### WHATCOM COUNTY COUNCIL AGENDA BILL

<table>
<thead>
<tr>
<th>CLEARANCES</th>
<th>Initial</th>
<th>Date</th>
<th>Date Received in Council Office</th>
<th>Agenda Date</th>
<th>Assigned to:</th>
</tr>
</thead>
<tbody>
<tr>
<td>Originator:</td>
<td></td>
<td>2/21/2018</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Division Head:</td>
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</tr>
<tr>
<td>Dept. Head:</td>
<td></td>
<td>2/21/18</td>
<td></td>
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<tr>
<td>Prosecutor:</td>
<td></td>
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<tr>
<td>Purchasing/Budget:</td>
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</tr>
<tr>
<td>Executive:</td>
<td></td>
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</tr>
</tbody>
</table>

### TITLE OF DOCUMENT:
Presentation from WWU Small Business Development Center

### ATTACHMENTS:

### SEPA review required? ( ) Yes ( ) No  
SEPA review completed? ( ) Yes ( ) No

### Should Clerk schedule a hearing? ( ) Yes ( ) No

### Requested Date:

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

### COMMITTEE ACTION:

### COUNCIL ACTION:

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

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

**NO. ab2018-066**

<table>
<thead>
<tr>
<th>CLEARANCES</th>
<th>Initial</th>
<th>Date</th>
<th>Date Received in Council Office</th>
<th>Agenda Date</th>
<th>Assigned to:</th>
</tr>
</thead>
<tbody>
<tr>
<td>Originator:</td>
<td></td>
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<td>Dept. Head:</td>
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<td>Prosecutor:</td>
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<td>Purchasing/Budget:</td>
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<tr>
<td>Executive:</td>
<td></td>
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</table>

**TITLE OF DOCUMENT:** Department Updates to Council

**ATTACHMENTS:**

<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></td>
<td></td>
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</tbody>
</table>

**SUMMARY STATEMENT OR LEGAL NOTICE LANGUAGE:**

1/16/2018

1/30/2018
2/13/2018  Public Works & Health  Public Works
Finance & Admin Servs  Finance

2/27/2018  Criminal Justice and Public Safety  Sheriff's Office

3/13/2018  Financial Services  Human Resources
3/27/2018  Natural Resources  WSU Ext.
4/10/2018  Planning & Development  PDS
Finance & Admin Servs  IT

4/24/2018  Criminal Justice and Public Safety  District Court Probation
5/8/2018  Finance & Admin Servs  Facilities
Public Works & Health  Public Works
5/22/2018  Finance & Admin Servs  Finance

6/5/2018
6/19/2018  Natural Resources  Parks & Recreation
Criminal Justice and Public Safety  Juvenile Court

7/10/2018  Finance & Admin Servs  Prosecuting Attorney
7/24/2018  Finance & Admin Servs  IT
Criminal Justice and Public Safety  Public Defender

8/7/2018  Finance & Admin Servs  Finance
Public Works & Health  Public Works
9/11/2018
9/25/2018  Criminal Justice and Public Safety  Superior Court
Criminal Justice and Public Safety  District Court
10/9/2018  Finance & Admin Servs  Human Resources
10/23/2018  Planning & Development  PDS
11/7/2018  (Wed)  Natural Resources  Parks & Recreation
11/20/2018  Finance & Admin Servs  Finance
Finance & Admin Servs  Facilities
12/4/2018  Finance & Admin Servs  IT
Public Works & Health  Public Works
TITLE OF DOCUMENT: 2018 Supplemental Budget Request #4

ATTACHMENTS: Ordinance, Memoranda & Budget Modification Requests

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

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.

From the Road Fund:
8. To appropriate $175,000 to fund Lummi Island Timber Dolphin repair.

From the Stormwater Fund:
9. To appropriate $135,000 to fund establishment of Lake Whatcom Stormwater Utility funding mechanism.

From the Public Utilities Improvement Fund:
10. To appropriate $500,000 in Non-Departmental to continue funding Homes Affordable through Workforce Program.
11. To appropriate $470,000 in Non-Departmental to fund NW Washington Fair Ag Center.

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:
2/13/2018: Introduced 7-0
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>General Fund</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Non Departmental</td>
<td>44,000</td>
<td></td>
<td>44,000</td>
</tr>
<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>Total General Fund</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>Total Supplemental</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

WHATCOM COUNTY COUNCIL
WHATCOM COUNTY, WASHINGTON

Rud Browne, Chair of the Council

APPROVED AS TO FORM:

Civil Deputy Prosecutor

( ) Approved       ( ) Denied

Jack Louws, County Executive

Date: ___________________
### Summary of the 2018 Supplemental Budget Ordinance No. 4

<table>
<thead>
<tr>
<th>Department/Fund</th>
<th>Description</th>
<th>Increased (Decreased) Expenditure</th>
<th>(increased) Decreased Revenue</th>
<th>Net Effect to Fund Balance (increase) Decrease</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>General Fund</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Non Departmental</td>
<td>To fund increased Washington State Association of Counties dues.</td>
<td>14,000</td>
<td>-</td>
<td>14,000</td>
</tr>
<tr>
<td>Non Departmental</td>
<td>To fund transfer for increases in Courthouse Security contract.</td>
<td>30,000</td>
<td>-</td>
<td>30,000</td>
</tr>
<tr>
<td>Sheriff</td>
<td>To fund cold weather motorcycle gear from grant proceeds.</td>
<td>1,675</td>
<td>(1,675)</td>
<td>-</td>
</tr>
<tr>
<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>
<td>-</td>
</tr>
<tr>
<td>Sheriff</td>
<td>To fund deputy participation in Organized Crime Drug Enforcement Task Force investigations. (Contract RL-17-0023)</td>
<td>2,500</td>
<td>(2,500)</td>
<td>-</td>
</tr>
<tr>
<td>Sheriff</td>
<td>To re-appropriate funding for personnel ID badge equipment.</td>
<td>9,774</td>
<td>-</td>
<td>9,774</td>
</tr>
<tr>
<td>WSU Extension</td>
<td>To fund increase in Strengthening Families program.</td>
<td>29,000</td>
<td>(20,000)</td>
<td>-</td>
</tr>
<tr>
<td><strong>Total General Fund</strong></td>
<td></td>
<td>89,449</td>
<td>(26,675)</td>
<td>53,774</td>
</tr>
<tr>
<td><strong>Road Fund</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>To fund Lummi Island Timber Dolphin repair.</td>
<td></td>
<td>175,000</td>
<td>-</td>
<td>175,000</td>
</tr>
<tr>
<td><strong>Stormwater Fund</strong></td>
<td>To fund establishment of Lake Whatcom Stormwater Utility funding mechanism.</td>
<td>135,000</td>
<td>-</td>
<td>135,000</td>
</tr>
<tr>
<td><strong>Public Utilities Improvement Fund</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Non Departmental</td>
<td>To continue funding Homes Affordable through Workforce Program.</td>
<td>500,000</td>
<td>-</td>
<td>500,000</td>
</tr>
<tr>
<td>Non Departmental</td>
<td>To fund NW Washington Fair Ag Center.</td>
<td>470,000</td>
<td>-</td>
<td>470,000</td>
</tr>
<tr>
<td><strong>Total Public Utilities Improvement Fund</strong></td>
<td></td>
<td>970,000</td>
<td>-</td>
<td>970,000</td>
</tr>
<tr>
<td><strong>Administrative Services Fund</strong></td>
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<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Facilities</td>
<td>To fund increased Courthouse Security contract from General Fund transfer.</td>
<td>30,000</td>
<td>(30,000)</td>
<td>-</td>
</tr>
<tr>
<td>Facilities</td>
<td>To fund extra help labor.</td>
<td>53,000</td>
<td>-</td>
<td>53,000</td>
</tr>
<tr>
<td><strong>Total Administrative Services Fund</strong></td>
<td></td>
<td>83,000</td>
<td>(30,000)</td>
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<td><strong>Total Supplemental</strong></td>
<td></td>
<td>1,443,449</td>
<td>(56,675)</td>
<td>1,386,774</td>
</tr>
</tbody>
</table>
Supplemental Budget Request

Non-Departmental

Supp ID #: 2548  Fund 1  Cost Center 4530  Originator: M Caldwell

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

Name of Request: Trf to fund Courthouse Security contract

Department Head Signature (Required on Hard Copy Submission)  Date: 2-6-18

<table>
<thead>
<tr>
<th>Costs:</th>
<th>Object</th>
<th>Object Description</th>
<th>Amount Requested</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>8351.507</td>
<td>Operating Transfer Out</td>
<td>$30,000</td>
</tr>
</tbody>
</table>

Request Total: $30,000

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
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.
Supplemental Budget Request

Non-Departmental

Supp ID # 2599  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

Department Head Signature (Required on Hard Copy Submission)  Date 2-6-18

Costs:

<table>
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<th>Object</th>
<th>Object Description</th>
<th>Amount Requested</th>
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<tbody>
<tr>
<td>7115</td>
<td>Membership &amp; Assoc Dues</td>
<td>$14,000</td>
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<tr>
<td>Request Total</td>
<td></td>
<td>$14,000</td>
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</table>

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 curent 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
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

Sheriff Operations

Status: Pending

Suppl ID # 2535

Fund 1 Cost Center 1003512001 Originator: Dawn Pierce

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

X

Department Head Signature (Required on Hard Copy Submission)

Date 1/30/18

Costs:

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<th>Object Description</th>
<th>Amount Requested</th>
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</thead>
<tbody>
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<td>Traffic Safety</td>
<td>($1,675)</td>
</tr>
<tr>
<td>6320.001</td>
<td>Office &amp; Op Supplies</td>
<td>$1,675</td>
</tr>
</tbody>
</table>

Request Total $0

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.
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

Supp# ID # 2537  

<table>
<thead>
<tr>
<th>Fund</th>
<th>Cost Center</th>
<th>Originator</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>1003516001</td>
<td>Dawn Pierce</td>
</tr>
</tbody>
</table>

Expenditure Type: One-Time  
Year: 2018  
Add'l FTE: No  
Add'l Space: No  
Priority: 1

Name of Request: OCDETF 2018 DEA #RL-16-0014

Department Head Signature (Required on Hard Copy Submission)

Date: 1/31/18

<table>
<thead>
<tr>
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<th>Object Description</th>
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</thead>
<tbody>
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<td>4342.1013</td>
<td></td>
<td>Reimb Drug Enforcement</td>
<td>($2,500)</td>
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<tr>
<td>6140</td>
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<td>Overtime</td>
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<tr>
<td>6210</td>
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<td>Retirement</td>
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<tr>
<td>6230</td>
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<td>Social Security</td>
<td>$165</td>
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<tr>
<td>6259</td>
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<td>Worker's Comp-Interfund</td>
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<tr>
<td>6269</td>
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<td>Unemployment-Interfund</td>
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</tr>
<tr>
<td>Request Total</td>
<td></td>
<td></td>
<td>$0</td>
</tr>
</tbody>
</table>

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.

