprehensive Plan does not satisfy the GMA requirements to protect water availability,
and stated, "We hold that the Board properly concluded that the GMA requires counties to make determinations of water availability.",; and,

WHEREAS, the Court stated, "...the GMA places the burden on counties to protect groundwater resources, and requires counties to assure that water is both factually and legally available before issuing building permits."; and,

WHEREAS, the Court stated, "...The county’s policies incorporate WCC provisions that do not allow water to be withdrawn from ‘an area where [the Department of Ecology] has determined by rule that water for development does not exist.’ ...these ordinances further provide that an application for a permit-exempt appropriation will be approved without any analysis of that withdrawal’s impact on instream flows. The Board found that these provisions result in water withdrawals from closed basins and senior instream flows—flows that the record indicated drop below the minimum levels 100 days out of the year. The Board properly held that this conflicts with the requirement placed on counties to protect water availability under the GMA..."; and,

WHEREAS, Chapter 173-501 WAC Instream Resources Protection Program – Nooksack Water Resource Inventory Area (WRIA) 1 identifies waterbodies in Whatcom County that are closed or partially closed to further appropriation, by listing their status as "closure," "partial year closure," "low flow," or "minimum flow,"; and,

WHEREAS, on October 25, 2016 Whatcom County adopted Ordinance 2016-048, an emergency moratorium on the filing, acceptance, and processing of new applications for project permits for uses that rely on permit-exempt groundwater withdrawals within a closed or partially closed basin, to allow the County time to review its Comprehensive Plan and development regulations in light of the Supreme Court ruling, and to draft and enact the necessary amendments as soon as feasible; and,

WHEREAS, RCW 36.70.790 and RCW 36.70.795 allow for adoption of interim official controls as long as a public hearing is held within 60 days of adoption; and,

WHEREAS, on December 6, 2016 the County Council adopted Ordinance 2016-066, an interim ordinance adopting amendments to the Whatcom County Comprehensive Plan and WCC Title 15, Title 20, Title 21, and Title 24 relating to water resources, which is effective until March 18, 2017, and the County has applied the provisions of the ordinance to project permit applications relying on new permit-exempt groundwater withdrawals; and,

WHEREAS, on March 7, 2017 the County Council adopted Ordinance 2017-008, a second interim ordinance; and,

WHEREAS, on April 18, 2017 the County Council adopted Ordinance 2017-008, a third interim ordinance; and,

WHEREAS, on October 10, 2017, the County Council adopted Ordinance 2017-057, a fourth interim ordinance, which is effective until March 30, 2018; and,

WHEREAS, on January 18, 2018, the Washington State Legislature adopted ESSB 6091, which requires the Department of Ecology to work with the initiating governments and the planning unit in WRIA I to review existing watershed plans to identify the potential impacts of exempt well use, identify evidence-based conservation measures, and identify projects to improve watershed health. Until rules are adopted that specify otherwise, Section 202(5), which effectively reverses the Court’s decision in Hirst, allows new domestic water uses in WRIA 1 that rely on groundwater withdrawals exempt from permitting under RCW 90.44.050, provided that applicants pay a fee of five hundred dollars to the permitting authority and limit their maximum annual average withdrawal of three thousand gallons per day, per connection, and record this limitation on the property title; and,
WHEREAS, ESSB 6091, in Section 101(5), also provides that "[a]ny permit-exempt groundwater withdrawal authorized under RCW 90.44.050 associated with a water well constructed in accordance with the provisions of chapter 18.104 RCW before the effective date of this section is deemed to be evidence of adequate water supply under this section"; and,

WHEREAS, the amendments proposed by this ordinance are consistent with the aforementioned requirements of ESSB 6091 and are therefore consistent with the GMA, as specifically addressed in Section 102 of ESSB 6091; and,

WHEREAS, WAC 197-11-880 provides an exemption from SEPA review for "Actions that must be undertaken immediately or within a time too short to allow full compliance with this chapter to avoid an imminent threat to public health or safety..."; and

WHEREAS, ESSB 6091 was signed by Governor Inslee on January 19, 2018, and, pursuant to the emergency clause in Section 307, it became effective immediately as the Legislature declared that it was "necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing institutions..."; and,

WHEREAS, with the enactment of ESSB 6091, Ordinance No. 2017-057 is no longer necessary to ensure that Whatcom County is in compliance with state law; and,

WHEREAS, pursuant to Section 2.40 of the Whatcom County Charter, an emergency ordinance "necessary for the immediate preservation of the public peace, health, or safety or support of the County government and its existing institutions" may be passed by a two-thirds vote of the County Council and then take effect immediately upon the approval of the County Executive; and,

WHEREAS, an ordinance adopted pursuant to Section 2.40 of the County Charter shall expire as of the sixty-first day following the date on which the ordinance became law; and,

WHEREAS, it is necessary for this ordinance to take effect immediately in order for property owners to be allowed to proceed with their development plans forthwith and thus obtain relief from the impacts of Hirst; and,

WHEREAS, in accordance with RCW 36.70A.106, Whatcom County Planning and Development Services notified the Department of Commerce of the proposed emergency interim amendments contained herein; and,

WHEREAS, the County Council is scheduled to hold a public hearing on this ordinance on February 13, 2018;

NOW, THEREFORE, BE IT ORDAINED that the Whatcom County Council adopts the above "WHEREAS" recitals as findings of fact in support of its action as required by RCW 36.70A.390.

BE IT FURTHER ORDAINED that Ordinance No. 2017-057 is hereby repealed in its entirety upon the effective date of this ordinance.

BE IT FURTHER ORDAINED that the Whatcom County Council finds that a public emergency exists due to the impact the Hirst decision has had on many rural property owners and their ability to develop their land; therefore, this ordinance shall take effect immediately and shall expire as of the sixty-first (61st) day following the date on which this ordinance becomes law, unless previously repealed or extended.
BE IT FURTHER ORDAINED that if a section, subsection, paragraph, sentence, clause, or phrase of this ordinance is declared unconstitutional or invalid for any reason by any court of competent jurisdiction; such decision shall not affect the validity of the remaining portions of this ordinance, and if the provisions of this ordinance are found to be inconsistent with other provisions of the Whatcom County Code, this ordinance shall control.

BE IT FURTHER ORDAINED by the Whatcom County Council that the Whatcom County Comprehensive Plan and the Whatcom County Code are hereby amended, on an interim basis, as shown in Exhibit A.

ADOPTED this 30th day of January, 2018.

ATTEST: 

[Signature]

Dana Brown-Davis, Council Clerk

APPROVED as to form:

[Signature]

Civil Deputy Prosecutor

WHATCOM COUNTY COUNCIL
WHATCOM COUNTY, WASHINGTON

[Signature]

Rud Browne, Chairperson

Approved ( ) Denied

Date: 1-31-18
EXHIBIT A
Whatcom County Code
AMENDMENTS

TITLE 15 BUILDINGS AND CONSTRUCTION
CHAPTER 15.04 BUILDING CODES

15.04.020 Amendments to the International Building Code.
A. The IBC is amended as follows:

5. Section 105.3, Application for Permit, is amended to include the following:
To obtain the permit, the applicant shall first file an application therefor in writing on a form
furnished by the Department of Building Safety for that purpose. Such application shall:

1. Identify and describe the work to be covered by the permit for which application is
made.

2. Describe the land on which the proposed work is to be done by legal description, street
address or similar description that will readily identify and definitely locate the
proposed building or work.

3. Indicate the use and occupancy for which the proposed work is intended.

4. Be accompanied by construction documents and other information as required in
Section 107.

5. State the valuation of the proposed work.

6. Be signed by the applicant, or the applicant’s authorized agent.

7. Include signature by the applicant or the applicant’s authorized agent of a statement for
guarantee of fee payment. The statement must be signed in the presence of County
staff or staff will provide a statement which includes verification of signature by a
licensed notary public.

8. Provide verification of approval to connect to a public sewer system or a septic system
installation permit issued by the Whatcom County Environmental Health Department
for any permit application that requires sewage disposal. The approval to connect or
issued septic system permit shall be specific to the project application.

9. For buildings requiring potable water, provide evidence of an adequate water supply (as
defined in WCC 20.97.451) for the intended use of the building(s).
10. Provide additional data and information in the designated sequence, as required by the Building Official.

5. 15.04.030 Amendments to the International Residential Code.

D. Section R105.3, Application for permit, is amended to include the following:

To obtain the permit, the applicant shall first file an application therefor in writing on a form furnished by the Department of Building Safety for that purpose. Such application shall:

1. Identify and describe the work to be covered by the permit for which application is made.

2. Describe the land on which the proposed work is to be done by legal description, street address or similar description that will readily identify and definitely locate the proposed building or work.

3. Indicate the use and occupancy for which the proposed work is intended.

4. Be accompanied by construction documents and other information as required in Section 107.

5. State the valuation of the proposed work.

6. Be signed by the applicant, or the applicant’s authorized agent.

7. Include signature by the applicant or the applicant’s authorized agent of a statement for guarantee of fee payment. The statement must be signed in the presence of County staff or staff will provide a statement which includes verification of signature by a licensed notary public.

8. Provide verification of approval to connect to a public sewer system or a septic system installation permit issued by the Whatcom County Environmental Health Department for any permit application that requires sewage disposal. The approval to connect or issued system permit shall be specific to the project application.

9. For buildings requiring potable water provide evidence of an adequate water supply (as defined in WCC 20.97.451) for the intended use of the building(s).

10. Provide additional data and information in the designated sequence, as required by the Building Official.
TITLE 20 ZONING
CHAPTER 20.84 VARIANCES, CONDITIONAL USES, ADMINISTRATIVE APPROVAL USES AND APPEALS

20.84.200 Conditional uses.

20.84.220 Criteria.
Before approving an application for a conditional use permit, the hearing examiner shall ensure that any specific standards of the use district defining the conditional use are fulfilled, and shall find adequate evidence showing that the proposed conditional use at the proposed location:

(5) Will be serviced adequately by necessary public facilities such as highways, streets, police and fire protection, drainage structures, refuse disposal, adequate water supply (as defined in WCC 20.97.451), and sewers, and schools; or that the persons or agencies responsible for the establishment of the proposed use shall be able to provide adequately any such services.

CHAPTER 20.97 DEFINITIONS

20.97.451 Water Supply, Adequate
"Adequate water supply" means a supply of potable water adequate to serve a land use associated with a project permit in terms of quality, quantity, and legal availability, as documented by a water availability notification signed by the director of the Whatcom County Health Department, per WCC 24.11.060.

TITLE 21 LAND DIVISION REGULATIONS

CHAPTER 21.04 SHORT SUBDIVISIONS

21.04.090 Water supply.
(1) Water from a public water system(s) shall be provided to serve each lot in a short plat, except as specified in subsection (2) of this section.
(2) For a residential short subdivisions, private water supplies may be utilized under the following circumstances:

(a) All lots served by the private water supplies are five acres or larger, unless smaller because of clustering. If the lots are smaller because of clustering, the gross density of the short subdivision shall not exceed one dwelling per five acres; and

(b) The withdrawal is not from a defined portion of an aquifer of known regional groundwater contamination that exceeds state standards and that has been identified by the director of the Whatcom County Health Department and confirmed by the Health Board; and

(c) The water source is groundwater and not surface water; and

(d) The applicant demonstrates that an adequate water supply (as defined in WCC 20.97.451) exists to serve the short subdivision; and

(e) The short subdivision is not located within the designated water service area of a public water purveyor, as shown on the coordinated water system plan map, or within one-half mile of an existing water purveyor’s water line; or

(f) If the short subdivision is located within the designated water service area of a public water purveyor, as shown on the coordinated water system plan map, or within one-half mile of an existing water purveyor’s water line, and:

(i) The purveyor cannot provide water service to the applicant within 120 calendar days of submitting a written request and applicable fees to the purveyor unless specified otherwise by the Hearing Examiner or County Council; or

(ii) The purveyor states in writing that it is unable or unwilling to provide the service; or

(iii) The purveyor and applicant are unable to achieve an agreement on the schedule and terms of provision of service within 120 calendar days.

(3) If a public water supply is required, all the requirements of Chapter 246-290 WAC, Group A Public Water Systems, or Chapter 246-291 WAC, Group B Public Water Systems, must be met prior to final plat approval.

CHAPTER 21.05 PRELIMINARY LONG SUBDIVISIONS

21.05.080 Water supply.
(1) Water from a public water system(s) shall be provided to serve each lot in a subdivision, except as specified in subsection (2) of this section.

(2) For a residential subdivision with six or fewer residences, private water supplies may be utilized under the following circumstances:

(a) All lots served by the private water supplies are five acres or larger, unless smaller because of clustering. If the lots are smaller because of clustering, the gross density of
the subdivision shall not exceed one dwelling per five acres and the number of clustered lots shall not exceed four; and

(b) The withdrawal is not from a defined portion of an aquifer of known regional ground water contamination that exceeds state standards and that has been identified by the director of the Whatcom County Health Department and confirmed by the Health Board; and

(c) The water source is groundwater and not surface water; and

(d) The long subdivision is not located within the designated water service area of a public water purveyor, as shown on the coordinated water system plan map, or within one-half mile of an existing water purveyor’s water line; or

(e) The subdivision is located within the designated water service area of a public water purveyor that is shown on the coordinated water system plan map or within one-half mile of an existing water purveyor’s water lines and:

(i) The purveyor cannot be provided water service to the applicant within 120 calendar days of submitting a written request and applicable fees to the purveyor unless specified otherwise by the hearing examiner or county council; or

(ii) The purveyor states in writing that it is unable or unwilling to provide the service; or

(iii) The purveyor and applicant are unable to achieve an agreement on the schedule and terms of provision of service within 120 calendar days.

(3) The applicant shall demonstrate that adequate water right(s) supply (as defined in WCC 20.97.451) exists to serve the subdivision, except when water withdrawal is exempt from obtaining a water right permit under RCW 90.44.050.

(4) If a Group B public water system is created to serve the subdivision, the number of wells shall be limited to the minimum needed to serve the water needs of the subdivision as determined by the Whatcom County Health Department.

(5) If a public water supply is required, all the requirements of Chapter 246-290 WAC, Group A Public Water Systems, or Chapter 246-291 WAC, Group B Public Water Systems, must be met prior to final plat approval.