Wednesday, January 31, 2018

Rpt: Rpt Suppl Regular

13
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

Sheriff

Operations

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<th>Dawn Pierce</th>
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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.
MEMORANDUM

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

Suppl ID #: 2536  Fund: 1  Cost Center: 2900  Originator: Dawn Pierce

Expenditure Type: One-Time  Year: 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

1. 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
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 $6000 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

Thursday, February 01, 2018
Supplemental Budget Request

WSU Extension

Supp1 ID # 2542  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

Public Works

Engineering Bridge & Hydraulic

Fund 108  Cost Center 918011  Originator: James Lee

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

Name of Request: 2018 Lummi Island Timber Dolphin Repair

Department Head Signature (Required on Hard Copy Submission)  Date 1/26/18

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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...
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

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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

Fund 123
Cost Center 123201
Originator: Cathy Craver

Stormwater

Expenditure Type: One-Time
Year 2 2018
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

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Request Total: $135,000

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
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

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

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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 then the normal market rate.

3a. Options / Advantages:
The other option is to no longer fund the HAFTW. Continuing to fund the HAFTW 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 impactfees 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
## Non-Departmental

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<td>T. Helms</td>
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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

Suppl'ID # 2545  Fund 332  Cost Center 332236  Originator: T. Helms

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

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<tr>
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<td></td>
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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

Name of Request: Courthouse Security Screening Services

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.
Supplemental Budget Request

Status: Pending

<table>
<thead>
<tr>
<th>Administrative Services</th>
<th>Facilities Management</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Supp ID #</strong> 2531</td>
<td><strong>Fund</strong> 507</td>
</tr>
<tr>
<td></td>
<td><strong>Cost Center</strong> 507160</td>
</tr>
<tr>
<td></td>
<td><strong>Originator:</strong> Rob Ney</td>
</tr>
</tbody>
</table>

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

Rob Ney, Project & Operations Manager

6. **Funding Source:**

Current Expense

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.
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 a 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*
# Supplemental Budget Request

**Status:** Pending

<table>
<thead>
<tr>
<th>Administrative Services</th>
<th>Facilities Management</th>
</tr>
</thead>
<tbody>
<tr>
<td>Supp1 ID # 2544</td>
<td><strong>Fund</strong> 507</td>
</tr>
<tr>
<td></td>
<td><strong>Cost Center</strong> 50791</td>
</tr>
<tr>
<td></td>
<td><strong>Originator:</strong> Rob Ney</td>
</tr>
</tbody>
</table>

Administrative Services Fund Balance

*Wednesday, January 31, 2018*
**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

**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:**
2/13/2018: 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.
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 Design/Build 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: 

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: ____________________
## EXHIBIT A

### JAIL IMPROVEMENT FUND - FUND 337

<table>
<thead>
<tr>
<th>Account</th>
<th>Description</th>
<th>Current Amended</th>
<th>Amendment #2 to Ord. 2011-031</th>
<th>Total Amended Project Budget</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Expenditures</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>6630</td>
<td>Professional Services</td>
<td>$350,000</td>
<td>$311,000</td>
<td>$661,000</td>
</tr>
<tr>
<td>7380</td>
<td>Other Improvements</td>
<td>$3,117,700</td>
<td>$0</td>
<td>$3,117,700</td>
</tr>
<tr>
<td></td>
<td></td>
<td><strong>$3,467,700</strong></td>
<td><strong>$311,000</strong></td>
<td><strong>$3,778,700</strong></td>
</tr>
<tr>
<td><strong>Revenues</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>8210</td>
<td>Build America Bonds</td>
<td>$3,012,840</td>
<td>$0</td>
<td>$3,012,840</td>
</tr>
<tr>
<td>8301.326</td>
<td>Operating Transfer in - REET 1</td>
<td>$104,860</td>
<td>$0</td>
<td>$104,860</td>
</tr>
<tr>
<td>8301</td>
<td>Operating Transfer In - Gen Fund</td>
<td>$350,000</td>
<td>$311,000</td>
<td>$661,000</td>
</tr>
<tr>
<td></td>
<td></td>
<td><strong>$3,467,700</strong></td>
<td><strong>$311,000</strong></td>
<td><strong>$3,778,700</strong></td>
</tr>
</tbody>
</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

Supp1 ID #: 2541  
Fund: 337  
Cost Center: 337100

Facilities Management

Originator: Rob Ney

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

Name of Request: Design2Last Jail Contract

X

Department Head Signature (Required on Hard Copy Submission)

2/1/18

Date

Costs:

<table>
<thead>
<tr>
<th>Object</th>
<th>Object Description</th>
<th>Amount Requested</th>
</tr>
</thead>
<tbody>
<tr>
<td>6630</td>
<td>Professional Services</td>
<td>$311,000</td>
</tr>
<tr>
<td>8301</td>
<td>Operating Transfer In</td>
<td>($311,000)</td>
</tr>
<tr>
<td><strong>Request Total</strong></td>
<td></td>
<td><strong>$0</strong></td>
</tr>
</tbody>
</table>

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
TITLE OF DOCUMENT: Contract Amendment #3 for Services Agreement – Building Assessment Studies and Cost Estimates for Capital Improvements at the Jail (Public Safety Building) and Work Center.

ATTACHMENTS:
Proposed Contract Amendment #3 Documents

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.)

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.
MEMO TO: Jack Louws, County Executive
FROM: Rob Ney, Project and Operations Manager
DATE: February 13, 2018
RE: Amended Design2Last Contract with Expanded Scope Items

Requested Action

Please allow this memo to serve as a request for approval of the attached contract amendment for Design2Last. This amendment is for the additional scope items requested at the Stakeholders charrette on November 28, 2017, and presented to Council on January 30th. There is an accompanying Budget Supplemental Request being considered by Council for this Contract Amendment.

This Contract Amendment is for an additional $310,322.

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.

On January 31st, Council directed staff to prepare a contract amendment for consideration. The attached contract amendment is for 18 additional scope items, outlined in the attached summary from Design2Last, dated February 7, 2018 (the list has 19 tasks, but item #2 was omitted).

It should be noted that these tasks were selected as a result of the design charrette, with the intent of extending the life of the jail. The additional scope items do not solve all of the system or building deficiencies present in the existing jail, but do result in additional operational efficiencies, improve many of the lighting issues, and address improvements to the HVAC system that has reached its useful life. Many of these items were not considered earlier due to the jail ballot, and are very costly. Implementing these costly improvements
was considered not prudent use of the County’s limited resources if a new facility was going to be built in the near future.

Lastly, there are additional “Concept Designs” and “Evaluation/Analysis” items outlined in the January 17, 2018 Design2Last proposal. These items are not being considered with this contract amendment and warrant further discussion. Some of these items will trigger the discussion of improvements to the existing jail vs building a new jail. This is a complex issue that is a policy decision that the Council may want to consider in advance. Upon request, these items can be forwarded to the Criminal Justice Committee for consideration.

**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.
Summary for additional tasks requested. The existing contract changes were intended as temporary “fixes” for ongoing problems in the jail. Many of the identified tasks below are direct and related add-ons to the work we are doing now and therefore make sense to include at this time.

<table>
<thead>
<tr>
<th>#</th>
<th>Task</th>
<th>Problem</th>
<th>Solution</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Revise Laundry room to restrict access to back side of laundry equipment by inmates.</td>
<td>Inmates can get behind laundry eqpt and tamper with connections.</td>
<td>Add barrier to protect back side of laundry equipment</td>
</tr>
<tr>
<td>3</td>
<td>Omit new Disposer at dishwashing station from the new equipment list on the current SOW.</td>
<td>Disposer is misused and causes drainage problems.</td>
<td>Eliminating the unnecessary equipment avoids potential problems</td>
</tr>
<tr>
<td>4</td>
<td>Design the inmate cell locking system such that all electronic locks may be opened simultaneously without having to upgrade the wiring system.</td>
<td>The cell locks will not all open at the same time due to the power configuration.</td>
<td>Review power requirements and provide upgrades to allow all cell doors to open at the same time</td>
</tr>
<tr>
<td>5</td>
<td>Provide a central emergency lighting inverter in lieu of “bug eye” emergency lighting to provide instant-on feature to illuminate facility during the time delay associated with generator start-up.</td>
<td>The inverter system is easier to maintain and more difficult to tamper with. The bug eye system was recommended as a temporary solution but will require more maintenance over a longer period of time.</td>
<td>Provide a central emergency lighting inverter in the location where the abandoned generator is sitting</td>
</tr>
<tr>
<td>6</td>
<td>Remove abandoned Generator.</td>
<td>The generator is taking up space that is needed for the new inverter for the lights listed in task above.</td>
<td>Remove abandoned Generator</td>
</tr>
<tr>
<td>7</td>
<td>Add epoxy floor in Recreation Area</td>
<td>Recreation room floor finish is failing.</td>
<td>We are specifying new epoxy in toilet rooms - it is a low cost item that can be easily added to the contract</td>
</tr>
<tr>
<td>8</td>
<td>Provide additional lighting in sally port and building exterior to comply with code and to provide safe operational light levels where light levels are determined to be inadequate.</td>
<td>Staff feels the lighting is inadequate and unsafe.</td>
<td>Measure light levels and provide additional or new lights where required</td>
</tr>
<tr>
<td>#</td>
<td>Task</td>
<td>Problem</td>
<td>Solution</td>
</tr>
<tr>
<td>----</td>
<td>---------------------------------------------------------------------------------------------------</td>
<td>-------------------------------------------------------------------------------------------------------</td>
<td>---------------------------------------------------------------------------------------------------</td>
</tr>
<tr>
<td>9</td>
<td>Upgrade emergency egress light levels throughout the facility to comply with code. Initial effort</td>
<td>Staff feels the lighting is inadequate and unsafe.</td>
<td>Measure light levels and provide additional or new lights where required</td>
</tr>
<tr>
<td></td>
<td>requires photometric calculations to determine egress light levels.</td>
<td>-------------------------------------------------------------------------------------------------------</td>
<td>---------------------------------------------------------------------------------------------------</td>
</tr>
<tr>
<td>10</td>
<td>Upgrade non-egress lighting for increased light levels beyond code required minimum levels for safe</td>
<td>Staff feels the lighting is inadequate and unsafe.</td>
<td>Measure light levels and provide additional or new lights where required</td>
</tr>
<tr>
<td></td>
<td>operation of the facility based on light level report dated 6/13/14.</td>
<td>-------------------------------------------------------------------------------------------------------</td>
<td>---------------------------------------------------------------------------------------------------</td>
</tr>
<tr>
<td>11</td>
<td>Upgrade interior and exterior lighting to LED to save energy and potentially reduce the load on</td>
<td>Existing lighting is outdated and energy inefficient. New LED's have better light colors and could</td>
<td>Replace existing fixtures and or ballasts from fluorescent to LED</td>
</tr>
<tr>
<td></td>
<td>the generator. Lighting replacement can be new or retrofit kit.</td>
<td>improve the working environment for the jail staff.</td>
<td>---------------------------------------------------------------------------------------------------</td>
</tr>
<tr>
<td>12</td>
<td>Replace existing chiller with new air cooled chiller on upper roof, remove existing cooling tower</td>
<td>All mechanical equipment is past its useful and more likely to experience major failures in the</td>
<td>There have been studies on the chiller which shows it needs replacement</td>
</tr>
<tr>
<td></td>
<td>(on roof) and re-use condenser water piping for chilled water piping between new chiller and</td>
<td>next 5-10 years.</td>
<td>---------------------------------------------------------------------------------------------------</td>
</tr>
<tr>
<td></td>
<td>mechanical room.</td>
<td>-------------------------------------------------------------------------------------------------------</td>
<td>---------------------------------------------------------------------------------------------------</td>
</tr>
<tr>
<td>13</td>
<td>Replace chilled water pumps, condenser water pumps, and heating water pumps and include redundant</td>
<td>All mechanical equipment is past its useful and more likely to experience major failures in the</td>
<td>Equipment cannot be replaced in kind as the building was built around it. New equipment will be</td>
</tr>
<tr>
<td></td>
<td>pumps for all three systems. Currently chilled and condenser water systems are single pump</td>
<td>next 5-10 years.</td>
<td>smaller, reliable, and more efficient.</td>
</tr>
<tr>
<td></td>
<td>systems so the systems go down on loss of single pump due to failure or maintenance. Includes</td>
<td>-------------------------------------------------------------------------------------------------------</td>
<td>---------------------------------------------------------------------------------------------------</td>
</tr>
<tr>
<td></td>
<td>tying all pumping systems to existing Siemens DDC energy management system. If Item 12 is accepted,</td>
<td>-------------------------------------------------------------------------------------------------------</td>
<td>---------------------------------------------------------------------------------------------------</td>
</tr>
<tr>
<td></td>
<td>condenser water pumps will not be required.</td>
<td>-------------------------------------------------------------------------------------------------------</td>
<td>---------------------------------------------------------------------------------------------------</td>
</tr>
<tr>
<td>14</td>
<td>Mitigate noise in the Booking Area by adding control measures.</td>
<td>Booking area is especially loud and disrupts daily operations. It is uncomfortable and therefore</td>
<td>Complete an acoustical survey and provide acoustical treatment recommended by an Acoustical</td>
</tr>
<tr>
<td></td>
<td></td>
<td>difficult for the staff to spend long amounts of time in the space.</td>
<td>consultant</td>
</tr>
</tbody>
</table>


<table>
<thead>
<tr>
<th>#</th>
<th>Task</th>
<th>Problem</th>
<th>Solution</th>
</tr>
</thead>
<tbody>
<tr>
<td>15</td>
<td>Provide ambient noise level alarms as an added security measure.</td>
<td>Often confrontations between inmates can be identified and addressed early if a rise in noise level is detected. The layout of the jail cells inhibits early detection of confrontations.</td>
<td>Measure noise levels and provide ambient noise level alarms.</td>
</tr>
<tr>
<td>16</td>
<td>Provide protection of natural gas line on exterior of the jail and at the courthouse.</td>
<td>The exposed gas lines are a potential vandalism and security risk.</td>
<td>Build a secure enclosure around the location where exposed pipes enter the building.</td>
</tr>
<tr>
<td>17</td>
<td>Design corrective action to prevent water pooling in Sally Port 1</td>
<td>The staff has stated there is a constant pool of water in Sallyport 1.</td>
<td>Investigate the source of water leaks and design solution.</td>
</tr>
<tr>
<td>18</td>
<td>Tuck-point (remove and replace aging existing grout) all CMU joints in and around cells. Specific locations and depth to be determined</td>
<td>Inmates are picking at aged and deteriorated grout between cells and passing contraband thru the openings.</td>
<td>Remove aged and deteriorated grout between cells and replace with new secure grout.</td>
</tr>
<tr>
<td>19</td>
<td>Review generator demand load study to confirm loading of existing emergency power system</td>
<td>Generator capacity is maxed out so nothing new can be added</td>
<td>Review requirements for generator power including requirements for newer equipment being added by tasks above. Remove and/or change items connected to generator power to reduce overloading. i.e. LED lights would reduce the power draw on the generator and might free up some space for other items – could reduce the size of a new generator</td>
</tr>
</tbody>
</table>
**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 - 505090</td>
</tr>
<tr>
<td>Contract or Grant Administrator:</td>
<td>Rob Ney</td>
</tr>
<tr>
<td>Contractor's / Agency Name:</td>
<td>Design2Last</td>
</tr>
</tbody>
</table>

**Is this a New Contract?**
Yes [x] No [ ]

If not, is this an Amendment or Renewal to an Existing Contract? Yes [x] No [ ]

If Amendment or Renewal, (per WCC 3.08.100 (a)) Original Contract #: 201607005-1 & 2

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

If No, include WCC: ________________

(see Whatcom County Codes 3.06.010, 3.08.090 and 3.08.100)

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

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

CFDA#: ________________

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

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

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

If yes, RFP and Bid number(s): 16-13

Contract Cost Center: 337100

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

If YES, indicate exclusion(s) below:
- [x] Professional services agreement for certified/licensed professional.
- □ 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):
$ 913,287.20

This Amendment Amount:
$ 310,332.00

Total Amended Amount:
$ 1,223,619.20

**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:** This contract Amendment #3 is between Whatcom County and design2Last, Inc. is for the Contract Services Agreement, Building Assessment Studies and Cost Estimates for Capital Improvements at the Jail (Public Safety Building) and Work Center.

**Term of Contract:**
1. Prepared by: Dee Ebergson
   Date: 02/13/18
2. Attorney signoff:
   Date: 2/14/18
3. AS Finance reviewed:
   Date: 2/14/18
4. IT reviewed (if IT related):
5. Contractor signed:
   Date: 2/14/18
6. Submitted to Exec.:
   Date: 2/15/18
7. Council approved (if necessary):
   Date: 2/15/18
8. Executive signed:
9. Original to Council:
   Date:

Expiration Date: 12/31/18
CONTRACT AMENDMENT #3
Consultant Services Agreement
Building Assessment Studies and Cost Estimates for Capital Improvements
At the Jail (Public Safety Building) and Work Center

This AMENDMENT is to the Contract made between Whatcom County and design2LAST, inc., June 30th, 2016 and designated "Whatcom County Contract No. 201607005". In consideration of the mutual benefits to be derived, the parties agree to the following:

This amendment adds the eighteen items to the contract language as listed in Exhibit "A" and Compensation Exhibit "B". The total for Amendment #3 is $310,332.00 for a new total of the contract with the amendments will be in the amount of $1,223,619.20 including applicable Washington State Sales Tax. See Exhibit "C" for a defined breakdown on additional services for Phase 2 & 3, Concept Designs and Evaluations & Analysis.

This amendment modifies the original contract termination date to be extended until 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 stated.

IN WITNESS WHEREOF, the parties have executed this Agreement this ___ day of __________, 20__.

CONTRACTOR:

[Signature]

Lauri Strauss, AIA LEED AP BD+C, President & CEO
Design2LAST, inc.