TITLE 24 HEALTH CODE

CHAPTER 24.11 DRINKING WATER

24.11.050 General requirements.
A. Applicants must submit all required forms, letters, and documents to the director.
B. The director will consider applications for water availability proposing to use groundwater, spring water, surface water, sea water or rainwater.

C. The director shall evaluate the availability of a public water system prior to approving the use of a private water system. If it is determined that a public water system is available and willing to provide water, the applicant must connect to that public water system when:

1. The applicant proposes to use surface water, spring water, rainwater, or contaminated groundwater; or

2. The applicant proposes to build on a lot located in a short subdivision or long subdivision that Whatcom County approved based on the availability of public water; or

3. The existing public water system has water lines adjacent to the property line of the applicant and connection is consistent with RCW 36.70A.110(4); or

4. The existing public water system has defined a “service area boundary” in accordance with the Whatcom County Coordinated Water System Plan which includes the property of the applicant.

D. The director will only approve a private or Non-Group B two-party well for proposed short subdivisions or long subdivisions when analytical results of untreated water samples for primary inorganic or organic contaminants do not exceed a maximum contaminate level (MCL) adopted by Washington State Department of Health.

E. Purveyors of public water systems and private water system applicants must comply with Washington State Department of Ecology water right requirements and must demonstrate that they have an adequate water supply for their proposed service per WCC 24.11.060. Compliance will include at a minimum, possession of a water right permit or certificate for:

1. All surface water sources excluding seawater.

2. All groundwater sources using more than 5,000 gallons per day.

3. Irrigating more than one-half acre of lawn or noncommercial garden.

24.11.060 Water availability required.

A. Prior to issuance of a building or other project permit, and unless exempt pursuant to subsection (C), the applicant must provide Whatcom County Planning and Development Services evidence of adequate water supply as documented by a water availability notification signed by the director, to Whatcom County planning and development services (PDS) except when: The water availability notification shall document a supply of potable water adequate to serve a land use associated with a project permit in terms of quality, quantity, and legal availability.

B. The applicant must provide evidence of legal availability in the form of:

1. A water right permit from the Department of Ecology; or,

2. A letter from an approved public water purveyor with sufficient water rights, stating the ability to provide water; or,
3. Evidence that a permit-exempt groundwater withdrawal (authorized under RCW 90.44.050) is associated with a well constructed (in accordance with the provisions of RCW Chapter 18.104) prior to January 19, 2018; or,

4. Documentation that water can be supplied by a rainwater catchment system approved by the Whatcom County Health Department, per Department of Ecology Policy 1017; or,

5. Documentation that water will be supplied by a new withdrawal exempt from permitting under RCW 90.44.050 and the well site is located in WRIA 3 (Lower Skagit-Samish) or in Point Roberts, Eliza Island, or Lummi Island, as shown in Figure 24.11.060.

6. Documentation that water will be supplied by a new withdrawal exempt from permitting under RCW 90.44.050 and the well site is located in those Limited Coastal Areas that may not be in hydraulic continuity with regulated surface waterbodies, as shown on Figure 24.11.060, and:
   a. A study prepared by a qualified hydrogeologist licensed in the State of Washington demonstrating a proposed groundwater withdrawal would not impair a senior water right, including instream flows established in Chapter 173-501 WAC where applicable, in accordance with current statutes and case law. Such documentation must be verified by the county either through consultation with the Department of Ecology, or a qualified technical review team appointed by the county. The county may require a third party review by an independent qualified hydrogeologist if the county determines additional technical expertise is needed. The cost of the third party review shall be borne by the County; or,
   b. A mitigation plan prepared by a qualified hydrogeologist licensed in the State of Washington, and approved by Whatcom County. The plan shall include:
      i. Evidence that the proposed withdrawal with mitigation in place will not impair a senior water right, including instream flows established in Chapter 173-501 WAC where applicable, in accordance with current statutes and case law. Such documentation must be verified by the county either through consultation with the Department of Ecology, or a qualified technical review team appointed by the county. The county may require a third party review by an independent qualified hydrogeologist if the county determines additional technical expertise is needed. The cost of the third party review shall be borne by the County.
      ii. A monitoring and reporting plan, including a quality assurance/quality control plan.
      iii. Documentation adequate to demonstrate that the mitigation will remain in place for the duration of the impact, including, for example, financial assurances or documentation of permanent dedication of water for mitigation purposes.

7. Except in Point Roberts, Eliza Island, or Lummi Island, for new permit-exempt groundwater withdrawals per RCW 90.44.050 within WRIA 1 (Nooksack) or within those
Limited Coastal Areas where the applicant has not met subsection (B)(6), the applicant may obtain approval for a withdrawal exempt from permitting pursuant to RCW 90.44.050 under the following conditions:

a. Water shall be for domestic use only, with a maximum annual average withdrawal of 3,000 gallons per day per connection.

b. The applicant shall record with the property title any relevant restrictions or limitations associated with water supply; and

c. The applicant shall pay to the permitting authority any applicable fees for each project permit.

C. A water availability notification is not required for:

1. A building—A project permit that does not require potable water.

2. A project permit relying on either a permit-exempt groundwater withdrawal per RCW 90.44.050 or a surface water withdrawal for potable water for (a) a remodel of an existing building or (b) replacement of a demolished or removed building, but not proposing a change of use, either of which would increase the floor area by no more than 50 percent over that of the existing building; however, such permits shall require documentation of current water quality and quantity, as approved by the director. A residential remodeling does not add additional bedrooms or result in an increase of floor space of more than 50 percent.

2. A project permit relying on surface water withdrawal for potable water (a) a remodel of an existing building or (b) replacement of a demolished or removed building, either of which would increase the floor area by no more than 50 percent over that of the existing building; however, such permits shall require documentation of water quality and quantity, as approved by the director. PDS determines that the building will replace a demolished or removed building and the building will not have more bedrooms or more than 50 percent greater floor space than the previous building.
24.11.070 Determining adequacy of water supply for building permit applications proposing to use an existing public water system.
A. Prior to director approval of evidence of an adequate water supply where the applicant proposes to obtain water from an existing public water system the applicant must:
   1. Submit to the director, an Availability Notification for Public Water form (as amended) signed by an authorized representative of the water system proposing to serve water to the building. The authorized representative:
      a. Must indicate on the form that the water system will provide water to the proposed building.
      b. Must sign a statement that they have reviewed the system records and ensures that the water system complies with Chapters 246-290 and 246-291 WAC and department requirements.
B. The director will review the completed Availability Notification for Public Water (form) for approval. The director will approve the completed form if:
   1. The applicant and the authorized representative met all the criteria listed on the form.
   2. The purveyor of the water system has the approval from Department of Health or the department to provide water to the building.
   3. The applicant has provided evidence of legal availability of water for the proposed project per WCC 24.11.060.

24.11.080 Determining adequacy of water supply for building permit applications proposing to create a new public water system.
Prior to director approval of evidence of an adequate water supply, an applicant proposing to create a new public water system must comply with:
A. Provisions of the Whatcom County Coordinated Water System Plan.
B. Chapters 246-290 and 246-291 WAC, and all other applicable local and state regulations for public water supplies.
C. The applicable sections of this chapter pertaining to public water supplies and water availability.

24.11.090 Determining adequacy of water supply for building permit applications proposing to use a well to serve one single-family dwelling or one single-family living unit.
A. Prior to director approval of evidence of an adequate water supply where the applicant proposes to use a private well, the applicant must:
   1. Notify the director of the intent to use a well.
   2. Request that the director conduct a site inspection and approve the proposed well site.
B. Upon request from the applicant, the director will conduct a site inspection for the purpose of approving the location. If the director cannot approve a well location the director will deny the application and give the reasons for denial.
**C. If the director approves the well location the applicant shall submit a completed Water Availability Notification Private – 1 Home Well form (as amended) and all required documents to the director for approval.**

A. Prior to director approval of evidence of an adequate water supply where the applicant proposes to use a private well, the applicant must submit a completed Water Availability Notification Private – 1 Home Well form (as amended) and all required documents to the director for approval.

**B.D.** The director will review the completed form and required documents submitted by the applicant for approval. The director will approve the form if:

1. The applicant met all the criteria listed on the form.
2. The applicant submitted all of the required documents.
3. The applicant has provided evidence of legal availability of water for the proposed project per WCC 24.11.060. The well site proposed by the applicant does not fall within the boundaries of an area where DOE has determined by rule that water for development does not exist.

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**24.11.100 Determining adequacy of water supply for building permit applications proposing to use a well to serve two single-family dwellings or two single-family living units.**

A. Prior to director approval of evidence of an adequate water supply where the applicant proposes to use a well to serve two single-family dwellings or two single-family living units, the applicant must:

1. Notify the director of the intent to use a well or wells.
2. Request that the director conduct a site inspection and approve the proposed well sites.

B. Upon request from the applicant, the director will conduct a site inspection for the purpose of approving the location. If the director cannot approve a well location the director will deny the application and give the reasons for denial.

C. If the director approves the well locations the applicant shall submit a completed Water Availability Notification Non-Group B – 2 Home Well form (as amended) and all required documents for each well to the director for approval.

D. The director will review the completed form and required documents submitted by the applicant for approval. The director will approve the form if:

1. The applicant met all the criteria listed on the form.
2. The applicant submitted all of the required documents.
3. The applicant has provided evidence of legal availability of water for the proposed project per WCC 24.11.060. The well site proposed by the applicant does not fall within the boundaries of an area where DOE has determined by rule that water for development does not exist.
24.11.110 Determining adequacy of water supply for building permit applications proposing to use a spring to serve one single-family dwelling unit or one single-family living unit.

A. Prior to director approval of evidence of an adequate water supply where the applicant proposes to use a spring source, the applicant must:
   1. Notify the director of the intent to use a spring.
   2. Provide information to the director showing that they cannot drill an adequate well on their property.
   3. Request that the director conduct a site inspection and approve the proposed location of the spring.

B. Upon request from the applicant, the director will conduct a site inspection for the purpose of approving the location. If the director does not approve the location the director will deny the application and give the reason for denial.

C. If the director approves the location of the spring the applicant must submit a completed Water Availability Notification Private – 1 Home Spring form (as amended) and all required documents for approval by the director.

D. The director will review the completed form and required documents for approval. The director will approve the application if:
   1. The applicant met all the criteria listed on the form.
   2. The applicant submitted all of the required documents.
   3. The applicant has provided evidence of legal availability of water for the proposed project per WCC 24.11.060. The spring site proposed by the applicant does not fall within the boundaries of an area where DOE has determined by rule that water for development does not exist.

24.11.120 Determining adequacy of water supply for building permit applications proposing to use a spring to serve two single-family dwelling units or two single-family living units.

A. Prior to director approval of evidence of an adequate water supply where the applicant proposes to use a spring source, the applicant must:
   1. Notify the director of the intent to use a spring.
   2. Provide information to the director showing that an adequate well cannot be drilled on their property.
   3. Request that the director conduct a site inspection and approve the proposed location of the spring.
B. Upon request from the applicant, the director will conduct a site inspection for the purpose of approving the location. If the director does not approve the location, the director will deny the application and give the reasons for denial.

C. If the director approves the location of the spring the applicant must submit a completed Water Availability Notification – 2 Home Spring form (as amended) and all required documents for approval by the director.

D. The director will review the completed form and required documents for approval. The director will approve the application if:

1. The applicant met all the criteria listed on the form.
2. The applicant submitted all of the required documents.
3. The applicant has provided evidence of legal availability of water for the proposed project per WCC 24.11.060. The spring or spring site proposed by the applicant does not fall within the boundaries of an area where DOE has determined by rule that water for development does not exist.

24.11.130 Determining adequacy of water supply for building permit applications proposing to use surface water, sea water, or rainwater for one or two single-family dwelling units or two single-family living units.
A. The director shall not approve use of surface water, sea water, or rainwater as evidence of an adequate water source unless the applicant:

1. Cannot obtain water from an existing public water supply.
2. Cannot use an approved source of groundwater from a well.
3. Could only use contaminated groundwater.

B. Prior to director approval of evidence of adequate water supply the applicant must:

1. Meet all applicable requirements for surface water, sea water or rainwater treatment design, maintenance and operation contained in Whatcom County health and human services Water Availability for a Private Surface Water Source (as amended) Notification as determined by the director.

2. Provide evidence of legal availability of water for the proposed project per WCC 24.11.060. The surface water site proposed by the applicant does not fall within the boundaries of an area where DOE has determined by rule that water for development does not exist.

3. Meet all other state and local regulations.

4. Sign and have recorded with the Whatcom County auditor’s office the following documents:
   a. A document stating which contaminate the untreated source water exceeded.
b. A document stating that the applicant has had a water treatment system designed that meets Whatcom County health and human services Water Availability Approval for a Surface Water Source (as amended), and secures a potable water supply for the building.

c. A document stating that the applicant has installed a treatment system according to the design reviewed by the director and treated water sample results that verify system performance.

d. A document stating that the applicant agrees to adhere to the operation, maintenance, and monitoring plan for the designed treatment system.

e. A document stating that the applicant understands that the obligation to comply with treatment system design, installation, operation and monitoring lies with the applicant and not Whatcom County.

f. When the public system is available, any person obtaining water from contaminated source must provide current test results showing water treatment is adequately maintaining water quality below maximum contaminant levels (MCL). If the quality does not meet the MCL, the applicant is required to hook up to a public system.

24.11.140 Determining adequacy of water supply for short subdivisions, long subdivisions or binding site plans proposing to use an existing public water system.

A. Prior to director approval of availability of an adequate water supply where the applicant proposes to obtain water from an existing public water supply to service lots of a short subdivision, long subdivision, or a binding site plan the applicant must:

1. Provide to the director an Availability Notification for Public Water (as amended) form or a letter signed by an authorized representative of the water system proposing to serve water to each lot. The authorized representative of the public water system:

   a. Must indicate that the water system will provide water to each proposed lot.

   b. Must sign a statement that they have reviewed the system records and ensures that the water system is in compliance with Chapters 246-290 and 246-291 WAC and department requirements.

B. The director will review the completed form or letter to determine the availability of adequate water. The director will make a determination of adequate water when:

1. The applicant and the authorized representative meet all the criteria listed on the form.

2. The purveyor of the water system has the approval from Department of Health or the department to provide water to the short subdivision, long subdivision, or binding site plan, except for Group A water systems the following conditions also apply:

   a. DOH has issued a green operating permit to the purveyor; or

   b. DOH has determined that the purveyor significantly complies with Chapter 246-290 WAC
3. The applicant has provided evidence of legal availability of water for the proposed project per WCC 24.11.060.