STATE OF _______

) ss

COUNTY OF__________

On this ___ day of February, 2018, before me personally appeared Lauri Strauss, AIA LEED AP BD+C to me know to be the President and CEO at design2LAST, inc. and who executed the above instrument and who acknowledged to me the act of signing and sealing thereof.

[Signature]

Patrick Scanlan

(Printed name)

NOTARY PUBLIC in and for the State of Washington

Notary seal

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  )
    ss
COUNTY OF WHATCOM  )

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

(printed name)
NOTARY PUBLIC in and for the State of __________________________,
residing at ____________________________________________
My commission expires ____________

CONTRACTOR INFORMATION:

design2LAST, inc.

Address:
design2LAST, inc.
543 Main Street, Suite 101
Edmonds, WA 98020

Mailing Address:
543 Main Street, Suite 101
Edmonds, WA 98020

Contact Name:
Lauri Strauss, AIA LEED AP BD&C, President & CEO

Contact Phone:
(425) 673-7269
EXHIBIT “B”

As consideration for the services provided pursuant to SCHEDULE “A” SCOPE OF SERVICES (pages 5 & 6) the County agrees to compensate the contractor five hundred forty-three thousand dollars ($543,000).

Payments will be based on the following milestones:

<table>
<thead>
<tr>
<th>Phase</th>
<th>Milestone</th>
<th>Fee</th>
</tr>
</thead>
<tbody>
<tr>
<td>Phase II</td>
<td>Scope Definition</td>
<td>$24,259</td>
</tr>
<tr>
<td></td>
<td>35% Concept Design</td>
<td>$67,834</td>
</tr>
<tr>
<td></td>
<td>65% Design Development</td>
<td>$62,773</td>
</tr>
<tr>
<td></td>
<td>100% Design Draft</td>
<td>$54,781</td>
</tr>
<tr>
<td></td>
<td>100% Final Bid Documents</td>
<td>$14,453</td>
</tr>
<tr>
<td></td>
<td>Consulting Services During Bidding &amp; Negotiations</td>
<td>$11,114</td>
</tr>
<tr>
<td>Phase III</td>
<td>Construction Administration Services</td>
<td>$75,109</td>
</tr>
<tr>
<td></td>
<td>Total Fee</td>
<td>$310,332</td>
</tr>
</tbody>
</table>

*Refer to Schedule “A” for Scope of Services
Travel Expenses are included in the proposal
**Refer to Schedule “C” for milestone deliverables

Fees
The fees listed above are offered as a lump sum basis. Each task will be invoiced by design2 LAST monthly on a percentage complete basis, and/or upon completion of a task. Upon approval, this work can be added as amendment to our existing contract.
17 January 2018

Garrett Maupin, Construction Coordinator, Whatcom County Facilities Management
316 Lottie Street,
Bellingham, WA 98225

RE: Whatcom County Jail Improvements:
Contract # 201607005 – Phase 2 and 3 Additional Services
Bellingham, WA

Dear Mr. Maupin,

Project Description

design2 LAST was retained by Whatcom County to perform building assessments on the existing Jail, (Public Safety Building) and the existing Work Center – formally known as Phase 1A. Whatcom County then selected ten tasks to further refine in Phase 1B with more detailed scope and costing. Whatcom County, following the recommendation of the team, then decided to proceed with design (Phase 2) and construction (Phase 3) of the scope options recommended in Phase 1B (see Schedule 'B'). A contract for Phase 2 and 3 design and CA services was executed on November 15, 2017.

On November 28, 2017, the design2 LAST team conducted a design charrette in accordance with our contract. During that day-long meeting, we presented and discussed each of the scope options (see Schedule 'B') being developed per our contract for design and construction. During that meeting we also had a conversation about the fact that the voters on November 8, 2017, for the second time rejected a bond to build a new Whatcom County Jail. The stakeholders (see meeting notes from the design charrette dated November 30, 2017 for attendees) wanted to discuss if, and how, that would affect the design2 LAST renovation work on the existing Jail. The existing Jail would now need to function over a longer period of time than the 5-7 year life-cycle identified at the start of design2 LAST’s contract. Many existing system deficiencies, that were understood to be short term challenges, are now potentially bigger problems that will need to be addressed with equipment repair or replacement. The county’s previous decisions to put off making major repairs to ongoing equipment break downs were revisited. Each of the issues identified during that meeting was documented in a list (see attached Schedule 'A1'). They were further refined in a meeting with Whatcom Facilities staff on December 7, 2017, and organized into categories at that time.

Since then, those items have been further refined and detailed by our team and are presented in the attached Excel Workbook. This workbook defines each task, the anticipated deliverable, any exclusions, and is the basis for the enclosed fee proposal.

In summary, our fees are presented thus:
Items 1-20 were identified by Whatcom County as tasks that should be considered by County Council to add to our existing contract. (Items 2 and 20 were eliminated.) Thus, our fees are divided into the same tasks we presented for our current contract and can be added by addendum, with one exception: the schedule to add these new tasks will change to remove the electronic 50% over-the-shoulder review by the County, and replace it with a standard 35% design review. We believe the added scope warrants an earlier and full review of the entire scope with the County.

<table>
<thead>
<tr>
<th>Additional Services for Phase 2 and 3 – ITEMS 1-20*</th>
</tr>
</thead>
<tbody>
<tr>
<td>Phase 2 **</td>
</tr>
<tr>
<td>Milestones**</td>
</tr>
<tr>
<td>Scope Definition</td>
</tr>
<tr>
<td>35% Concept Design</td>
</tr>
<tr>
<td>65% Design Development</td>
</tr>
<tr>
<td>100% Design Draft</td>
</tr>
<tr>
<td>100% Final Bid Documents</td>
</tr>
<tr>
<td>Consulting Services During Bidding and Negotiations</td>
</tr>
<tr>
<td>Phase 3 **</td>
</tr>
<tr>
<td>Construction Administration Services</td>
</tr>
</tbody>
</table>

*Refer to Schedule A for SCOPE OF SERVICES
TRAVEL EXPENSES are included in the proposal
**Refer to Schedule ‘C’ for milestone deliverables

$310,322

Items 21-25 are concept designs and each is presented as a separate fee. Concept design will include information gathering, feasibility discussions with stakeholders, 1-3 design options, opinions of probable cost, and recommendations for proceeding. The County may select any one or a combination of the concept designs; to begin any time over the course of 2018. We will honor these fees through January 2019.

<table>
<thead>
<tr>
<th>CONCEPT DESIGNS – ITEMS 21-25*</th>
</tr>
</thead>
<tbody>
<tr>
<td>21 Provide a code-compliant smoke evacuation system.</td>
</tr>
<tr>
<td>22 Reconfigure the medical office area and add space from the commissary storage room per Phase 1A description.</td>
</tr>
<tr>
<td>23 Provide additional toilet areas for female inmates</td>
</tr>
<tr>
<td>24 Improve staff lockers and restrooms</td>
</tr>
<tr>
<td>25 Provide a design repurposing the existing basement for other correctional space or renovation / reallocation of spaces that are currently in the jail, as if the Sheriff’s office was moved out of this facility. Space could also be provided for other programs not currently housed elsewhere.</td>
</tr>
</tbody>
</table>

*Refer to Schedule A for SCOPE OF SERVICES
Items 26-30 are evaluation and/or analysis studies. These are also each presented with their own fee. These do not include any design work, but may reveal non-compliant code issues that could lead to design of corrective work. Feasibility studies will include reports of findings and opinions of probable cost where they can be estimated. Similar to the concept designs, the county may select any one or a combination of these studies; to begin any time over the course of 2018. We will honor these fees through January 2019.

<table>
<thead>
<tr>
<th>EVALUATIONS AND ANALYSIS - ITEMS 26-30*</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>26 Feasibility study to refurbish existing air handling units in place.</td>
<td>$ 20,936</td>
</tr>
<tr>
<td>27 Confirm condition of Boilers - determine if replacement would provide an acceptable ROI and would be more energy efficient.</td>
<td>$ 12,631</td>
</tr>
<tr>
<td>28 Perform FEMA Seismic Screening (FEMA 154)</td>
<td>$ 27,307</td>
</tr>
<tr>
<td>29 Complete ADA evaluation</td>
<td>$ 76,593</td>
</tr>
<tr>
<td>30 Full Code analysis to determine what it would take to upgrade the facility to current building and correctional code compliance (not including other evaluations listed above)</td>
<td>$ 76,894</td>
</tr>
</tbody>
</table>

*Refer to Schedule A for SCOPE OF SERVICES

It was agreed by all that the "Future Projects" and "Optional Procurement Method" (items 31-37) would not be included in the fee request at this time.

Sub Consultants

design2 LAST has included the team members listed below for Phases 2 and 3:
- Architects Rasmussen Triebelhorn (A-RT)....Criminal Justice Facility Design and Operations
- Säärinen Group....Mechanical, Electrical, and Fire Protection Engineering
- Clevenger and Associates....Kitchen and Laundry Design
- ProDirms....Cost Estimating
- SCBC Engineers....Structural Engineering – QC
- WR Consulting....Civil Engineering

Schedule

design2 LAST is prepared to begin work and would like direction on Items 1-20 as soon as possible so we can work this into our existing contract. We will complete a design and construction schedule upon receiving approval on this proposal.

Fees

The fees listed above are offered as a lump sum basis. Each task will be invoiced by design2 LAST monthly on a percentage complete basis, and/or upon completion of a task. Upon approval, this work can be added as amendment to our existing contract.

I thank you for this opportunity and look forward to continuing our work on this project.