24.11.150 Determining adequacy of water supply for short subdivisions, long subdivisions or binding site plans proposing to use a new public water system.
Prior to director approval of availability of an adequate water supply where the applicant proposes to create a new public water supply to service lots of a short subdivision, long subdivision, or a binding site plan the applicant must comply with:
A. Provisions of the Whatcom County Coordinated Water System Plan.
B. Chapters 246-290 and 246-291 WAC, and all other applicable local and state regulations for public water supplies.
C. The applicable sections of this chapter pertaining to public water supplies and water availability.

24.11.160 Determining adequacy of water supply for short subdivisions or long subdivisions proposing to use a private well or private wells to serve one single-family dwelling or one single-family living unit.
A. Prior to director approval of availability of an adequate water supply where the applicant proposes to use a private well or private wells to service lots of a short subdivision or long subdivision the applicant must:
   1. Notify the director of the intent to use a private well or wells.
   2. Request that the director conduct a site inspection and approve the proposed well sites.
B. Upon request from the applicant, the director will conduct a site inspection for the purpose of approving the location. If the director cannot approve a well location the director will deny the application and give the reasons for denial.
C. If the director approves the well locations the applicant shall submit a completed Subdivision Water Availability form (as amended) and all required documents for each well to the director for approval.
D. The director will review each completed form and required documents for approval. The director will approve the availability of adequate water when:
   1. The applicant met all the criteria listed on the form.
   2. The applicant submitted all of the required documents.

3. The applicant has provided evidence of legal availability of water for the proposed project per WCC 24.11.060. The well site or well sites proposed by the applicant does not fall within the boundaries of an area where DOE has determined by rule that water for development does not exist.
24.11.170 Determining adequacy of water supply for short subdivisions or long subdivisions proposing to use a well to serve two single-family dwellings or two single-family living units.
A. The applicant shall create a Group B Public water supply as defined in Chapter 246-291 WAC when WCC Title 21 requires the applicant to provide public water service to each lot. This includes a water system where one well services two lots.
B. Prior to director approval of availability of an adequate water supply where the applicant proposes to use one well to service two lots of a short subdivision or long subdivision when public water is not required the applicant must:
   1. Notify the director of the intent to use a well or wells.
   2. Request that the director conduct a site inspection and approve the proposed well sites.
C. Upon request from the applicant, the director will conduct a site inspection for the purpose of approving the location. If the director cannot approve a well location the director will deny the application and give the reasons for denial.
D. If the director approves the well locations the applicant shall submit a completed Subdivision Water Availability form (as amended) and all required documents for each well to the director for approval.
E. The director will review each completed form and required documents for approval. The director will approve the availability of adequate water when:
   1. The applicant met all the criteria listed on each of the forms.
   2. The applicant submitted all of the required documents.
   3. The applicant has provided evidence of legal availability of water for the proposed project per WCC 24.11.060. The well site or well sites proposed by the applicant does not fall within the boundaries of an area where DOE has determined by rule that water for development does not exist.
**Whatcom County Council Agenda Bill**

<table>
<thead>
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<th>CLEARANCES</th>
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<th>Date Received in Council Office</th>
<th>Agenda Date</th>
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<tr>
<td>Executive:</td>
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</tbody>
</table>

**Title of Document:**
Executes appointment of one councilmember to ADA Compliance Committee

**Attachments:**

**Summary Statement or Legal Notice Language:** (If this item is an ordinance or requires a public hearing, you must provide the language for use in the required public notice. Be specific and cite RCW or WCC as appropriate. Be clear in explaining the intent of the action.)
Executive Louws requests appointment of one councilmember to serve on the American with Disabilities Act (ADA) Compliance Committee

**Committee Action:**

**Council Action:**

**Related County Contract #:**

**Related File Numbers:**

**Ordinance or Resolution Number:**

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

CLEARANCES | Initial | Date | Date Received in Council Office | Agenda Date | Assigned to:
---|---|---|---|---|---
Originator: | Council | 2/6/2018 | | | 2/13/2018 | Council
Division Head: | | | | | |
Dept. Head: | | | | | |
Prosecutor: | | | | | |
Purchasing/Budget: | | | | | |
Executive: | | | | | |

TITLE OF DOCUMENT:
Appointment to fill vacancy on Portage Bay Shellfish Protection District

ATTACHMENTS:
Application

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

SUMMARY STATEMENT OR LEGAL NOTICE LANGUAGE: (If this item is an ordinance or requires a public hearing, you must provide the language for use in the required public notice. Be specific and cite RCW or WCC as appropriate. Be clear in explaining the intent of the action.)
3 vacancies - 1 appointment is for partial term ending 1/31/2019, 2 appointments for partial term ending 1/31/2021. Members must have a direct interest in the shellfish protection district. Duties are to advise the County Council on the proposed actions and operations relating to the restoration of water quality in the Portage Bay Shellfish Protection District. Applicant Eleanor Hines

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.
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.

<table>
<thead>
<tr>
<th>First Name</th>
<th>Eleanor</th>
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<tbody>
<tr>
<td>Last Name</td>
<td>Hines</td>
</tr>
<tr>
<td>Date</td>
<td>1/22/2018</td>
</tr>
<tr>
<td>Street Address</td>
<td>511 Gladstone St</td>
</tr>
<tr>
<td>City</td>
<td>Bellingham</td>
</tr>
<tr>
<td>Zip</td>
<td>WA</td>
</tr>
<tr>
<td>Do you live in &amp; are you registered to vote in Whatcom County?</td>
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<td>Primary Telephone</td>
<td>2152870043</td>
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<tr>
<td>Secondary Telephone</td>
<td>Field not completed.</td>
</tr>
<tr>
<td>Email Address</td>
<td><a href="mailto:eleanorehines@gmail.com">eleanorehines@gmail.com</a></td>
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Step 2
<table>
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<tr>
<th>1. Name of Board or Committee</th>
<th>Portage Bay Shellfish Protection District Advisory Committee</th>
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<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>
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<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>
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<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>
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<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>
</tbody>
</table>

You may attach a resume or detailed summary of experience, qualifications, & interest in response to the following questions

9. Please describe your occupation (or former occupation if retired), qualifications, professional and/or community activities, and education

I have a masters of science with a focus in environmental toxicology and am currently lead scientist at RE Sources. I have been involved and continue to be involved through both work and volunteer groups with water quality testing and identifying sources of bacterial pollution for about 10 years and protecting water for recreationists. Please see resume for more details.
10. Please describe why you're interested in serving on this board or commission:

I have always had an interest in water quality. I hope to provide my scientific expertise combined with education and outreach experience to this committee. Identifying pollution sources is not an easy task, but a really important one.

References (please include daytime telephone number):

Ann Russel, work supervisor, (360) 733-8307 ext. 212

Signature of applicant:

Eleanor Hines

Place Signed / Submitted:

Bellingham, WA

Email not displaying correctly? View it in your browser.
Eleanor Hines • 511 Gladstone St, Bellingham, WA 98225 • 215-287-0043 • eleanorehines@gmail.com

Education:
Masters in Science at Huxley College, Western Washington University: 2011-2013
Degree in Environmental Science, focus on regional risk assessment using a Bayesian network approach for probabilistic modeling methods and examining effectiveness of management tools in the risk model framework. Looked at spawner mortality in Oncorhynchus kisutch (coho salmon) and the ability of low impact development to alter the risk of this acutely lethal syndrome in the Puyallup River Watershed in Pierce Co, WA.
Bachelors of Science at Huxley/Fairhaven College at Western Washington University: 2004-2008
Degree in Environmental Science, emphasis in Environmental Toxicology; minor in Chemistry.

Professional Experience:
Lead Scientist – RE Sources for Sustainable Communities: 2014 – present
• Managed Squalicum Clean Water Project entailing water quality sampling, data management, and social marketing development and implementation.
• Review and encourage public comment throughout the Bellingham Bay toxics site cleanup process and ensuring protection of marine habitat.
• Provide scientific support for Clean Water, Clean Energy, and Sustainable Schools programs as needed.
• Staff support for Cherry Point and Fidalgo Bay Aquatic Reserves Citizen Stewardship Committees.
• Manage citizen science projects such as intertidal monitoring, marine birds monitoring and water quality monitoring projects.

Field Manager – Hirsch Consulting Services, LLC 2014 – 2016
• Managed and trained field team on an Ecology 319 grant on Cain Creek in Blaine, WA to collect fecal coliform bacteria and microbial source tracking samples as well as other water quality parameters including temperature, pH, DO, conductivity and flow measurements.
• Managed data, assisted with reports, and consulted on field sampling.
• Develop and assist with education and outreach program component to improve water quality in Blaine.

• Assist with education and outreach programs in classrooms k-6 and field trips aimed to protect shellfish harvest.
• Promote program through social media and at events to encourage Salish Sea stewardship and develop program website.

Private Contractor – Institute of Natural Resources/North West University of KwaZulu-Natal, South Africa: 2013
• Assist with environmental risk assessment modeling using a combination of Monte Carlo and Bayesian network modeling in the Relative Risk Assessment method framework.
• Assisted with the formulation of ProbFlo, an instream flow requirements method that falls within the ELOHA framework using probabilistic methods incorporating adaptive management for dams in Lesotho.
• Attended Water Affairs workshop with team of national South African scientists to lay out framework for Water Quality Objectives in the Olifants River catchment.
• Worked at the North West University of KwaZulu-Natal to determine conceptual models for a relative risk assessment on the Phongolo catchment to ensure that social and economic needs of the catchment are met.

Field Technician– Western Washington University: 2011-2012
• Aided in research and field sampling for the Calostomus catrostomus (Salish suckerfish)
• Set traps, recorded data, took water quality readings with YSI water quality probe, gathered site data including GPS coordinates, gradient of riffles, bankfull width, depths, habitat assessments, and pit tagged fish.

Private Contractor – Nooksack Salmon Enhancement Association: 2010-2011
• Trained replacement monitoring coordinator.
• Took volunteer interns on Washington Department of Fish and Wildlife salmon spawner surveys to document returning adult salmon by species, count redds, and process carcasses for samples including coded wire tags, prespawn mortality assessment, otolith samples, and DNA samples.

Monitoring Coordinator (AmeriCorps Term) – Nooksack Salmon Enhancement Association: 2009-2010
• Responsible for salmon enhancement monitoring projects, including salmon spawner surveys, water quality monitoring, community habitat restoration work parties, and education and outreach.
• Wrote for a variety of audiences, including: technical documents for evaluating salmon spawner surveys and water quality data to aid in regulatory determinations, State of the Watershed Reports for community members from collected and analyzed water quality data, authored website content and newsletter articles, and more.
• Trained and managed interns, sometimes as many as a dozen or more at a time.
• Assisted with grant applications, updates, and reports.

Volunteer Experience:
Chapter Chair – Northwest Straits Chapter, Surfrider Foundation: 2007-present
• Coordinate citizen science water quality monitoring project (Blue Water Task Force), present findings to community, and work with partner organizations along with source tracking of contaminants in marine water.
• Organize beach cleanups and other events.
• Project management experience with planning and organizing campaigns, events, fundraisers, education and outreach programs, press releases, factsheets and messaging, workshops, and internship programs.
• Developed and managed summer college internship focused on education and outreach on water quality issues at a local state park; assess and match tasks with volunteers’ abilities.
• Bolster partnerships with local organizations with similar goals to expand the Surfrider scope with limited resources.
• Collaborate with Surfrider chapters throughout Washington, Oregon, and British Columbia to implement Surfrider projects on a regional scale.

Whatcom County Marine Resources Committee: 2007-present
• Participate on subcommittees such as the Shellfish, Scientific, Advocacy, and Project Development.
• Participate/organize/lead citizen science programs such as shellfish, intertidal, kelp, forage fish, water quality testing, and other monitoring programs.
• Organize education and outreach programs and materials on water quality issues and present messaging and data to local community.
• Currently hold scientific expertise seat (as of 2014) and committee chair (as of 2016).

Professional Conferences and Presentations:
Salish Sea Conference: October 2011 Represented the Surfrider Foundation
• Recreational users test water quality at popular beaches throughout Puget Sound and tackle barriers to incorporate citizen science into monitoring and education programs.

Pacific Northwest Chapter Society of Environmental Toxicology and Chemistry 21st Annual Meeting: April 2012
Represented the Institute of Environmental Toxicology, Huxley College, WWU
• Regional Risk Assessment of the Puyallup River Watershed and Low Impact Development (LID) to meet management goals.

Society of Environmental Toxicology and Chemistry North American Conference: November 2012
Represented the Institute of Environmental Toxicology, Huxley College, WWU
• Regional Risk Assessment of the Puyallup River Watershed and Low Impact Development (LID) to meet management goals.

Society of Risk Analysis: December 2012
Represented for the Institute of Environmental Toxicology, Huxley College, WWU
• Risk assessment for non-indigenous plants for the intermountain Western United States.

Padilla Bay Research Symposium: 2013
Represented the Northwest Straits Chapter, Surfrider Foundation
• Blue Water Task Force: A look into effective ways to use citizen science to help protect community health.

Restore America’s Estuaries National Conference: November 2014
Represented the Surfrider Foundation
- The Surfrider Foundation's Blue Water Task Force in Bellingham, WA: A citizen science program inspiring actions and engaging communities.

Salish Sea Ecosystem Conference: April 2016 Represented the Surfrider Foundation and Whatcom Marine Resources Committee
- Recreational users update their program to test water quality at popular beaches and tackle barriers to incorporate citizen science into monitoring and education.

Publications:
Hines EE, Landis WG. 2013. Regional risk assessment of the Puyallup River watershed and the evaluation of low impact development in meeting management goals. Integrated Environmental Assessment and Management. DOI: 10.1002/ieam.1509.

**WHATCOM COUNTY COUNCIL AGENDA BILL**

**CLEARANCES**

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<th>CLEARANCES</th>
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**RECEIVED**

FEB 06 2018
WHATCOM COUNTY COUNCIL

**EXECUTIVE:** 2.6.18

**TITLE OF DOCUMENT:** Appointments to Executive’s Boards and Commissions

**ATTACHMENTS:** Membership applications.

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

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

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

County Executive Jack Louws requests confirmation of his new appointments to the following boards and committees:

- Agricultural Advisory Committee- nominated for appointment are Jagiwan Brar and Jeff Rainey;
- Developmental Disabilities Board- nominated for appointment is Megen Porter;
- Northwest Senior Services Board – nominated for appointment is Denise Irey.

**COMMITTEE ACTION:**

**COUNCIL ACTION:**

**Related County Contract #:**
**Related File Numbers:**

**Ordinance or Resolution Number:**

**Please Note:** Once adopted and signed, ordinances and resolutions are available for viewing and printing on the County’s website at: www.co.whatcom.wa.us/council.
Application for Appointment to Whatcom County Boards and Commissions

Public Statement

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First Name
Jaggiwan

Last Name
Brar

Date
1/23/2018

Street Address
790 beard rd

City
Lynden

Zip
98264

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
3605942706

Secondary Telephone
3603934232

Email Address
jagliwanb@gmail.com

Agricultural Advisory Committee

Agricultural Programs Expertise
Yes

1. Name of Board or Committee

Position applied for:

2. Do you meet the residency, employment, and/or affiliation requirements of the position for which you’re applying?
Yes

3. Which Council district do you live in?
District 3

4. Are you a US citizen?
Yes

5. Are you registered to vote in Whatcom County?
Yes
6. Have you declared candidacy (as defined by RCW 42.17A.055) for a paid elected office in any jurisdiction within the county?

No

7. Have you ever been a member of this Board/Commission?

No

8. Do you or your spouse have a financial interest in or are you an employee or officer of any business or agency that does business with Whatcom County?

No

You may attach a resume or detailed summary of experience, qualifications, & interest in response to the following questions

Resume Jagiwan Brar.docx - attached

9. Please describe your occupation (or former occupation if retired), qualifications, professional and/or community activities, and education

Current berry farmer in Whatcom County, and Whatcom Community College student. On the board at Lynden Guru Nanak Gursikh Gurudwara.

My motivation for committing time and effort to this position was an irresistible desire I have to help protecting and enhancing the long term viability of agriculture.

10. Please describe why you’re interested in serving on this board or commission

References (please include daytime telephone number):

Satpal Sidhu (360) 305-4948 Aaron Bagwell (360) 815-1118

Signature of applicant:

Jagiwan Brar

Place Signed / Submitted

Bellingham
Jagjiwan Brar

EXPERIENCE

Kissan Berry Farm, 6757 Hannegan rd — Quality Control
June 2008 - PRESENT
Operating machinery, Supervisory, GAP audit responsibilities, Spray recommendation

EDUCATION

Lynden High School, 1201 Bradley Rd, — High School Diploma
September 2011 - June 2015
Graduation 2015, June

Whatcom Community College, 233 W Kellogg Rd
September 2015 - Present

LANGUAGES
English, Punjabi

References:

Mr. Satpal Sidiu
(360) 305-4948
Whatcom county council member

Mr. Malcolm H. Oliver
Bellingham technical College
(360) 201-1382
Director of Multicultural and student services

Mr. Arron Bagwell
CHS Northwest
(360) 815-1118
Agronomist, served on this board 10 years ago

790 Beard Rd
Lynden Wa, 98264
(360) 594-2706
Jagjiwanb@gmail.com
Application for Appointment to Whatcom County Boards and Commissions

Public Statement
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First Name
Jeff

Last Name
Rainey

Date
1/27/2018

Street Address
2304 valley highway

City
Deming

Zip
98244

Do you live in & are you registered to vote in Whatcom County?
Yes

Do you have a different mailing address?
Field not completed.

Primary Telephone
360 595 2410

Secondary Telephone
360 319 9122

Email Address
Coldstreamfarms@yahoo.com

Agricultural Advisory Committee

Position applied for:
Agricultural Producer

Do you meet the residency, employment, and/or affiliation requirements of the position for which you’re applying?
Yes

Which Council district do you live in?
District 1

Are you a US citizen?
Field not completed.

Are you registered to vote in Whatcom County?
Yes
6. Have you declared candidacy (as defined by RCW 42.17A.055) for a paid elected office in any jurisdiction within the county? No

7. Have you ever been a member of this Board/Commission? No

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

If yes, please explain Darigold Director. Coldstream farms,

You may attach a resume or detailed summary of experience, qualifications, & interest in response to the following questions Field not completed.

9. Please describe your occupation (or former occupation if retired), qualifications, professional and/or community activities, and education 40 yr career Dairyfarmer, currently farm with 2nd generation, two terms county FSA Committee, one term county planning commission, term ended 2013 or 14, Darigold BOD 2013 to present. High school grad

10. Please describe why you’re interested in serving on this board or commission Have a vested interest in keeping ag viable in whatcom county

References (please include daytime telephone number): Leroy Plagerman 360 815 2593. Ed Blok 360 815 3169

Signature of applicant: Jeff Rainey

Place Signed / Submitted Deming Wa
January 24, 2018

TO: Jack Louws, County Executive

FROM: Jessica Lee, Program Specialist, Developmental Disabilities

RE: Nomination for Initial Appointment to the Developmental Disabilities Advisory Board

I am pleased to recommend Megen Porter for initial appointment to the Developmental Disabilities Advisory Board. (DDAB) Megen was interviewed and recommended by the DDAB nominating committee on 1/22/18.

Megen is the parent of a child with developmental disabilities and former co-chair of the Bellingham School District Special Education Parent Advisory Committee. (SEPAC) Parents are the primary support for most individuals with DD across the lifespan, and parent representation on the DDAB is particularly critical to its mission.

Her references describe her as curious, determined and innovative and particularly value her problem-solving skills.

As you can see, Megen provides valuable expertise in areas that will assist the Board in its work improving the lives of people with developmental disabilities.

Thank you, Jack, for considering this nomination for appointment.
APPLICATION FOR APPOINTMENT TO WHATCOM COUNTY BOARDS AND COMMISSIONS

PLEASE PRINT LEGIBLY and COMPLETE ALL ITEMS

Name: Megan Porter

Street Address: 1500 E. Illinois St.

City: Bellingham

Mailing Address (if different from street address):

Day Telephone: 360.441.1984   Evening Telephone: Same   Cell Phone: Same

E-mail address: megan.porter79@gmail.com

1. Name of board or committee—please see reverse:

Developmental Disabilities Board

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.)

   1 of 3 open spots

4. Which Council district do you live in? ( ) One (X) Two ( ) Three ( ) Four ( ) Five

5. Are you a US citizen? (X) yes ( ) no

6. Are you registered to vote in Whatcom County? (X) yes ( ) no

7. Have you ever been a member of this Board/Commission? ( ) yes (X) 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 (X) 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 (X) 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.

   Stay at home mom, former paralegal, co-chaired Special Ed Parent Advisory committee, parent vaccine advocate, BA in English, starting Human Services program in the spring.

11. Please describe why you’re interested in serving on this board or commission: My daughter has a developmental disability. I would like to learn about and contribute to positive outcomes for this community within our county.

References (please include daytime telephone number): Beverly Porter (no relation) 6. 360.115.0170 x 3060 cell. 360.303.3413

Signature of applicant: [Signature]

THIS IS A PUBLIC DOCUMENT: As a candidate for a public board or commission, the above information will be available to the County Council, County Executive, and the public. All board and commission members are expected to be fair, impartial, and respectful of the public, County staff, and each other. Failure to abide by these expectations may result in revocation of appointment and removal from the appointive position.
February 5, 2018

TO: County Executive Louws

FROM: Dan Murphy, Executive Director

SUBJECT: Recommendation to the NWSSB

Currently, there are two openings on the Northwest Senior Services Board (NWSSB) for Whatcom County. Recently we heard from an interested community member, Denise Irey, who would like to serve on the board. She learned about the opening on the county website.

Ms. Irey has an extensive volunteer and employment history. In the past she has worked at many long-term care facilities and has volunteered at the Bellingham and Ferndale senior centers. She is knowledgeable regarding the issues that our aging community members face.

On Friday, the Board’s Interview Committee met with Ms. Irey and unanimously decided to recommend her for appointment to the NWSSB. Prior to the interview, she submitted her resume and the Boards and Commissions application to the county. Should Ms. Irey be appointed, Whatcom County would have only one vacancy on the NWSSB.

If I can be of further assistance, please do not hesitate to contact me.
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
\hspace{1cm} Denise

Last Name
\hspace{1cm} Irey

Date
\hspace{1cm} 12/19/2017

Street Address
\hspace{1cm} 2110 I Street

City
\hspace{1cm} Bellingham

Zip
\hspace{1cm} 98225

Do you live in & are you registered to vote in Whatcom County?
\hspace{1cm} Yes

Do you have a different mailing address?
\hspace{1cm} Field not completed.

Primary Telephone
\hspace{1cm} 360-389-7298

Secondary Telephone
\hspace{1cm} Field not completed.

Email Address
\hspace{1cm} denise.irey@gmail.com

1. Name of Board or Committee
\hspace{1cm} Northwest Senior Services Board

2. Do you meet the residency, employment, and/or affiliation requirements of the position for which you’re applying?
\hspace{1cm} Yes

3. Which Council district do you live in?
\hspace{1cm} District 2

4. Are you a US citizen?
\hspace{1cm} Yes

5. Are you registered to vote in Whatcom County?
\hspace{1cm} Yes
6. Have you declared candidacy (as defined by RCW 42.17A.055) for a paid elected office in any jurisdiction within the county? No

7. Have you ever been a member of this Board/Commission? No

8. Do you or your spouse have a financial interest in or are you an employee or officer of any business or agency that does business with Whatcom County? No

You may attach a resume or detailed summary of experience, qualifications, & interest in response to the following questions

Irey Resume - CB17.docx - attached

9. Please describe your occupation (or former occupation if retired), qualifications, professional and/or community activities, and education

I have been working with seniors and local elder care professionals, since 2003. From operations to community outreach, my commitment to seniors has made a positive impact on the families I serve. I have been involved with a number of non-profits, assisting in the areas of fund development, special events and public relations. Additionally, I served as the chair for two planning committees and have continued to look for opportunities where I can help provide education and resources for seniors. In 2006, I became certified as a mental health and dementia trainer by the State of Washington. Later in my career, I completed a course in grant writing, with the goal of finding resources for special interest groups. Later, I attained my Boarding Home Executive Director certifications in both Washington and Oregon States. My career path has reflected my personal and professional goals towards ensuring the safety and success of our seniors. Through my work, I have assisted hundreds of families who are navigating the complicated process of moving into a residential care community. My goal is to be a resource and connect them with the professional and governmental tools they need.

10. Please describe why you’re interested in serving on this board or commission

Over the years, I have a developed a deeper understanding of our social responsibility to the senior community. It can be incredibly challenging for many seniors to tap into resources and access the support they need. Additionally, it is critical that we maintain the rights and protect the resources of our aging adults. As a senior advocate, my goal is to consistently look to the future and determine how we will serve our aging population best. I want to participate on a deeper level and help impact the lives of our seniors.

References (please include daytime telephone number):

Debbie Gann- owner- Home Attendant Care (360) 303-5028
Laurie Wade- Executive Director- Brookdale Senior Living (360) 320-2440
Renee Marr- Vice President- Vibrant USA Medicare (360) 510-1934

Signature of applicant:

Denise Irey

Place Signed / Submitted:

Bellingham, WA
Denise Irey
Community Builder and Business Professional
denise.irey@gmail.com  (360) 389-7298

Professional
  • Exceptional networker and relationship builder, with strong ties to the community
  • Strong analytical and project management skills, combined with the ability to customize goals and coordinate the efforts of many objectives
  • Extensive marketing and communications comprehension

Experienced
2017 - present  Solstice Senior Living
Director of Marketing and Sales
  • Identify and foster new business and community relationships
  • Create a plan for social media management as well as provide content
  • Design and implement a comprehensive marketing plan, which includes referral opportunities and outreach opportunities
  • Work collaboratively with team and provide clear direction on upcoming and current goals
  • Development of unique promotions and educational seminars
  • Conduct all in-house event planning

2015-2017  Louisa Place Senior Living
Community Relations Manager and General Operations
  • Achieved two quarters as top performer in the West Division, through high-occupancy, budget management, and accuracy in service plans
  • Planned and executed successful events and networking opportunities, to increase top of mind awareness in the community
  • Oversight and management of 39-unit community, including all A/R, A/P, payroll, and community relations
  • Conducted daily clinical meetings to ensure proper communication with team and compliance with State regulations

2015 - 2015  Quail Park at Klamath Falls Retirement, Assisted Living and Memory Care
Administrator
  • General Operations of large campus, including 87 retirement and assisted living suites, independent cottages, and a 44-bed free-standing Memory Care
  • Development of new policies and procedures for rapidly-growing company
  • Met and exceeded quarterly budget goals in 2nd and 3rd quarters
  • Maintained an average 99% occupancy

2014 - 2015  Spring Creek Retirement, Assisted Living and Memory Care
Administrator
  • Responsible for the management of $6.5 million budget, including measurable revenue development, decreases in expense, and a reduction in average outstanding receivables to less than 1.5% per month.
  • Successfully reached NOI goals quickly, by achieving projected goals, close monitoring of all departmental budgets, and consistency in spending practices
• Achieved 100% State compliance within four months

2012 - 2014  Greenleaf Bookkeeping & Accounting  Bellingham, WA
**Director of Marketing & Operations**
- Created a marketing plan, which included improvements to website, social media sites and SEO activity
- Conducted financial analysis and developed an annual budget, to support President in developing long-range business goals
- Improved spending reports, to enhance clarity of spending and increase efficiency
- Provided payroll and bookkeeping support, invoicing and collection services as needed

2010 - 2012  The Leopold Retirement Residence  Bellingham, WA
**Director of Marketing and Sales**
- Developed and managed a new $50,000+ budget for the marketing department
- Progressively increased building occupancy and waitlist
- Exceed past profit margins and worked collaboratively with administrator to increase 2011 revenue by 30% from 2010, through occupancy development and service fees

2009 – 2010  Woodway Senior Living  Bellingham, WA
**Director of Marketing and Alternate Administrator**
- Drove profits up, by maintaining 98-100% occupancy
- Promoted to alternate administrator, within four months
- Actively participated in the management of staffing and operational duties
- Implemented new events and activities, to generate interest and in-house traffic

2006 – 2008  Merrill Gardens at Cordata  Bellingham, WA
**Garden House Dementia Care Community Supervisor**
- Created and implemented new policies and procedures for quality assurance
- Successfully managed and scheduled frontline team of 35+ employees
- Ensured that all DSHS and internal documentation was accurate and up to date
- Developed and fostered a new activity program for residents and a support group for family members

**Community Relations**
- Consistently sustained high closing ratio and maintained 97-100% occupancy
- Conducted engaging presentations, for families and professional referrals
- Planned, executed and hosted 3 - 4 in-house events each month

**Qualified**
2015  **Washington State Administrator**  Bellingham, WA
2015  **Oregon State Administrator**  Portland, OR
2005  Washington Healthcare Training Center  Bothell, WA
**Trainer Manager Mental Health Certification**
**Trainer Manager Dementia Specialty Training Certification**
1999  Western Washington University  Bellingham, WA
**B.A. English Literature/ Writing Fellow; served 1998-1999**
2008  Whatcom Community College  Bellingham, WA
**Grant Writing I**
Systems and Databases
Microsoft Office Suite, QuickBooks Pro, Intracare, REPS, Vigilan, You’ve Got Leads, Eldermark, STAR, RealPage

Community Connections
Sustainable Connections, Alzheimer Association (2007, 2008 Chair), Elder Service Providers, South End Coalition (former Vice President), Alzheimer’s Society of Washington (Interim Chair), Washington Assisted Living Association, Mt. Baker Mountaineers, Community Boating Center (former Development Committee and Volunteer), Bellingham Senior Center
**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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<tbody>
<tr>
<td>Originator:</td>
<td>Council</td>
<td>2/6/2018</td>
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<td>2/13/2018</td>
<td>Introduction</td>
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<td>Division Head:</td>
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<td>Dept. Head:</td>
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<td>Prosecutor:</td>
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<tr>
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<tr>
<td>Executive:</td>
<td></td>
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<td></td>
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</table>

**TITLE OF DOCUMENT:**
Receipt of application for Flood Control Zone District Advisory Committee

**ATTACHMENTS:**
Application

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

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

1 vacancy representing Impacted Cities. 1-year term.