Sincerely,

Lauri Strauss, AIA LEED AP BD&C, President and CEO
<table>
<thead>
<tr>
<th>Add Y/N</th>
<th>Item</th>
<th>Description</th>
<th>Related to IB task?</th>
<th>Cost Est.</th>
<th>Deliverable</th>
</tr>
</thead>
<tbody>
<tr>
<td>Y</td>
<td>1</td>
<td>Revise Laundry room to restrict access to back side of laundry equipment by inmates.</td>
<td>Task 8</td>
<td>Y</td>
<td>Cost Estimate, Drawings and Specs</td>
</tr>
<tr>
<td>Y</td>
<td>2</td>
<td>Not Used</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Y</td>
<td>3</td>
<td>Omit new Disposer at dishwashing station from the new equipment list on the current SOW.</td>
<td>Task 8</td>
<td>Y</td>
<td>Cost Estimate, Drawings and Specs</td>
</tr>
<tr>
<td>Y</td>
<td>4</td>
<td>Design the inmate cell locking system such that all electronic locks may be opened simultaneously without having to upgrade the wiring system.</td>
<td>Task 10</td>
<td>Y</td>
<td>Cost Estimate, Drawings and Specs</td>
</tr>
<tr>
<td>Y</td>
<td>5</td>
<td>Provide a central emergency lighting inverter in lieu of &quot;bug eye&quot; emergency lighting to provide instant-on feature to illuminate facility during the time delay associated with generator start-up.</td>
<td>Task 12</td>
<td>Y</td>
<td>Cost Estimate, Drawings and Specs</td>
</tr>
<tr>
<td>Y</td>
<td>6</td>
<td>Remove abandoned Generator.</td>
<td>Task 12</td>
<td>Y</td>
<td>Cost Estimate, Drawings and Specs</td>
</tr>
<tr>
<td>Y</td>
<td>7</td>
<td>Add epoxy floor in Recreation Area</td>
<td>Task 17</td>
<td>Y</td>
<td>Cost Estimate, Drawings and Specs</td>
</tr>
<tr>
<td>Y</td>
<td>8</td>
<td>Provide additional lighting in sally port and building exterior to comply with code and to provide safe operational light levels where light levels are determined to be inadequate.</td>
<td>Task 12</td>
<td>Y</td>
<td>Cost Estimate, Drawings and Specs</td>
</tr>
<tr>
<td>Y</td>
<td>9</td>
<td>Upgrade emergency egress light levels throughout the facility to comply with code. Initial effort requires photometric calculations to determine egress light levels.</td>
<td>Task 12</td>
<td>Y</td>
<td>Cost Estimate, Drawings and Specs</td>
</tr>
<tr>
<td>Y</td>
<td>10</td>
<td>Upgrade non-egress lighting for increased light levels beyond code required minimum levels for safe operation of the facility based on light level report dated 6/13/14.</td>
<td>Task 12</td>
<td>Y</td>
<td>Cost Estimate, Drawings and Specs</td>
</tr>
<tr>
<td>Y</td>
<td>11</td>
<td>Upgrade interior and exterior lighting to LED to save energy and potentially reduce the load on the generator. Lighting replacement can be new or retrofit kit.</td>
<td>Task 12</td>
<td>Y</td>
<td>Cost Estimate, Drawings and Specs</td>
</tr>
<tr>
<td>Y</td>
<td>12</td>
<td>Replace existing chiller with new air cooled chiller on upper roof, remove existing cooling tower (on roof) and re-use condenser water piping for chilled water piping between new chiller and mechanical room.</td>
<td>Task 4</td>
<td>Y</td>
<td>Cost Estimate, Drawings and Specs</td>
</tr>
<tr>
<td>Y</td>
<td>13</td>
<td>Replace chilled water pumps, condenser water pumps, and heating water pumps and include redundant pumps for all three systems. Currently chilled and condenser water systems are single pump systems so the systems go down on loss of single pump due to failure or maintenance. Includes tying all pumping systems to existing Siemens DDC energy management system. If item 12 is accepted, condenser water pumps will not be required.</td>
<td>Task 4</td>
<td>Y</td>
<td>Cost Estimate, Drawings and Specs</td>
</tr>
<tr>
<td>Y</td>
<td>14</td>
<td>Mitigate noise in the Booking Area by adding control measures.</td>
<td></td>
<td>Y</td>
<td>Cost Estimate, Drawings and Specs</td>
</tr>
<tr>
<td>Y</td>
<td>15</td>
<td>Provide ambient noise level alarms as an added security measure.</td>
<td></td>
<td>Y</td>
<td>Cost Estimate, Drawings and Specs</td>
</tr>
<tr>
<td>Y</td>
<td>16</td>
<td>Provide protection of natural gas line on exterior of the jail and at the courthouse.</td>
<td></td>
<td>Y</td>
<td>Cost Estimate, Drawings and Specs</td>
</tr>
<tr>
<td>Y</td>
<td>17</td>
<td>Design corrective action to prevent water pooling in Sally Port 1.</td>
<td></td>
<td>Y</td>
<td>Cost Estimate, Drawings and Specs</td>
</tr>
<tr>
<td>Y</td>
<td>18</td>
<td>Tuck-point (remove and replace aging existing grout) all CMU joints in and around cells. Specific locations and depth to be determined.</td>
<td></td>
<td>Y</td>
<td>Cost Estimate, Drawings and Specs</td>
</tr>
<tr>
<td>Y</td>
<td>19</td>
<td>Review generator demand load study to confirm loading of existing emergency power system</td>
<td>Task 12</td>
<td>N</td>
<td>Report</td>
</tr>
<tr>
<td>N</td>
<td>20</td>
<td>Paint walls of sally port for better contrast for security cameras</td>
<td></td>
<td>N</td>
<td>N/A</td>
</tr>
</tbody>
</table>

Updated 1/17/2018
<table>
<thead>
<tr>
<th>Add Y/N</th>
<th>Item</th>
<th>Description</th>
<th>Related to 1B task?</th>
<th>Cost Est.</th>
<th>Deliverable</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>21</td>
<td>Y Provide a code-compliant smoke evacuation system.</td>
<td>Task 7</td>
<td>Y</td>
<td>Concept Design/cost estimate</td>
</tr>
<tr>
<td></td>
<td>22</td>
<td>Y Reconfigure the medical office area and add space from the commissary storage room per Phase 1A description.</td>
<td></td>
<td></td>
<td>Concept Design/cost estimate</td>
</tr>
<tr>
<td></td>
<td>23</td>
<td>Y Provide additional toilet areas for female inmates</td>
<td></td>
<td></td>
<td>Concept Design/cost estimate</td>
</tr>
<tr>
<td></td>
<td>24</td>
<td>Y Improve staff lockers and restrooms</td>
<td></td>
<td></td>
<td>Concept Design/cost estimate</td>
</tr>
<tr>
<td></td>
<td>25</td>
<td>Y Provide a design repurposing the existing basement for other correctional space or renovation/reallocation of spaces that are currently in the jail, as if the Sheriffs office was moved out of this facility. Space could also be provided for other programs not currently housed elsewhere.</td>
<td></td>
<td></td>
<td>Concept Design/cost estimate</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>26</td>
<td>Y Feasibility study to refurbish existing air handling units in place. Remove rust from condensate drain pans and re-coat entire interior bases to prevent further corrosion, remove existing inlet guide vanes on supply fans, and rework condensate drains for proper condensate trap configurations (may require raising units).</td>
<td>Task 4</td>
<td>Y</td>
<td>Feasibility Study/cost estimate</td>
</tr>
<tr>
<td></td>
<td>27</td>
<td>Y Confirm condition of Boilers - determine if replacement would provide an acceptable ROI and would be more energy efficient.</td>
<td></td>
<td></td>
<td>Report/cost estimate</td>
</tr>
<tr>
<td></td>
<td>28</td>
<td>Y Perform FEMA Seismic Screening (FEMA 154) - and one of the following to be determined: - ASCE 41 Tier 1 study - ASCE 41 Tier 2 study - ASCE 41 Tier 3 study</td>
<td></td>
<td></td>
<td>Report/cost estimate</td>
</tr>
<tr>
<td></td>
<td>29</td>
<td>Y Complete ADA evaluation</td>
<td></td>
<td></td>
<td>Report/Cost Estimate</td>
</tr>
<tr>
<td></td>
<td>30</td>
<td>Y Full Code analysis to determine what it would take to upgrade the facility to current building and correctional code compliance (not including other evaluations listed above)</td>
<td></td>
<td></td>
<td>Report/cost estimate</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>31</td>
<td>TBD Make entire jail facility (including cells) ADA compliant. (Compliance design as determined by ADA evaluation Item 29)</td>
<td>TBD</td>
<td>Dependent on results of Evaluation</td>
<td></td>
</tr>
<tr>
<td></td>
<td>32</td>
<td>TBD Seismic Upgrades. (Compliance design as determined by Seismic Screening Item 28)</td>
<td>TBD</td>
<td>Dependent on results of Evaluation</td>
<td></td>
</tr>
<tr>
<td></td>
<td>33</td>
<td>Fut Add a secure exterior space/courtyard for employees.</td>
<td>Fut</td>
<td>Concept Design/cost estimate</td>
<td></td>
</tr>
<tr>
<td></td>
<td>34</td>
<td>Fut Redesign Work Center Kitchen to full use to reduce number of meals prepared at the jail</td>
<td>Fut</td>
<td>N/A at this time</td>
<td></td>
</tr>
<tr>
<td></td>
<td>35</td>
<td>Fut Consider Modifications to the juvenile area in the Courthouse since there seems to be more space than necessary.</td>
<td>Fut</td>
<td>N/A at this time</td>
<td></td>
</tr>
<tr>
<td></td>
<td>36</td>
<td>Fut Consider adding space for Mental health areas</td>
<td>Fut</td>
<td>N/A at this time</td>
<td></td>
</tr>
<tr>
<td></td>
<td>37</td>
<td>TBD Consider GC/CM procurement method due to phasing complexity of project and work in occupied facility. Feasibility must be coordinated with Office of Financial Management. RCW 39.10.200, 220, 240 Write GC/CM RFP.</td>
<td>TBD</td>
<td>Fee proposal to write RFP</td>
<td></td>
</tr>
</tbody>
</table>

Updated 1/17/2018

pg. 5
**SCHEDULE 'B' SCOPE OF SERVICES CURRENT CONTRACT**

These scope options will be collectively referred to as the "Whatcom County Jail improvements" project for the Phase 2 and 3 efforts.