*Any person interested in serving on the advisory committee may be appointed as an alternate for a term of six years. Alternate members shall be notified of each meeting and are encouraged to attend.

Committee assists and makes recommendations to the Board of Supervisors in performing flood damage repairs, maintenance and improvements, and minimizing future flood damage through prevention and management on the Nooksack River, its watershed, and the other watersheds within Whatcom County. Meets the second Thursday of the month or as needed. Council acting as Flood Control Zone District Board of Supervisors-appointed. Application John Perry

Applications for this vacancy are due 10:00 a.m. February 20, 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.*
Board and Commission Application

Step 1

Application for Appointment to Whatcom County Boards and Commissions

Public Statement

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First Name John
Last Name Perry
Date 2/1/2018
Street Address 1312 Birchwood Dr
City Everson
Zip 98247
Do you live in & are you registered to vote in Whatcom County? Yes
Do you have a different mailing address? Field not completed.
Primary Telephone 360-815-5954
Secondary Telephone 360-778-3708
Email Address mayor@ci.everson.wa.us

Step 2
1. Name of Board or Committee
   - Flood Control Zone District Advisory Committee

2. Do you meet the residency, employment, and/or affiliation requirements of the position for which you’re applying?
   - Yes

3. Which Council district do you live in?
   - Field not completed.

4. Are you a US citizen?
   - Yes

5. Are you registered to vote in Whatcom County?
   - Yes

6. Have you declared candidacy (as defined by RCW 42.17A.055) for a paid elected office in any jurisdiction within the county?
   - No

7. Have you ever been a member of this Board/Commission?
   - Yes
   
   If yes, please list dates:
   - 2010-2017

8. Do you or your spouse have a financial interest in or are you an employee or officer of any business or agency that does business with Whatcom County?
   - No

You may attach a resume or detailed summary of experience, qualifications, & interest in response to the following questions

9. Please describe your previous experience:
   - Mayor of the City of Everson - 2010 - Current Contractor - 1997
occupation (or former occupation if retired), qualifications, professional and/or community activities, and education

10. Please describe why you’re interested in serving on this board or commission

Field not completed.

References (please include daytime telephone number):

Field not completed.

Signature of applicant: John Perry

Place Signed / Submitted: Eveson, WA

Email not displaying correctly? View it in your browser.
### 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>
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<td>Originator:</td>
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<td>2/12/18</td>
<td>2/13/18</td>
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<tr>
<td>Dept. Head:</td>
<td>KF&lt;</td>
<td>2/12/18</td>
<td>2/27/18</td>
<td>Finance Committee; Council</td>
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<td>Prosecutor:</td>
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<tr>
<td>Executive:</td>
<td>T&lt;</td>
<td>2/6/18</td>
<td></td>
<td></td>
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</tr>
</tbody>
</table>

**TITLE OF DOCUMENT:** 2018 Supplemental Budget Request #4

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

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

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

**Supplemental #4 requests funding from the General Fund:**

1. To appropriate $14,000 in Non-Departmental to fund increased Washington State Association of Counties dues.
2. To appropriate $30,000 in Non-Departmental to fund transfer for increase in Courthouse Security contract.
3. To appropriate $1,675 in the Sheriff’s Office to fund cold weather motorcycle gear from grant proceeds.
4. To appropriate $2,500 in the Sheriff’s Office to fund deputy participation in Organized Crime Drug Enforcement Task Force investigations. (Contract RL-16-0014)
5. To appropriate $2,500 in the Sheriff’s Office to fund deputy participation in Organized Crime Drug Enforcement Task Force investigations. (Contract RL-17-0023)
6. To re-appropriate $9,774 in funding in the Sheriff’s Office for personnel ID badge equipment.
7. To appropriate $20,000 in WSU Extension to fund increase in Strengthening Families program.
8. From the Road Fund:
   8. To appropriate $175,000 to fund Lummi Island Timber Dolphin repair.
9. From the Stormwater Fund:
   9. To appropriate $135,000 to fund establishment of Lake Whatcom Stormwater Utility funding mechanism.
10. From the Public Utilities Improvement Fund:
11. To appropriate $500,000 in Non-Departmental to continue funding Homes Affordable through Workforce Program.
12. To appropriate $470,000 in Non-Departmental to fund NW Washington Fair Ag Center.
13. From the Administrative Services Fund:
   12. To appropriate $30,000 in Facilities to fund increased Courthouse Security contract from General Fund transfer.
   13. To appropriate $53,000 in Facilities to fund extra help labor.

**COMMITTEE ACTION:**

**COUNCIL ACTION:**

- Related County Contract #:
- Related File Numbers:
- Ordinance or Resolution Number:
## ORDINANCE NO.
AMENDMENT NO. 4 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:

<table>
<thead>
<tr>
<th>Fund</th>
<th>Expenditures</th>
<th>Revenues</th>
<th>Net Effect</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>General Fund</strong></td>
<td></td>
<td></td>
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</tr>
<tr>
<td>Non Departmental</td>
<td>44,000</td>
<td>-</td>
<td>44,000</td>
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<tr>
<td>Sheriff</td>
<td>16,449</td>
<td>(6,675)</td>
<td>9,774</td>
</tr>
<tr>
<td>WSU Extension</td>
<td>20,000</td>
<td>(20,000)</td>
<td>-</td>
</tr>
<tr>
<td><strong>Total General Fund</strong></td>
<td>80,449</td>
<td>(26,675)</td>
<td>53,774</td>
</tr>
<tr>
<td>Road Fund</td>
<td>175,000</td>
<td>-</td>
<td>175,000</td>
</tr>
<tr>
<td>Stormwater Fund</td>
<td>135,000</td>
<td>-</td>
<td>135,000</td>
</tr>
<tr>
<td>Public Utilities Improvement Fund - Non-Departmental</td>
<td>970,000</td>
<td>-</td>
<td>970,000</td>
</tr>
<tr>
<td>Administrative Services Fund - Facilities</td>
<td>83,000</td>
<td>(30,000)</td>
<td>53,000</td>
</tr>
<tr>
<td><strong>Total Supplemental</strong></td>
<td>1,443,449</td>
<td>(56,675)</td>
<td>1,386,774</td>
</tr>
</tbody>
</table>

ADOPTED this ____ day of __________________, 2018.

ATTEST:

Dana Brown-Davis, Council Clerk

Rud Browne, Chair of the Council

APPROVED AS TO FORM:

Civil Deputy Prosecutor

( ) Approved     ( ) Denied

Jack Louws, County Executive

Date: ____________________________
<table>
<thead>
<tr>
<th>Department/Fund</th>
<th>Description</th>
<th>Increased (Decreased) Expenditure</th>
<th>(Increased) Decreased Revenue</th>
<th>Net Effect to Fund Balance (Increase) Decrease</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>General Fund</strong></td>
<td>Non Departmental</td>
<td>To fund increased Washington State Association of Counties dues.</td>
<td>14,000</td>
<td>-</td>
</tr>
<tr>
<td></td>
<td>Non Departmental</td>
<td>To fund transfer for increases in Courthouse Security contract.</td>
<td>30,000</td>
<td>-</td>
</tr>
<tr>
<td></td>
<td>Sheriff</td>
<td>To fund cold weather motorcycle gear from grant proceeds.</td>
<td>1,675</td>
<td>(1,675)</td>
</tr>
<tr>
<td></td>
<td>Sheriff</td>
<td>To fund deputy participation in Organized Crime Drug Enforcement Task Force investigations. (Contract RL-16-0014)</td>
<td>2,500</td>
<td>(2,500)</td>
</tr>
<tr>
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<td>(2,500)</td>
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<td></td>
<td>Sheriff</td>
<td>To re-appropriate funding for personnel ID badge equipment.</td>
<td>9,774</td>
<td>-</td>
</tr>
<tr>
<td></td>
<td>WSU Extension</td>
<td>To fund increase in Strengthening Families program.</td>
<td>20,000</td>
<td>(20,000)</td>
</tr>
<tr>
<td></td>
<td><strong>Total General Fund</strong></td>
<td></td>
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<td>(26,675)</td>
</tr>
<tr>
<td><strong>Road Fund</strong></td>
<td></td>
<td>To fund Lummi Island Timber Dolphin repair.</td>
<td>175,000</td>
<td>-</td>
</tr>
<tr>
<td><strong>Stormwater Fund</strong></td>
<td></td>
<td>To fund establishment of Lake Whatcom Stormwater Utility funding mechanism.</td>
<td>135,000</td>
<td>-</td>
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<tr>
<td><strong>Public Utilities Improvement Fund</strong></td>
<td>Non Departmental</td>
<td>To continue funding Homes Affordable through Workforce Program.</td>
<td>500,000</td>
<td>-</td>
</tr>
<tr>
<td></td>
<td>Non Departmental</td>
<td>To fund NW Washington Fair Ag Center.</td>
<td>470,000</td>
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<td></td>
<td><strong>Total Public Utilities Improvement Fund</strong></td>
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<tr>
<td><strong>Administrative Services Fund</strong></td>
<td>Facilities</td>
<td>To fund increased Courthouse Security contract from General Fund transfer.</td>
<td>30,000</td>
<td>(30,000)</td>
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<td></td>
<td>Facilities</td>
<td>To fund extra help labor.</td>
<td>53,000</td>
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<td><strong>Total Administrative Services Fund</strong></td>
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<td>83,000</td>
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<td><strong>Total Supplemental</strong></td>
<td></td>
<td>1,443,449</td>
<td>(56,675)</td>
</tr>
</tbody>
</table>
MEMO:

TO: Whatcom County Council
DATE: January 19, 2018
FROM: Tawni Helms, Administrative Coordinator
RE: Washington State Association of Counties (WSAC) Association Dues

Background and Purpose:
The Whatcom County Executive Office allocates a budget for annual association dues which includes WSAC, National Association of Counties and other small associations. Occasionally, additional membership dues are requested by these Associations for new initiatives and strategies. Whatcom County has agreed to support WSAC’s request for Litigation & Strategic Communication Dues dedicated for legislative resources and advocacy. These additional dues reflect a small investment that will benefit Whatcom County from the impact of a statewide program.

This funding request exceeds the current 2018 budget allocated for Association Dues.

Funding Amount and Source:

Additional fees are projected to exceed current budget authority of $69,000 used for all Executive Office Association Dues. This budget supplemental request is to increase the Association Dues budget by $14,000. The funding source is the General Fund.
MEMO:

TO: Whatcom County Council

DATE: January 19, 2018

FROM: Tawni Helms, Administrative Coordinator

RE: Washington State Association of Counties (WSAC) Association Dues

Whatcom County has agreed to support WSAC's request for Litigation & Strategic Communication Dues. These additional dues reflect a small investment that will benefit Whatcom County from the impact of a statewide program.

This increase in dues exceeds the current budget allocated for Association Dues.

Background and Purpose:
The Whatcom County Executive Office allocates a budget for association dues which provide for legislative resources and advocacy.

Funding Amount and Source:

Additional fees are projected to exceed current budget authority by $14,000. The funding source is the General Fund.
Supplemental Budget Request

Non-Departmental

Supp ID #: 2545  Fund 1  Cost Center 4530  Originator: M Caldwell

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

Name of Request: Trf to fund Courthouse Security contract

X

Department Head Signature (Required on Hard Copy Submission)  Date

Z-6-18

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1a. Description of request:
Companion supplemental to AS Facilities' Courthouse Security Screening Services ID# 2531 supplemental budget request. This will provide funding from the General Fund for the increased costs of Security Services.

1b. Primary customers:

2. Problem to be solved:

3a. Options / Advantages:

3b. Cost savings:

4a. Outcomes:

4b. Measures:

5a. Other Departments/Agencies:

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

6. Funding Source:
General Fund

Thursday, February 01, 2018
Supplemental Budget Request

Non-Departmental

Supp1 ID #: 2529  Fund 1  Cost Center 4090  Originator: T. Helms

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

Name of Request: WSAC Association Dues

[Signature]

Department Head Signature (Required on Hard Copy Submission)

Date: 2-4-18

Costs:

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1a. Description of request:
New membership association dues have been approved by the Washington State Association of Counties (WSAC). In November, 2017 the Executive Committee of WSAC approved new dues to support expenses in accordance with the Approved 2018 WSAC Operating Budget and Goals. TWSAC's approved budget includes a dues supported program to carry out a new WSAC Litigation Advocacy Program and continue the enhanced communication services to support both legislative and litigation advocacy.

Whatcom County is in support of the new Litigation and Strategic Communications advocacy initiative.

1b. Primary customers:
Whatcom County and its citizens.

2. Problem to be solved:
For the past several years, the WSAC Board of Directors and Legislative Steering Committee have discussed new strategies to advance their policy agenda and assure Washington's 39 Counties are fiscally sustainable. One such action that has garnered the most discussion and attention is to develop a proactive legal strategy that is integrated with legislative and communication strategies to advance WSAC's policy agenda.

Additional Association Dues are projected to exceed current budget authority by $14,000.

3a. Options / Advantages:
Whatcom County is in support of the Litigation and Strategic Communications program which will utilize litigation as a tool to advance WSAC's policy goals by creating leverage with the legislature and executive branch. In some cases, the legislature and executive branch are only likely to act on WSAC's specific policy objectives, such as blocking new unfunded mandates or providing adequate defence, under the threat of litigation or after a court mandate.

A permanent litigation program within WSAC will make the legislature and state agencies think more carefully about the needs of counties.

3b. Cost savings:
These are new and ongoing costs for WSAC to manage and support a new litigation program. Through a small investment Whatcom County will benefit from the impact of a statewide program.

4a. Outcomes:
This is a new statewide program and will serve all Counties.
The proposed litigation program includes:
Coordinating WSAC processes for making litigation decisions

Tuesday, January 30, 2018

Rpt: Rpt Suppl Regular
Coordinating with WSAC members and partners (WAPA, WACO, etc.); Conducting financial and legal research and/or managing research projects to support litigation; Submitting Amicus briefs on existing cases; Coordinating member counties' participation in litigation; WSAC intervention in litigation; WSAC serving as lead plaintiff to initiate litigation; Managing outside counsel when utilized, and; Participating in settlement negotiations.

4b. Measures:
In some cases, the legislature and executive branch are only likely to act on WSAC's specific policy objectives, such as blocking new unfunded mandates or providing adequate defence, under the threat of litigation or after a court mandate.

A permanent litigation program within WSAC will make the legislature and state agencies think more carefully about the needs of counties.

5a. Other Departments/Agencies:
Whatcom County Government as a whole is served through WSAC membership and the payment of association dues.

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

6. Funding Source:
General Fund
MEMORANDUM

TO: Jack Louws, County Executive
FROM: Sheriff Bill Elfo
DATE: January 29, 2018
SUBJECT: Supplemental Budget ID# 2535
WTSC School Zone Safety Funds 2018

The attached supplemental budget requests budget authority to use Washington Traffic Safety Commission (WTSC) School Zone Safety Account funds to purchase cold weather motorcycle gear for Sheriff’s Office Traffic Unit.

Background and Purpose
School Zone Safety Account grants are awarded to fund projects in local communities to improve school zone safety. The WTSC awarded funds to the Whatcom County Sheriff’s Office in November 2017 to purchase heavy weather motorcycle gear to enforce traffic laws in school zones. The Sheriff’s Office will purchase the motorcycle gear in 2018.

Funding Amount and Source
Washington Traffic Safety Commission will provide state grant funds of $1,675.00 from the School Zone Safety Account.

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

Thank you.
Supplemental Budget Request

Status: Pending

Sheriff

<table>
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<th>Cost Center</th>
<th>Originator: Dawn Pierce</th>
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Expenditure Type: One-Time | Year 2 | 2018 | Add'l FTE | Add'l Space | Priority | 1

Name of Request: WTSC School Zone Safety Account Funds 2018

Department Head Signature (Required on Hard Copy Submission) 1/20/18

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1a. Description of request:
The Sheriff's Office will use Washington Traffic Safety Commission (WTSC) School Zone Safety Account grant funds to purchase cold weather motorcycle gear for traffic enforcement.

1b. Primary customers:
Sheriff's Office Traffic Unit.

2. Problem to be solved:
Budget authority is needed to purchase motorcycle gear with state grant funds.

3a. Options / Advantages:
School Zone Safety Account grants are awarded to purchase equipment used to enforce school zone traffic laws. The current award was approved specifically for the purchase of heavy weather gear for motorcycle enforcement.

3b. Cost savings:
Cost savings of $1,675.

4a. Outcomes:
Heavy weather motorcycle gear will be purchased allowing Traffic Unit deputies to effectively work the school zones in our community.

4b. Measures:
Continue work to improve pedestrian safety in school zones by enforcing speed restrictions and decreasing the number of traffic violations.

5a. Other Departments/Agencies:
N/A

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

6. Funding Source:
Washington Traffic Safety Commission will provide grant funds of $1,675 from the School Zone Safety Account.

Sunday, January 28, 2018

Rpt: Rpt Suppl Regular

549
MEMORANDUM

TO: Jack Louws, County Executive
FROM: Sheriff Bill Elfo
DATE: January 29, 2018
SUBJECT: Supplemental Budget ID #2537
OCDETF 2018 DEA #RL-16-0014

The attached supplemental budget requests budget authority for Sheriff’s Office deputies to participate in federal Organized Crime Drug Enforcement Task Forces investigations.

Background and Purpose
The Whatcom County Sheriff’s Office entered into an agreement with the Organized Crime Drug Enforcement Task Forces (OCDETF) Program to assist with the investigation and prosecution of major drug trafficking organizations (Whatcom County Contract No. 201801017). The U.S. Department of Justice Drug Enforcement Administration will reimburse the Sheriff’s Office for overtime costs of deputies engaged in federal OCDETF investigations.

Deputies assigned to assist in OCDETF investigations may perform a variety of functions, including: interviewing witnesses, conducting surveillance, performing undercover assignments, handling informant transportation and/or prisoner transportation, preparing and executing search and arrest warrants, serving subpoenas, assisting with trial preparation, and testifying at trials.

Funding Amount and Source
The U.S. Department of Justice Drug Enforcement Administration will provide $2,500 from State and Local Overtime (SLOT) Funds.

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

Thank you.
Supplemental Budget Request

Status: Pending

Sheriff Operations

Suppl ID # 2537  Fund 1  Cost Center 1003516001  Originator: Dawn Pierce

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

Name of Request: OCDETF 2018 DEA #RL-16-0014

Department Head Signature (Required on Hard Copy Submission)  Date

1a. Description of request:
The Whatcom County Sheriff's Office received approval from the U.S. Department of Justice Drug Enforcement Administration (DEA) to participate in the Organized Crime Drug Enforcement Task Forces (OCDETF) and assist with the investigation and prosecution of major drug trafficking organizations. DEA will reimburse the Sheriff's Office’s Office for overtime costs of deputies engaged in these federal OCDETF investigations.

1b. Primary customers:
Citizens of Whatcom County

2. Problem to be solved:
Additional budget authority is needed to provide the investigative services.

3a. Options / Advantages:

3b. Cost savings:
Cost savings of $2,500

4a. Outcomes:
Sheriff's Office deputies will participate in Federal OCDETF investigations.

4b. Measures:

5a. Other Departments/Agencies:

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

6. Funding Source:
The U.S. Department of Justice Drug Enforcement Administration will provide $2,500 from State and Local Overtime (SLOT) Funds.
MEMORANDUM

TO: Jack Louws, County Executive

FROM: Sheriff Bill Elfo

DATE: January 29, 2018

SUBJECT: Supplemental Budget ID #2538
OCDETF 2018 DEA #RL-17-0023

The attached supplemental budget requests budget authority for Sheriff’s Office deputies to participate in federal Organized Crime Drug Enforcement Task Forces investigations.

Background and Purpose
The Whatcom County Sheriff’s Office entered into an agreement with the Organized Crime Drug Enforcement Task Forces (OCDETF) Program to assist with the investigation and prosecution of major drug trafficking organizations (Whatcom County Contract No. 201801016). The U.S. Department of Justice Drug Enforcement Administration will reimburse the Sheriff’s Office for overtime costs of deputies engaged in federal OCDETF investigations.

Deputies assigned to assist in OCDETF investigations may perform a variety of functions, including: interviewing witnesses, conducting surveillance, performing undercover assignments, handling informant transportation and/or prisoner transportation, preparing and executing search and arrest warrants, serving subpoenas, assisting with trial preparation, and testifying at trials.

Funding Amount and Source
The U.S. Department of Justice Drug Enforcement Administration will provide $2,500 from State and Local Overtime (SLOT) Funds.

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

Thank you.
Supplemental Budget Request

Status: Pending

Sheriff

Operations

SuppY ID # 2538

Fund 1 Cost Center 1003517003 Originator: Dawn Pierce

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

Name of Request: OCDETF 2018 DEA #RL-17-0023

Department Head Signature (Required on Hard Copy Submission) Date: 1/31/18

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Request Total $0

1a. Description of request:
The Whatcom County Sheriff's Office received approval from the U.S. Department of Justice Drug Enforcement Administration (DEA) to participate in the Organized Crime Drug Enforcement Task Forces (OCDETF) and assist with the investigation and prosecution of major drug trafficking organizations. DEA will pay for the overtime of Sheriff's Office deputies engaged in federal OCDETF investigations.

1b. Primary customers:
Citizens of Whatcom County

2. Problem to be solved:
Additional budget authority is needed to provide the investigative services.

3a. Options / Advantages:

3b. Cost savings:
Cost savings of $2,500

4a. Outcomes:
Sheriff's Office deputies will participate in Federal OCDETF investigations.

4b. Measures:

5a. Other Departments/Agencies:

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

6. Funding Source:
The U.S. Department of Justice Drug Enforcement Administration will provide $2,500 from State and Local Overtime (SLOT) Funds.
TO: Jack Louws, County Executive
FROM: Sheriff Bill Elfo
DATE: January 29, 2018
SUBJECT: Supplemental Budget ID #2536
Personnel Identification Badge Equipment 2018

The attached supplemental budget requests budget authority to purchase new personnel identification badge equipment in 2018.

Background and Purpose
Additional Service Request (ASR 2017-5430) was submitted with the 2017-2018 budget cycle for the Sheriff’s Office to purchase new personnel identification badge equipment. The ASR was approved and included in the 2017 budget. The Sheriff’s Office was unable to procure the equipment in 2017 and needs budget authority to make the purchase in 2018.

Funding Amount and Source
General Funds unused for the purchase in 2017 will be used in 2018.

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

Thank you.
WHATCOM COUNTY SHERIFF’S OFFICE

Memorandum

TO: Jack Louws, County Executive

FROM: Undersheriff Jeff Parks

DATE: January 29, 2018

SUBJECT: Supplemental Budget Request (#2536)

Additional explanation for supplemental request:

During 2017 Sheriff’s Office staff met several times with the vendor that we were hoping could provide software and hardware for an upgraded ID badge system that in addition to our normal requirements for printing ID badges and credentials, could also serve to track visitors and exercise/event participants at the emergency coordination center. Legend ID was unable to develop a satisfactory system despite several demonstrations and requirements sessions we had with them. Late in the year we dropped them as a viable resource and looked for a new vendor, which was identified as Jolly Systems. Although some questions remained about their ability to service hardware in a timely manner it was felt that this was the best option as most hardware is plug and play and generic enough that we should be able to get service and/or replacement in an acceptable time frame. Unfortunately we were mistaken that we could drop a specific vendor name from the issued PO and substitute the new vendor for the same type of system we had funds appropriated for within a continuing appropriation. Upon being advised of this we proceeded with a new PO and are looking to recover the funds that were not spent in 2017.

Thank you for your consideration.

[Signature]
Supplemental Budget Request

Sheriff Administration

Supp ID # 2536 Fund 1 Cost Center 2900 Originator: Dawn Pierce

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

Name of Request: Personnel Identification Badge Equipment 2018

Department Head Signature (Required on Hard Copy Submission) Date

X. Smith, for 1/31/18

Costs:

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1a. Description of request:

Additional Service Request (ASR 2017-5430) for Sheriff's Office purchase of new personnel identification badge equipment was submitted with the 2017-2018 budget cycle. The ASR was approved and included in the 2017 budget. The Sheriff's Office was unable to procure the equipment in 2017 and needs budget authority to make the purchase in 2018.

All Sheriff's Office personnel are issued identification badges. Commissioned personnel use these authorized instruments to identify themselves to the general public and other governmental agencies. In addition to creating identification cards for Sheriff's Office employees, the new identification badge equipment will be used for electronic tracking of all personnel admitted to the Whatcom Unified Emergency Coordination Center, which will be particularly beneficial during activation of the Emergency Operations Center.

1b. Primary customers:

Sheriff's Office

2. Problem to be solved:

The existing identification badge equipment is outdated and needs to be replaced; the printer is at the end of life and parts for it are no longer made.

3a. Options / Advantages:

3b. Cost savings:

4a. Outcomes:

New personnel identification badge equipment will be purchased in 2018.

4b. Measures:

5a. Other Departments/Agencies:

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

6. Funding Source:

General Fund

Wednesday, January 31, 2018

Rpt: Rpt Suppl Regular
1a. Description of request:

WSU Extension has received an additional $20,000 from the Whatcom County Health Dept for the Strengthening Families Program. The $20,000 will be used to fund the contract with Washington State University for Extension personnel to staff the program.

WSU Whatcom County Extension will coordinate and deliver the Strengthening Families Program for Parents and Youth 10-14 Years (SFP 10-14) to families in selected locations in the county. The program is delivered in 7 sessions at each location. Each series takes place in the evening at a host school. Dinner is included. Each session has 3 distinct lessons, an hour for each parents, youth and family. The youth and parents meet separately for the first hour and then the families meet together for the second hour.

1b. Primary customers:

Families with 10-14 year old youths. Families are broadly defined. Foster parents, relatives caregivers, step families and birth parents are all invited.

2. Problem to be solved:

This program addresses family management issues and youth substance abuse prevention as identified areas of concern by the county substance abuse prevention plan for the 2018 year. The Substance Abuse Prevention board identified this area as a high priority and the funds come from the Health Department.

3a. Options / Advantages:

There are no alternatives to this high quality program in Whatcom County. This program has a proven track record here and families trust its quality.

3b. Cost savings:

Washington Public Policy Institute and the Prevention Research Center at Penn State University consider $5000 per participating youth a reasonable estimate for cost savings from substance abuse related crimes over a lifetime. We anticipate that 25-30 youth will complete the program, resulting in a possible savings of up to $180,000 for this program in a three month period.