- 4-1 - Improvements to domestic water distribution piping system
- 4-2 - Improvements to condensate drain pans of the AHU cabinets
- 5-1 - Provide new wet pipe sprinkler protection in the second and third floor housing units
- 5-2 - Extend wet pipe and dry pipe sprinkler protection to unsprinklered non-housing areas
- 5-3 - Sprinkler system maintenance and repair
- 8-1 - Replace items that have exceeded their useful life
- 8-2 - Replace items that have an expected remaining life of less than five years
- 8-3 - Repair: Walk-In Cooler/Freezer, Disposer at Pot Wash
- 8-4 - Replace existing electrical panelboard serving kitchen equipment
- 9-1-9-11 - Replace/repair door hardware on commercial type doors.
- 10-1-10-12 - Replace all detention cell doors, including detention hardware. Replace specific hardware pieces identified on other detention doors listed.
- 12-18 - Provide UL924 listed “bugeye” emergency lighting units with integral batteries in critical jail spaces
- 12-2 - Provide UL924 listed “bugeye” emergency lighting units with integral batteries in elevator cabs
- 12-3 - Provide UL924 listed “bugeye” emergency lighting units with integral batteries in recreation area
- 12-4 - Re-circuit existing lighting in the dormitory spaces to provide additional emergency lighting beyond the current single lamp “night lights”.
- 17-1 - Modify the sanitary drain from the kitchen to minimize backups and prevent water from flowing toward the cleanout
- 17-2 - Modify shower drains in the cells that are beginning to fail
- 17-3 - Seal the floor of first floor restroom next to the shower room in the north east corner of the building
- 17-4 - Modify the drain pipe in the clothes washing machine drain room and provide ventilation to the space to remove moisture and odors

**Scope includes the following:**

1. Additional field investigation by relevant disciplines prior to design effort.
2. Design Charrette – 4-6 hour meeting to include in-person participation of all design team members, facilities personnel, and Jail staff.
3. Design work and construction documents required to address the SCOPE OPTIONS listed above and confirmed by the charrette.
4. Plans and specifications showing the affected spaces only.
5. Electronic delivery (via dropbox or A360 site) of the 22”x34” drawing set and 8-1/2” x 11” specification booklet in PDF format for the Charrette report, 50% over-the-shoulder review, 65% submittal, 100% draft, and 100% final (Bid) submittals.
6. Web-based review conference of 50% documents with virtual participation by the design team.
8. Project Manager Participation at the 100% review conference at facilities office in Bellingham. Engineers and consultants will all participate via phone or Web Conference.
9. Construction cost estimates for the Charrette, 50% over-the-shoulder review, 65% review, 100% draft, and 100% final (Bid) submittals to a level of detail comparable to the phase of design.
10. Four (4) Sets Hard Copies of the 22”x34” drawing set and 8-1/2” x 11” Specifications and Supplemental Information for the Charrette report, 65% review, 100% draft, and 100% final (Bid) submittals.
11. Coordination with the permitting agencies as required for the project scope.
12. Design team participation during the bidding and negotiating phase of the project: i.e. responding to bidder questions, issuing document clarifications, telephonic participation in a pre-bid conference, and consultation during contractor selection.

13. Design team participation in administration of the construction contract: i.e. responding to contractor questions, issuing document clarifications, review of contractor submittals, review of contractor schedule, review of contractor applications for payment, etc.

14. Project Manager will attend and lead the weekly construction meetings in Bellingham. Engineers and consultants will attend construction meetings when pertinent to their discipline, otherwise, their participation will be via phone or Web Conference.

15. Record drawings of work effort in affected spaces will be provided.

16. Participating in a pre-construction conference (Project manager in person, engineers and consultants via telephone).

17. Site observation visits and report of construction activities during the construction phase.

Exclusions
The following are not anticipated to be necessary for this contract and are not a part of the services described above. These services can be added to our contract at our standard hourly rates or on an "as needed" basis.

1. Detailed record drawings of the entire facility outside of the areas of work covered by this contract.

Rate Schedule
Additional effort not described in the scope above may be provided as requested on an hourly basis per the following rates:

- Principal Architect/Project manager $175.00
- Professional Engineer/Sr Architect $150.00
- Drafting/Revit/AutoCAD $125.00

SCHEDULE 'C' DELIVERABLES

Electronic Delivery in PDF format (Included with all options)
All scope options will be included as one project, one set of documents. Each deliverable package includes:

- 22"x34" drawing sheets
  - Existing conditions/Demolition plans, drawings for new construction including plans, elevations, details, as necessary to describe the work
- 8 ½" x 11" sets:
  - Specifications (65%, 100% submittals only)
  - Supplemental Information
    - Design Analysis (35% submittal only)
    - Cost Estimate
    - Comments and responses from review meetings

Final Submittal will include electronically stamped documents.

Hard Copies

- Four (4) sets 22"x34", black and white, drawings on bond:
- Four (4) sets 8 ½" x 11" bound, black and white, specifications:
- Four (4) sets 8 ½" x 11", black and white, supplemental information, stapled

Additional sets can be added and will be charged at cost + 10%.
WHATCOM COUNTY COUNCIL AGENDA BILL

<table>
<thead>
<tr>
<th>CLEARANCES</th>
<th>Initial</th>
<th>Date</th>
<th>Date Received in Council Office</th>
<th>Agenda Date</th>
<th>Assigned to:</th>
</tr>
</thead>
<tbody>
<tr>
<td>Originator:</td>
<td>Dee</td>
<td>1/31/18</td>
<td></td>
<td>2/27/18</td>
<td>Pin/Council</td>
</tr>
<tr>
<td>Division Head:</td>
<td>B</td>
<td>1/31/18</td>
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<tr>
<td>Dept. Head:</td>
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<td>Prosecutor:</td>
<td>Lg</td>
<td>2/6/18</td>
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<tr>
<td>Purchasing/Budget:</td>
<td>B</td>
<td>2/7/18</td>
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<tr>
<td>Executive:</td>
<td></td>
<td>2/20/18</td>
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</tr>
</tbody>
</table>

**TITLE OF DOCUMENT:** Contract Courthouse Security Screener Services

**ATTACHMENTS:** Contract

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

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

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

This contract between Whatcom County and Universal Protection is for the Courthouse Security Services, Security Screening, X-ray and Parking Services.

**COMMITTEE ACTION:**

**COUNCIL ACTION:**

<table>
<thead>
<tr>
<th>Related County Contract #:</th>
<th>Related File Numbers:</th>
<th>Ordinance or Resolution Number:</th>
</tr>
</thead>
</table>

**Please Note:** Once adopted and signed, ordinances and resolutions are available for viewing and printing on the County’s website at: [www.co.whatcom.wa.us/council](http://www.co.whatcom.wa.us/council).
MEMO TO: Jack Louws, County Executive
FROM: Rob Ney, Project and Operations Manager
DATE: February 15, 2018
RE: Courthouse Security Screening Contract

Requested Action

Please allow this memo to serve as a request for approval of the attached Contract between Whatcom County and Allied Universal Security Services, in the amount of $142,178.40. The contract term is one year, with three possible one-year extensions.

Background and Purpose

Whatcom County implemented security screening services in 2005, and continues to provide these services for visitors who need access to the basement and floors 2 through 6 of the Courthouse.

Through a Request for Qualifications process, Allied Universal was selected as the responsible firm. The fee for their services exceeds the County’s budget for security screening services. A Supplemental budget request is also being considered by the Council, authorizing additional budget and spending authority for this contract.

Funding Amount and Source

Funding would be from the Facilities Management budget (507160), augmented by Supplemental Budget Request #2545, also being considered by the Council on February 27, 2018.

Should you have any questions, do not hesitate to contact me at x5387.
## 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>Contract or Grant Administrator:</td>
<td>Rob Ney</td>
</tr>
<tr>
<td>Contractor's / Agency Name:</td>
<td>Allied Universal</td>
</tr>
</tbody>
</table>

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

If Amendment or Renewal, (per WCC 3.08.100 (a)) Original Contract #: __________

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

If No, include WCC: __________

(see Whatcom County Codes 3.06.010, 3.08.090 and 3.08.100)

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

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

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

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

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

If yes, RFP and Bid number(s): RFP #17-73

**Contract Cost Center:** 507160

**Is this agreement excluded from E-Verify?** No [ ] Yes [x]

If no, include Attachment D Contractor Declaration form.

If YES, indicate exclusion(s) below:

☐ Professional services agreement for certified/licensed professional.

☐ Contract work is for less than $100,000.

☐ Contract work is for less than 120 days.

☐ Interlocal Agreement (between Governments).

☐ Contract for Commercial off the shelf items (COTS).

☐ Work related subcontract less than $25,000.

☐ Public Works - Local Agency/Federally Funded FHWA.