4a. Outcomes:

We will measure the following:

1. Weekly attendance for all participants
2. Pre and post program measures for all adults and youth participating
3. Implementation details, costs of meals, volunteer time, etc.
4. Demographics of the participants
Supplemental Budget Request

WSU Extension

Fund 1  Cost Center 2003  Originator: Drew Betz

4b. Measures:
All of our evaluation data is sent to the state SFP office at WSU for analysis upon completion of the program. An outcome report is prepared for each series and an aggregate report is completed at the end of the 3 classes. The demographic data and attendance is entered onto a data management website by our coordinator as required by the contract with the health department. That data is entered monthly while the services are being delivered.

5a. Other Departments/Agencies:
Whatcom County Health Department funds this program to support the county Substance Abuse Prevention Plan. Our partners for this period are Ferndale School District, Bellingham School District, Meridian School District, Mt. Baker School District, Nooksack Valley School District, and other TBA. Families in each program will provide positive impact on their own kids and the youth who associate with them. It will reduce negative behaviors and support pro-social behavior in parents and youth in and out of school.

5b. Name the person in charge of implementation and what they are responsible for:
Joe Fuller, Prevention Program Specialist, Whatcom County Health Department

6. Funding Source:
Whatcom County Health Department
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: January 24, 2018

Subject: 2018 Lummi Island Timber Dolphin Repair CRP #918011 Supplemental Budget Request

Requested Action
Enclosed for your review and consideration is a supplemental budget request for 2018 (see attached Supplemental Budget Request ID # 2532).

Background and Purpose
The project proposes to repair the two (2) existing interior timber dolphins at the Lummi Island Ferry Terminal. These two timber dolphins, which have deteriorated timber piles and wire rope wraps, were originally slated for replacement in 2019 as part of the Ferry Breakwater and Dolphin Replacement Project (CRP 914015). However, work on this project was delayed pending clarity regarding Lummi Tribal developments at the Gooseberry Point landing as well as the potential for a replacement ferry vessel. In 2017 the County Council directed the Lummi Island Ferry Advisory Committee (LIFAC) to work with Whatcom County staff to perform a Level of Service Analysis and provide recommendations for purchasing a new ferry vessel within the next 10 years. KPFF Consulting Engineers was hired to complete the Level of Service Analysis and as a part of their first task provided a recommendation for addressing these two existing timber dolphins.

Because the dolphin design is based on specific vessel characteristics, KPFF has made the recommendation that the County pursue repairs to the timber dolphins at this time rather than replacement to allow for the design and purchase of a new ferry vessel. It is anticipated that within the next 2-5 years, the vessel design will be finalized and the replacement dolphin design can be completed based on the specific berthing energies of the new vessel.

The proposed repair work will include driving three (3) additional piles at each dolphin and securing the new piles to the existing dolphins with wire rope.

Funding Amount and Source
This supplemental budget request will authorize $175,000 of additional expenditure authority from the County Road Fund for this repair work. This work is part of the larger 2018 Annual Construction Program Item No. 26, Lummi Island Dolphin and Breakwater Replacement, CRP 914015.

Please contact James Lee at extension 6264 if you have any questions or concerns regarding this request.
Supplemental Budget Request

Name of Request: 2018 Lummi Island Timber Dolphin Repair

Department Head Signature (Required on Hard Copy Submission)

1a. Description of request:

The project proposes to repair the two (2) existing interior timber dolphins at the Lummi Island Ferry Terminal. These dolphins were originally slated for replacement in 2019 as part of the Ferry Breakwater and Dolphin Replacement Project (CRP 914015). However in 2015 work on this project was delayed pending clarity regarding Lummi Tribal developments at the Gooseberry Point landing as well as the potential for a replacement ferry vessel. In 2017 the County Council directed the Lummi Island Ferry Advisory Committee (LIFAC) to work with Whatcom County staff to perform a Level of Service Analysis and provide recommendations for purchasing a new ferry vessel within the next 10 years. KPFF Consulting Engineers was hired to complete the Level of Service Analysis and as a part of their first task, provided a recommendation for addressing these two existing timber dolphins. Because the dolphin design is based on specific vessel characteristics, KPFF has made the recommendation that the County pursue repairs to the timber dolphins at this time rather than replacement to allow for the design and purchase of a new ferry vessel. It is anticipated that within the next 2-5 years, the vessel design will be finalized and the replacement dolphin design can be completed based on the specific berthing energies of the new vessel.

KPFF also recommended pursuing the timber dolphin repairs as soon as possible considering the deterioration of the timber piles and wire ropes as noted in an October 2017 underwater dive inspection. The proposed repairs will be similar to the 2015 project that repaired a timber dolphin that was damaged by the ferry boat.

1b. Primary customers:

General public and island residents

2. Problem to be solved:

The existing dolphin performance is severely impaired by loose or broken cable wraps and damaged timber piles.

3a. Options / Advantages:

The existing dolphins are in poor shape and need to be addressed, however full dolphin replacement is not recommended at this time. Since dolphins are designed for the specific vessel utilizing them, it would not be cost effective to install new dolphins for the Whatcom Chief only to have to replace or modify them for a future unknown vessel. Since there is now clear direction from the County Council on a timeline for design and purchase of a new vessel, and recommendations from the consulting firm working on the Level of Service Analysis

3b. Cost savings:

Cost Savings will be recognized by delaying the full replacement of the dolphins in anticipation of a new ferry vessel. If the dolphins were to be replaced now it is likely that they would either have to be heavily modified or removed and replaced again to accommodate a new vessel. Repair work now will also provide
Supplemental Budget Request

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<th>Engineering Bridge &amp; Hydraulic</th>
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<td><strong>Originator:</strong> James Lee</td>
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more flexibility in the final placement and configuration of future terminal modifications as may be required for a new vessel.

4a. **Outcomes:**
   - The project will be constructed in the summer of 2018.

4b. **Measures:**
   - The project will be constructed and dolphin performance will be improved.

5a. **Other Departments/Agencies:**
   - N/A

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

6. **Funding Source:**
   - Road Fund
## Supplemental Budget Estimate

### 2018 Lummi Island Timber Dolphin Repair, CRP 918011

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MEMORANDUM

TO: Jack Louws, County Executive
THROUGH: Jon Hutchings, Public Works Director
FROM: Cathy Craver, Senior Planner / NPDES Supervisor
DATE: January 26, 2018
RE: Supplemental Budget Request

Requested Action
The Public Works Stormwater Division requests supplemental budget authority to establish an equitable funding proposal and prepare the fee roll for submittal to the Whatcom County Treasurer for the newly-formed Lake Whatcom Stormwater Utility.

Background and Purpose
The County Council established a Stormwater Utility Service area for unincorporated Lake Whatcom in December 2017 to supplement funding for the Lake Whatcom Management Program. It was the Council’s request that the administration develop funding alternatives and recommend rates and charges by the end of 2018. Because of this compressed timeline, this work is being developed in two phases. Phase 1 can be funded with existing budget authority. Phase 2 will be funded with this supplemental budget request. Tasks include: preparation of a funding plan, rate design, implementation assistance, public outreach, documentation, and establishing and maintaining the fee roll.

Funding Amount and Source
This request is for $135,000 from the Stormwater Fund (123). The Stormwater Fund is principally supported by the Flood Fund.

Please contact Gary Stoyka at extension 6218 or Cathy Craver at extension 6299 if you have any questions or concerns regarding the terms of this agreement.

Attachment
Supplemental Budget Request

Public Works

Expenditure Type: One-Time
Year: 2018

Stormwater

Add'l FTE □ Add'l Space □ Priority 1

Name of Request: 2018 Establishing Lk Whatcom Funding Mechanism

Department Head Signature (Required on Hard Copy Submission) 1/29/18

<table>
<thead>
<tr>
<th>Costs:</th>
<th>Object</th>
<th>Object Description</th>
<th>Amount Requested</th>
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<tr>
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<td>6630</td>
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<tr>
<td>Request Total</td>
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<td>$135,000</td>
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</table>

1a. Description of request:
This SBR will provide funding to establish an equitable funding proposal and prepare the fee roll for submittal to the Whatcom County Treasurer for the newly-formed Lake Whatcom Stormwater Utility. The County Council established the Stormwater Utility Service area for unincorporated Lake Whatcom in December 2017 to supplement funding for the Lake Whatcom Management Program. It is the Council’s request that the administration develop funding alternatives and recommend rates and charges by the end of 2018. Because of this compressed timeline, this work is being developed in two phases. Phase 1 can be funded with existing budget authority. Phase 2 will be funded with this supplemental budget request. Tasks include: preparation of a funding plan, rate design, implementation assistance, public outreach, documentation, and establishing and maintaining the fee roll.

1b. Primary customers:
Residents within the Lake Whatcom Stormwater Utility Service Area and other Lake Whatcom Management Program partners.

2. Problem to be solved:
Whatcom County currently provides base funding for the Lake Whatcom Management Program (LWMP) with a combination of Flood Control Zone District, Real Estate Excise taxes, and state grants. The needs of the LWMP exceed the level of service that is offered throughout the County for water management services and therefore, exceeds the available funds that can be reasonably provided by the Flood Control Zone District. The County Council established the Lake Whatcom Stormwater Utility to fund services above the base level provided county-wide. Furthermore, these fees will establish more funding equity between residents who live in the incorporated portion of the Lake Whatcom watershed and those that live in the unincorporated portion. Residents within the City of Bellingham pay into a stormwater utility that funds the City’s share of the cost of the LWMP and those in the unincorporated portion do not. Some people also believe that residents who live in the Lake Whatcom watershed have a greater impact on the lake and should pay a higher cost for that impact than county residents in general.

3a. Options / Advantages:
This funding is needed for establishing the funding alternatives of the newly-formed utility. Without this funding, it will not be possible to establish fees and provide the funding needed for implementation of the Lake Whatcom Management Program.

3b. Cost savings:
Establishing the funding mechanism and fee roll will provide the funding that was requested by the County Council.

4a. Outcomes:
Funding will be provided to implement the Lake Whatcom Management Program.

4b. Measures:

Monday, January 29, 2018
### Supplemental Budget Request

**Status:** Pending

<table>
<thead>
<tr>
<th>Public Works</th>
<th>Stormwater</th>
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</thead>
<tbody>
<tr>
<td><strong>Fund</strong> 123</td>
<td><strong>Cost Center</strong> 123201</td>
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</table>

Establishment of the fee rolls.

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

Public Works staff will need to work with staff at the Treasurer’s Office to establish the fee rolls and begin fee collection.

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

Gary Stoyka, Public Works Department

6. **Funding Source:**

Stormwater Fund (123); $135,000
MEMO:

TO: Whatcom County Council
DATE: January 19, 2018
FROM: Tawni Helms, Administrative Coordinator
RE: EDI Application – Housing Affordable

Whatcom County has agreed to sponsor the request for additional Economic Development Investment (EDI) funding for the Homes Affordable through Workforce program. The EDI funding will be used for impact fees and public utility charges that are directly related to construction of housing affordable at or below 80 percent of the area median income.

Background and Purpose:
In 2011, Whatcom County Council approved the EDI board recommendation of $1.2 million made through the Economic Development Investment Board in support of the Homes Affordable through Workforce (HAFTW) Program. Since 2011 the program has funded 80 loans and leveraged at least $20M in economic development by creating over $18M in taxable residential property while the entire $1.2 million is being used by cities to construct public facilities (utilities, roads, etc.) that are eligible for RCW 8214.370 sales tax revenue.

On December 12, 2017 the EDI Board recommended additional funding in the amount of $500K to continue the HATFW program.

Funding Amount and Source:
Funding for this project will come from the Public Utilities Improvement EDI Loan Fund
Supplemental Budget Request

Non-Departmental

Supp ID #  2534  Fund  332  Cost Center  332213  Originator:  T. Helms

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

Name of Request: Housing Affordable Impact Fee Loan Program

X

Department Head Signature (Required on Hard Copy Submission)  Date  2/1/18

Costs:

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<td></td>
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1a. Description of request:

In 2011, Whatcom County Council approved a $1.2M funding recommendation made through the Economic Development Investment Board in support of the Homes Affordable through Workforce Program (HAFTW). The EDI funding was used to support low income housing through a impact fee loan program. Results since 2011 include:

* $1.2 million invested in Housing Affordable for the Workforce, sending $1.2 million from EDI to cities to build public facilities (through impact fee loans)
* 80 homes have applied have applied for funds so far, resulting in taxable real estate in excess of $18 million
* 80 homebuyers will have accessed over $12 million in mortgage financing at favorable terms
* Homebuyers and their families contributed over $2.3 million in "sweat equity" downpayments
* $67,000 in loan payments have been received by the County so far, after the resale of four homes.

1b. Primary customers:

Whatcom County citizens, developers, and city governments

2. Problem to be solved:

The County’s HAFTW program was funded from local RCW 82.14.370 sales tax revenue, known locally as the Economic Development Investment (EDI) Program. The original $1.2M will soon be fully expended. New HAFTW funding will reserve more EDI funding for cities to invest in the construction of public facilities while simultaneously catalyzing the construction of new homes. Doing so will allow more families in Whatcom County the chance to afford their home because their monthly housing costs will be less than the normal market rate.

3a. Options / Advantages:

The other option is to no longer fund the HAFTW. Continuing to fund the HATFW will leverage the

3b. Cost savings:

N/A

4a. Outcomes:

If EDI invests another $500k the County can expect 30 homes or more will get built, based on impact fees averaging $15,000 per home. The taxable value of 30 or more homes will exceed $7.5 million.

4b. Measures:

Loans will be granted as new affordable homes are built.

5a. Other Departments/Agencies:

No.

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

Wednesday, January 31, 2018

Rpt: Rpt Suppl Regular

567
Supplemental Budget Request

Non-Departmental

<table>
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<td>2534</td>
<td>332</td>
<td>332213</td>
<td>T. Helms</td>
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</tbody>
</table>

N/A

6. **Funding Source:**
   Public Utilities Improvement Fund
MEMO:

TO: Whatcom County Council
DATE: January 31, 2018
FROM: Tawni Helms, Administrative Coordinator
RE: EDI Application – Northwest Washington Fair – Ag Center

Whatcom County has agreed to sponsor the request for additional Economic Development Investment (EDI) funding for the Northwest Washington Fair – Agricultural Center. The EDI funding will be used for construction of a new facility to promote agriculture on an ongoing basis.

Background and Purpose:
On December 12, 2017 the EDI Board recommended funding in support for the proposed construction of a new facility to house an agricultural center comprised of exhibits areas, various food processing equipment, a commercial kitchen and meeting and conference room spaces to be used for agricultural education.

Washington State University is the funding sponsor and recipient. They a project partner and intend to be a tenant occupant of the proposed facility.

Funding Amount and Source:
Funding for this project will come from the Public Utilities Improvement EDI Loan Fund
Supplemental Budget Request

Non-Departmental

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

Name of Request: NW Washington Fair Agricultural Center

X

Department Head Signature (Required on Hard Copy Submission)  Date: 2/1/19

Costs:

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1a. Description of request:

The Whatcom County Economic Development Investment Board has recommended for fund the Northwest Washington Fair Ag Center Project; a multi-purpose agricultural educational facility. Whatcom County has a strong community of agricultural producers. This project is meant to promote agriculture on an ongoing basis, year-round, and on a larger scale than is currently done at the annual fair. The goal is to create connections and build the ag community by showcasing to the general public and supporting agriculture on into the future. The building that is being proposed is 40,000 square feet, with the first floor housing exhibits: various food processing equipment, and a commercial kitchen. The second floor would be for education (meeting/classroom) space for WSU Extension.

1b. Primary customers:

Whatcom County residents and the statewide agricultural community.

2. Problem to be solved:

Inadequate space to provide agricultural education and programming. The construction of a new Agricultural Educational Facility will provide a place where visitors will come to understand the critical connection between land, water and air for the food we eat. This multi-purpose facility will also provide the community with space for other exhibits, meetings, banquets and conventions.

3a. Options / Advantages:

The EDI Board considered and approved funding for this project.

3b. Cost savings:

The project sponsors have successfully applied for State Funding through the Department of Commerce and are also soliciting private donations and contributions to fully fund the project.

4a. Outcomes:

4b. Measures:

After construction, success can be measured by the volume of visitors over the next twelve months. Identifying new varieties of crops and added acreage and long term viability for threatened agricultural industries.

5a. Other Departments/Agencies:

No.

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

N/A

6. Funding Source:

Public Utilities Improvement Fund

Thursday, February 01, 2018
MEMO TO: Jack Louws, County Executive  
FROM: Rob Ney, Project and Operations Manager  
DATE: January 29, 2018  
RE: Supplemental Budget Request – Courthouse Security Contract

Requested Action

Please allow this memo to serve as a request for approval of the accompanying Budget Supplemental for the proposed Courthouse Security Contract. This supplemental request will provide adequate funding and spending authority to implement the Contract for Courthouse Security Screening Services.

Background and Purpose

Whatcom County implemented security screening services in 2005 and continues to provide these services for visitors who need to access the basement and floors 2 through 6. In addition to daily screening services, security also provides for scheduled afterhours meetings, such as Teen Court, Elections and Council Meetings and patrols the Courthouse parking lots.

Whatcom County recently solicited proposals from Security companies that provide security services. The increase will fund the negotiated contract, scheduled evening meetings and a 3% increase each year.

Funding Amount and Source

Facilities Management currently has $130,000 in the 507160 budget for security screening services. The proposed contract increases our budget authority by $30,000 for a total of $160,000 budget authority. This will cover the contract amount, afterhours meetings and any unforeseen security requests.

Should you have any questions, do not hesitate to contact me at x5387.
Supplemental Budget Request

Administrative Services

Status: Pending

Fund 507  Cost Center 507160  Originator: Rob Ney

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

Name of Request: Courthouse Security Screening Services

Department Head Signature (Required on Hard Copy Submission)  Date

X  2/1/18

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1a. Description of request:
In 2005, Whatcom County implemented security screening procedures at the Courthouse in an effort to increase safety for both the public and Courthouse employees. When visitors enter the Whatcom County Courthouse and need to access the basement or floors two through six they will pass through a security screening process similar to what one might expect in an airport. The Courthouse entrance doors are open to the public from 7:30 a.m. until 5:00 p.m. on normal business days. During these hours, the screening station will be operating next to the elevators on the main floor. Visitors will be required to pass through the magnetometer (metal detector) and belongings will be inspected with x-ray screening equipment.
Whatcom County recently solicited proposals from Security companies that provide security services. This increase will fund the negotiated contract, scheduled evening meetings and a 3% increase each year.

1b. Primary customers:
The Courts, Judges, Staff and clients of the Courts and the Public that utilize the Courthouse.

2. Problem to be solved:
Whatcom County recently solicited Requests for Proposals for Security Screening services, and after reviewing each proposal, has selected a qualified firm to provide this service. The cost proposal for the selected company exceeds our budget capacity and spending authority. Therefore, additional budget capacity will need to be provided to execute this contract.

3a. Options / Advantages:
The proposal and costs associated with this request were a result of a RFQ process, consistent with the County's purchasing policy.
To approve the additional budget and execute a contract for the services requested. These services protect our employees, customers and Court system.

3b. Cost savings:

4a. Outcomes:
If adequate budget is provided, a contract will be executed for the Security Screening services.

4b. Measures:
A contract will be executed between the vendor and the County.

5a. Other Departments/Agencies:
All patrons of the Courthouse benefit from the Security Screening service.
All County Courthouse Departments, Divisions, and the Court system benefit from this service.

Wednesday, January 31, 2018

Rpt: Rpt Suppl Regular
5b. Name the person in charge of implementation and what they are responsible for:
   Rob Ney, Project & Operations Manager

6. Funding Source:
   Current Expense

**Supplemental Budget Request**

<table>
<thead>
<tr>
<th>Administrative Services</th>
<th>Facilities Management</th>
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<tr>
<td>Supp # 2531 Fund 507</td>
<td>Cost Center 507160</td>
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<tr>
<td>Originator: Rob Ney</td>
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</table>

*Wednesday, January 31, 2018*
MEMO TO: Jack Louws, County Executive
FROM: Rob Ney, Project and Operations Manager
DATE: January 29, 2018
RE: Supplemental Budget Request – Extra Help Labor

Requested Action
Please allow this memo to serve as a request for approval of the accompanying Budget Supplemental for Extra Help Labor for Facilities Management.

Facilities is asking for $53,000 to fund an extra help technician and an additional on-call office clerk, when needed.

Background and Purpose
Facilities goal is to respond quicker to work order requests and begin populating our preventative maintenance program. Additionally, it is our goal to expand our scope of services to our Customers (other County departments). With this additional labor, we could provide these improved services and perform more in-house work, lessening the amount of work provided by outside vendors.

Funding Amount and Source
Funding would be from the General Fund and in the future be part of the Square Footage rates billed to the departments for Administrative Services Facilities services provided.

Should you have any questions, do not hesitate to contact me at x5387.
Supplemental Budget Request

Administrative Services

Supp’t ID #: 2544  Fund: 507  Cost Center: 50791  Originator: Rob Ney

Expenditure Type: Ongoing  Year 1  2017  Add’l FTE  Add’l Space  Priority 1

Name of Request: Extra Help

X

Department Head Signature (Required on Hard Copy Submission)  Date: 2/1/18

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</table>

1a. Description of request:
Facilities Management is in need of additional labor capacity. As Facilities and the Executive determine the long term labor plan, extra help can be utilized to provide additional capacity. The additional labor would allow Facilities to respond quicker to work orders, and expand the services we provide to better serve our customers.

1b. Primary customers:
County Departments that receive Facilities Maintenance services.

2. Problem to be solved:
It is the goal of Facilities Management to expand our scope of services and better respond to our customer’s needs. In order to accomplish this goal, we need excess labor capacity. This proposal is low cost solution as the greater plan is developed.

3a. Options / Advantages:
Continue to provide fewer services, and respond to work orders less timely.
To approve the additional budget capacity. This would allow Facilities to provide better customer service to our customers (County departments).

3b. Cost savings:
Extra help is less expensive than permanent employees.

4a. Outcomes:
If adequate budget is provided, Facilities strives to respond quicker to work orders. In addition, a high priority of Facilities Maintenance is to begin populating our preventative maintenance plan. Lastly, it is believed the additional labor capacity could lessen the amount of outside vendors needed to perform work.

4b. Measures:
If budget capacity is approved, a new extra help position should immediately lessen our lag time in responding to work orders.

5a. Other Departments/Agencies:
The impacts would be positive and immediate. There would be much faster response to work order requests.

5b. Name the person in charge of implementation and what they are responsible for:
All County departments receiving assistance from Facilities Management would be impacted in a positive manner. It is believed that with additional labor, Facilities could respond to work order quicker, could begin populating and formulating our preventative maintenance plan, and expand the services we provide, possibly lessening the amount of outside vendors we need to hire to perform work.

6. Funding Source:

Wednesday, January 31, 2018

Rpt: Rpt Suppl Regular 575
### Supplemental Budget Request

<table>
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<td><strong>Cost Center 50791</strong></td>
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Administrative Services Fund Balance

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**Wednesday, January 31, 2018**

Rpt: Rpt Suppl Regular
**WHATCOM COUNTY COUNCIL AGENDA BILL**

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<th>CLEARANCES</th>
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**EXECUTIVE: 2.6.18**

**TITLE OF DOCUMENT:**
Amendment No. 2 to Ordinance No. 2011-031 Establishing Project Budget No. 2 (Jail Improvement Project) of the 2011 Budget

**ATTACHMENTS:**
1. Ordinance
2. Exhibit A
3. Supplemental Budget Request

**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.)

Requesting Council approval for additional budget authority of $311,000 to be added to the project budget for Fund 337 – 2010 Jail Improvement Fund. Budget will be used to fund design of additional items requested at the November 28, 2017 Stakeholders charrette and presented to Council on January 30, 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](http://www.co.whatcom.wa.us/council).
ORDINANCE NO. ________

AMENDMENT NO. 2 TO ORDINANCE NO. 2011-031 ESTABLISHING PROJECT BUDGET NO. 2 (JAIL IMPROVEMENT PROJECT) OF THE 2011 BUDGET

WHEREAS, Ordinance 2011-031 established the project budget for jail improvements, including the replacement of jail and juvenile detention center controls, and Phases 1A and 1B of the Design2Last contract, which resulted in building assessments, detailed investigations, project scopes and cost reports for improvements needed on the Jail and Work Center; and

WHEREAS, additional funding of $350,000 was approved in Amendment No. 1 to Ordinance No. 2018-003 for Phase 2 (design) and Phase 3 (construction) of selected improvement projects, and

WHEREAS, design of additional items totaling $311,000 was approved by the Council on January 30, 2018, and

WHEREAS, the additional design will be funded by a transfer from the General Fund,

NOW, THEREFORE, BE IT ORDAINED by the Whatcom County Council that Ordinance 2011-031 is hereby amended by adding $311,000 of expenditure authority, as described in Exhibit A, to the current amended project budget of $3,467,700, for a total amended project budget of $3,778,700.

ADOPTED this ____ day of ____________________, 2018.

ATTEST: WHATCOM COUNTY COUNCIL

Dana Brown-Davis, Council Clerk WHATCOM COUNTY, WASHINGTON

Rud Browne, Chair of the Council

APPROVED AS TO FORM: ( ) Approved ( ) Denied

Jack Louws, County Executive

Date: ____________________
### EXHIBIT A

**JAIL IMPROVEMENT FUND - FUND 337**

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<th>Description</th>
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<th>Amendment #2 to Ord. 2011-031</th>
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</table>
MEMO TO: Jack Louws, County Executive
FROM: Rob Ney, Project and Operations Manager
DATE: January 29, 2018
RE: Supplemental Budget Request – Design2Last Contract

Requested Action
Please allow this memo to serve as a request for approval of the accompanying Budget Supplemental for an amended Design2Last contract. This amendment is for the additional scope items requested at the Stakeholders charrette on November 28th, and presented to Council on January 30th. The supplemental will provide budget authority for the items listed in Design2Lasts' January 17th proposal.

We are asking for an additional $311,000 to fund these additional services and increased scope of work.

Background and Purpose
The Design2Last Contract was approved by the Council on November 8th. The existing contract was to address items to extend the life of the jail 5-7 years, with the understanding that a new jail was to be built. On November 28th a design Charrette was held, and at that meeting it was discussed that additional work should be considered to extend the life of the jail beyond the 7 year time period. This additional funding would authorize a contract to implement these longer range improvements.

Funding Amount and Source
Adequate funds exist within the Capital Project Fund, which was increased to $7,000,000 for the 2018 budget.

Should you have any questions, do not hesitate to contact me at x5387.
Supplemental Budget Request

Administrative Services  Facilities Management

Fund 337  Cost Center 337100  Originator: Rob Ney

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

Name of Request: Design2Last Jail Contract

Department Head Signature (Required on Hard Copy Submission) Date

Costs:  Object  Object Description  Amount Requested

6630  Professional Services  $311,000
8301  Operating Transfer In  ($311,000)

Request Total  $0

1a. Description of request:
Design2Last has been retained to prepare construction plans for proposed jail improvements. The current contract has been amended several times, to increase the scope of work and services needed by the design team. In light of the failed jail ballot, the Stakeholders recommend additional improvements to the existing jail which will extend the useful life of the jail.

1b. Primary customers:
The Sheriff's office, patrons of the jail, and Facilities maintenance staff.

2. Problem to be solved:
The current jail needs operational improvements (such as HVAC and lighting). Most of these improvements seemed unnecessary if a new jail was to be built in the near future. Now that a new jail is not likely, it is recommended that we address these issues to extend the useful life of the facility.

3a. Options / Advantages:
The jail ballot was a practical solution to replacing the aging jail facility. However, that proposal was not approved by the voters. To approve the additional budget and execute a contract for the services requested. These services protect our employees, customers and Court system.

3b. Cost savings:

4a. Outcomes:
If adequate budget is provided, a Change Order and revised Contract will be executed with Design2Last for these new design services.

4b. Measures:
A contract will be executed between the vendor and the County.

5a. Other Departments/Agencies:
The positive impacts of approving the ASR and Contract with Design2Last will be realized by the Sherriff's Office, Facilities Management, and Finance. All patrons of the jail, the Sherriff's office and Facilities Management will benefit from these improvements.

5b. Name the person in charge of implementation and what they are responsible for:
Rob Ney, Project & Operations Manager

6. Funding Source:
General Fund

Wednesday, January 31, 2018