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

$ 160,000

**This Amendment Amount:**

$ __________

**Total Amended Amount:**

$ 160,000

**Summary of Scope:** Attached is the proposed contract between Whatcom County and Allied Universal authorizing services to provide parking services, security services, security screening and x-ray services at the Whatcom County Courthouse, 311 Grand Avenue, Bellingham WA

**Term of Contract:** 12/31/19

<table>
<thead>
<tr>
<th>Contract Routing</th>
<th>Expiration Date</th>
<th>Date: 12/31/19</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Prepared by:</td>
<td></td>
<td>12/31/19</td>
</tr>
<tr>
<td>Dee Ebergson</td>
<td>Date: 12/31/19</td>
<td></td>
</tr>
<tr>
<td>2. Attorney signoff:</td>
<td></td>
<td>2/14/18</td>
</tr>
<tr>
<td>3. AS Finance reviewed:</td>
<td></td>
<td>2/14/18</td>
</tr>
<tr>
<td>4. IT reviewed (if IT related):</td>
<td></td>
<td>2/14/18</td>
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<tr>
<td>5. Contractor signed:</td>
<td></td>
<td>2/14/18</td>
</tr>
<tr>
<td>6. Submitted to Exec.:</td>
<td></td>
<td>2/14/18</td>
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<tr>
<td>7. Council approved (if necessary):</td>
<td></td>
<td>2-15-18</td>
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<tr>
<td>8. Executive signed:</td>
<td></td>
<td>2-15-18</td>
</tr>
<tr>
<td>9. Original to Council:</td>
<td></td>
<td>2-15-18</td>
</tr>
</tbody>
</table>

Last edited 10/31/16

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Allied Universal Security Services, hereinafter called Contractor, and Whatcom County, hereinafter referred to as County, agree and contract as set forth in this Agreement, including:

- General Conditions, pp. 3 to 11,
- Exhibit A (Scope of Work), pp. 12 to 13,
- Exhibit B (Example Afterhours Schedule), pp. 15
- Exhibit C (Compensation), pp. 16
- Exhibit D (E-Verify), pp. 17

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

The term of this Agreement shall commence March 1st, 2018, and shall, unless terminated or renewed as elsewhere provided in the Agreement, terminate on the 31 day of, December, 2019.

The general purpose or objective of this Agreement is to provide Courthouse Security Screener Services at the Whatcom County Courthouse Building, as more fully and definitively described in Exhibit “A” Scope of Work, hereto. The language of Exhibit “A” controls in case of any conflict between it and that provided here.

The maximum consideration for the initial term of this agreement shall not exceed $160,000. The Contract Number, set forth above, shall be included on all billings or correspondence in connection therewith.

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

IN WITNESS WHEREOF, the parties have executed this Agreement this 14th day of February 2018.

CONTRACTOR:

Allied Universal Security Services

Brandon Ezola, General Manager

STATE OF WASHINGTON
COUNTY OF WHATCOM

On this 14th day of February 2018, before me personally appeared Mike Smith, to me known to be the Region President and Authorized Signatory for Allied Universal Security Services and who executed the above instrument and who acknowledged to me the act of signing and sealing thereof.

WHATCOM COUNTY:

Contract for Security Services Agreement
Allied Universal Security Services 2018 - 2019

v 1.0

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Approved as to form:

[Signature] 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 ________, 20 __, before me personally appeared Jack Louws, to me known to be the Executive of Whatcom County, who executed the above instrument and who acknowledged to me the act of signing and sealing thereof.

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

CONTRACTOR INFORMATION:

Allied Universal Security Service

Address:
Allied Universal Security Service
801 S. Fidalgo Street, 2nd Floor
Seattle, WA 98108

Contact Name:
Dan Schwarz, Client Manager

Contact Email:
Daniel.schwarz@aus.com

Contact Phone:
(206) 448-4040

Contact FAX:
(206) 448-2461
GENERAL CONDITIONS

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

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

Series 10-19: Provisions Related to Term and Termination

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

10.2 Extension:
The duration of this Agreement may be extended by mutual written consent of the parties, for a period of up to one year at a time, and for a total of no longer than three years. Extension may include a cost of living increase, not to exceed three percent (3%) per year.

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

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

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

**Series 20-29: Provisions Related to Consideration and Payments**

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

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

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

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

22.1 **Withholding Payment:**
In the event the County’s Administrative Officer determines that the Contractor has failed to perform any obligation under this Agreement within the times set forth in this Agreement, then the County may withhold from amounts otherwise due and payable to Contractor the amount determined by the County as necessary to cure the default, until the Administrative Officer determines that such failure to perform has been cured. Withholding under this clause shall not be deemed a breach entitling Contractor to termination or damages, provided that the County promptly gives notice in writing to the Contractor of the nature of the default or failure to perform, and in no case more than 10 days after it determines to withhold amounts otherwise due. A determination of the Administrative Officer set forth in a notice to the Contractor of the action required and/or the amount required to cure any alleged failure to perform shall be deemed conclusive, except to the extent that the Contractor acts within the times and in strict accord with the provisions of the Disputes clause of this Agreement. The County may act in accordance with any determination of the Administrative Officer which has become conclusive under this clause, without prejudice to any other remedy under the Agreement, to take all or any of the following actions: (1) cure any failure or default, (2) to pay any amount so required to be paid and to charge the same to the account of the Contractor, (3) to set off any amount so paid or incurred from amounts due or to become due the Contractor. In the event the Contractor obtains relief upon a claim under the Disputes clause, no penalty or damages shall accrue to Contractor by reason of good faith withholding by the County under this clause.
23.1 Labor Standards:
The Contractor agrees to comply with all applicable state and federal requirements, including but
not limited to those pertaining to payment of wages and working conditions, in accordance with
RCW 39.12.040, the Prevailing Wage Act; the Americans with Disabilities Act of 1990; the Davis-Bacon
Act; and the Contract Work Hours and Safety Standards Act providing for weekly payment of
prevailing wages, minimum overtime pay, and providing that no laborer or mechanic shall be
required to work in surroundings or under conditions which are unsanitary, hazardous, or dangerous to
health and safety as determined by regulations promulgated by the Federal Secretary of Labor and
the State of Washington.

Series 30-39: Provisions Related to Administration of Agreement

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

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

Contractor will defend, indemnify and hold harmless the County, its officers, agents or employees
from any loss or expense, including, but not limited to, settlements, judgments, setoffs, attorneys' fees
or costs incurred by reason of claims or demands because of breach of the provisions of this
paragraph.

30.2 Assignment and Subcontracting:
The performance of all activities contemplated by this agreement shall be accomplished by the
Contractor. No portion of this contract may be assigned or subcontracted to any other individual,
firm or entity without the express and prior written approval of the County.

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

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

31.2 Patent/Copyright Infringement:
Contractor will defend and indemnify the County from any claimed action, cause or demand
brought against the County; to the extent such action is based on the claim that information supplied
by the Contractor infringes any patent or copyright. The Contractor will pay those costs and
damages attributable to any such claims that are finally awarded against the County in any action. Such defense and payments are conditioned upon the following:

A. The Contractor shall be notified promptly in writing by the County of any notice of such claim.
B. Contractor shall have the right, hereunder, at its option and expense, to obtain for the County the right to continue using the information, in the event such claim of infringement, is made, provided no reduction in performance or loss results to the County.

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

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

34.1 Proof of Insurance: The Contractor shall, at its own expense, obtain and continuously maintain the following insurance coverage. All insurers providing such insurance shall have an A.M. Best Rating of not less that A- (or otherwise be acceptable to the County) and be licensed to do business in the State of Washington and admitted by the Washington State Insurance Commissioner. Coverage limits shall be the minimum limits identified in this Agreement or the coverage limits provided or available under the policies maintained by the Contractor without regard to this Agreement, whichever are greater:

Property Damage - $500,000.00 per occurrence
General Liability & Property Damage for bodily injury- $1,000,000.00 per occurrence
Professional Liability - $1,000,000 per occurrence:

If the professional liability insurance is a claims made policy, and should the contractor discontinue coverage either during the term of this contract or within three years of completion, the contractor agrees to purchase tail coverage for a minimum of three years from the completion date of this contract or any amendment to this contract.
Workers' Compensation and Employer's Liability: $1,000,000.
Automobile Liability: $1,000,000. Each accident limit of liability for bodily injury and property damage.

A Certificate of Insurance with Endorsements must be provided to the County that identifies and names Whatcom County, employees, officers, agents, officials and volunteers as additional insureds on Contractor's policy. If subcontracting is permitted, Contractor's subcontractors must provide a Certificate of Insurance and endorsements naming Whatcom County, employees, officers, agents, officials as additional insureds. The Contractor's Insurance shall be considered primary and shall waive all rights of subrogation. The County insurance shall be noncontributory. The insurance policy shall provide coverage on an occurrence basis. All Contractors' liability insurance policies must be endorsed to show this primary coverage. The County must be notified immediately of any cancellation of the policy or change in insurer carrier and must provide the County with proof current insurance coverage, including if a new insurance carrier is obtained or a new annual policy is issued.

Payment Conditioned on Insurance. Compensation and/or payments due to the Contractor under this Agreement are expressly conditioned upon the Contractor's strict compliance with all insurance requirements. Payment to the Contractor shall be suspended in the event of non-compliance. Upon receipt of evidence of Contractor's compliance, payments not otherwise subject to withholding or set-off will be released to the Contractor.

The Contractor agrees that the insurance requirements specified in the agreement do not reduce the liability Contractor has assumed in the indemnification/hold harmless section of the contract. If the Contractor's insurance policy coverage is greater than the minimum specified in this agreement, then the County's coverage as an additional insured shall be the higher amount stated in the Contractor's policy.

Failure of the CONTRACTOR to take out and/or maintain any required insurance shall not relieve The CONTRACTOR from any liability under the AGREEMENT, nor shall the insurance requirements be construed to conflict with or otherwise limit the obligations concerning indemnification. The COUNTY does not waive any Insurance requirements by the CONTRACTOR even in the event the Insurance Certificates and Endorsements provided by the CONTRACTOR were insufficient or inadequate proof of coverage.

A Certificate of Insurance and Endorsements shall be attached to this contract as Exhibit E and/or provided prior to the contractor's performance on the contract.

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

34.3 Defense & Indemnity Agreement:
To the fullest extent permitted by law, the Contracting Entity agrees to indemnify, defend and hold the County and its departments, elected and appointed officials, employees, agents and volunteers, harmless from and against any and all claims, damages, losses and expenses, including but not limited to court costs, attorney's fees and alternative dispute resolution costs, for any personal injury, for any bodily injury, sickness, disease or death and for any damage to or destruction of any property (including the loss of use resulting therefrom) which 1) are caused in whole or in part by any act or omission, negligent or otherwise, of the Contracting Entity, its employees, agents, participants, or volunteers or Contracting Entity's subcontractors and their employees, agents or volunteers; or 2) are directly or indirectly arising out of, resulting from, or in connection with Contracting Entity's activity
and use under this Agreement; or 3) are based upon the Contracting Entity or their participants, employees, agents, or volunteers, or its subcontractors' use of, presence upon or proximity to the property of the County. This indemnification obligation of the Contracting Entity shall not apply in the limited circumstance where the claim, damage, loss or expense is caused by the sole negligence of the County.

This indemnification obligation of the Provider shall not be limited in any way by the Washington State Industrial Insurance Act, RCW Title 51, or by application of any other workmen's compensation act, disability benefit act or other employee benefit act, and the Provider hereby expressly waives any immunity afforded by such acts. The Contracting Entity agrees all Contracting Entity's indemnity obligations shall survive the completion, expiration or termination of this Agreement.

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

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

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

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

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

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

37.1 Administration of Contract:
This Agreement shall be subject to all laws, rules, and regulations of the United States of America, the State of Washington, and political subdivisions of the State of Washington. The Contractor also agrees to comply with applicable federal, state, county or municipal standards for licensing, certification and operation of facilities and programs, and accreditation and licensing of individuals.

The County hereby appoints, and the Contractor hereby accepts, the Whatcom County Executive, and his or her designee, as the County's representative, hereinafter referred to as the Administrative Officer, for the purposes of administering the provisions of this Agreement, including the County's right to receive and act on all reports and documents, and any auditing performed by the County related to this Agreement. The Administrative Officer for purposes of this agreement is:

Rob Ney, Project and Operations Manager
Whatcom County Facilities Management
316 Lottie Street
Bellingham, WA 98225
(360) 778-5360

37.2 Notice:
Except as set forth elsewhere in the Agreement, for all purposes under this Agreement except service of process, notice shall be given by the Contractor to the County’s Administrative Officer under this Agreement. Notice to the Contractor for all purposes under this Agreement shall be given to the address provided by the Contractor herein above in the “Contractor Information” section. Notice may be given by delivery or by depositing in the US Mail, first class, postage prepaid.

38.3 E-Verify:
See Exhibit “D”

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

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

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

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

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

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

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

d. Arbitration: Other than claims for injunctive relief, temporary restraining order or other provisional remedy to preserve the status quo or prevent irreparable harm, brought by a party hereto (which may be brought either in court or pursuant to this arbitration provision), and consistent with the provisions hereinafore, any claim, dispute or controversy between the parties under, arising out of, or related to this Agreement or otherwise, including issues of specific performance, shall be determined by arbitration in Bellingham, Washington, under the applicable American Arbitration Association (AAA) rules in effect on the date hereof, as modified by this Agreement. There shall be one arbitrator selected by the parties within ten (10) days of the arbitration demand, or if not, by the AAA or any other group having similar credentials. Any issue about whether a claim is covered by this Agreement shall be determined by the arbitrator. The arbitrator shall apply substantive law and may award injunctive relief, equitable relief (including specific performance), or any other remedy available from a judge but shall not have the power to award punitive damages. Each Party shall pay all their own costs, attorney fees and expenses of arbitration but share equally in the Arbitrator’s fees and costs. The decision of the arbitrator shall be final and binding and an order confirming the award or judgment upon the award may be entered in any court having jurisdiction. The parties agree that the decision of the arbitrator shall be the sole and exclusive remedy between them regarding any dispute presented or pled before the arbitrator. At the request of either party made not later than forty-five (45) days after the arbitration demand, the parties agree to submit the dispute to nonbinding mediation, which shall not delay the arbitration hearing date; provided, that either party may decline to mediate and proceed with arbitration.

Any arbitration proceeding commenced to enforce or interpret this Agreement shall be brought within six years after the initial occurrence giving rise to the claim, dispute or issue for which arbitration is commenced, regardless of the date of discovery or whether the claim, dispute or issue was continuing in nature. Claims, disputes or issues arising more than six years prior to a written request or demand for arbitration issued under this Agreement are not subject to arbitration.
e. The Parties may agree in writing signed by both Parties that a claim or dispute may be brought in Whatcom County Superior Court rather than mediation or arbitration. The Parties agree that Prevailing Party attorney fees are not to be awarded, unless otherwise agreed in writing.

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

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

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

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

Allied Universal Security Services was selected as a result of competitive bid process through Whatcom County RFP #17-73, to perform the following security services for Whatcom County to implement the Courthouse Security Program. Whatcom County Facilities Management Division is responsible for security screening operations for all people entering the judicial areas of the Courthouse.

Security Screening Contractor will provide three security screeners at one security station in the Whatcom County Courthouse, hours of work will be 7:00 am through 5:00 pm Monday through Friday.

In addition to the normal hours of the Courthouse there are various afterhours events that will be scheduled, Council meetings, night court, teen court, elections and various evening meetings held in the Courthouse; See Exhibit “B” for an example of the afterhours schedule. It will be the Contractor’s responsibility to keep the security station manned at all times during the scheduled hours. Additional security staff may be needed for afterhours functions.

Security screeners and supervisors provided by the contractor will perform a variety of duties to ensure Courthouse security and protection of visitors and staff. Duties will include, but are not limited to:

- The identification of dangerous objects on persons or in parcels, cases, baggage and other handheld objects.
- Prevent those objects from being transported into the restricted areas of the Courthouse.
- Monitor the Courthouse parking areas, issue parking violations and respond to other parking related issues.

The detection of prohibited objects will be accomplished by the use of electronic wands, metal detector, pat-down searches, operation of x-ray machines, lifting of baggage (up to 70 lbs.), and screening using electronic and imaging equipment. Courthouse security screeners may perform screening of both the general public and County staff.

The Courthouse will provide all necessary screening equipment including, two-way radios, x-ray machine, metal detector and electronic wands.

Contractor’s Duties and Obligations:

1. Contractor is responsible for providing uniforms and furnishing and supervising all uniformed Security Screeners and Supervisors for proper performance in the assigned area of the Courthouse.
2. Contractor is required to pay all salaries, social security, taxes, federal and state unemployment insurance and any other similar taxes relating to such employees.
3. Contractor to provide Whatcom County with names and telephone numbers of screeners and supervisors.
4. The Contractor will use 911 as the primary contact during emergencies

Screeners and supervisors are expected to perform these duties in a courteous and professional manner, consistent with the way the County employees interact with the general public.

Screeners will report to the County’s Facilities Manager and/or designee.

All incidents must be brought to the attention of the Facilities Manager. A written report describing the incident must be completed the day of incident a phone call to the Facilities Manager or designee informing them of the incident must be done at the screener’s earliest opportunity.
EXHIBIT A
SCOPE OF WORK
COURTHOUSE SECURITY SERVICES

Security Screener Qualification Requirements
1. Screeners and supervisors must be a U.S. Citizen or U.S. National
2. Screeners and supervisors must have a high school diploma, GED or equivalent and at least one year of full-time work experience in security work, aviation screener work, or x-ray technician work.
3. Screeners and supervisors must be currently licensed as a security guard in accordance with the Revised Code of Washington RCW #18.170.
4. Screeners must maintain their certification status and training to operate all necessary tools and equipment associated with this work.
5. Rejected screeners shall not be accepted by owner.

Performance
Security screeners and supervisors must possess the following knowledge, skills, abilities, and characteristics:
1. English Proficiency (i.e., reading, writing, speaking, listening)
2. Mental abilities including visual observation and identification, mental rotation
3. Interpersonal skills such as clear communication, active listening, polite customer service, and patience
4. Work values such as responsibility, dependability, honesty, and integrity
5. Physical abilities must include the capability of repeatedly lifting and carrying parcels, cases or baggage up to 70 lbs. in weight
6. Ability to identify objects by touch
7. Ability to follow written instructions
8. Ability to defuse angry customers

All security screeners and supervisors must meet the following standards
1. Distance vision correctable to 20/30 or better in the best eye and 20/100 or better in the worse eye.
2. Near vision correctable to 20/40 or better binocular
3. Color perception including red, green, blue, yellow, orange, purple, brown, black, white and gray

Note: color filters, including contact lenses, for enhancing color discrimination are prohibited.
1. Hearing as measured by audiometry cannot exceed:
   a. An average hearing loss of 25 decibels (ANSI) at 500, 1000, 2000 and 3000Hz in each ear
   b. Single reading of 45 decibels at 4000Hz and 6000Hz in each ear
2. Adequate muscular and joint mobility, dexterity and range of motion, strength, and stability to lift and move at least 70 pounds, as well as a complete medical evaluation including cardiovascular system, hypertension, and other factors.

Conditions of Assignment
1. To be considered for assignment, the screener must be able to:
2. Demonstrate daily a fitness for duty without impairment due to illegal drugs, sleep deprivation, medication or alcohol
3. Pass Drug and Alcohol Screening examinations
4. Pass a background investigation, including a criminal history check and a credit check
In addition, screeners and supervisors must successfully complete training required by their employer and by Whatcom County
1. Continued assignment is contingent up on passing required training and certification exams on a periodic bases
2. This is a position that required the screener to be fingerprinted, photographed and have completed appropriate security paperwork.
Screeners Guidance
It is important to emphasize that in performing critical inspection and screening duties that personnel may not rely on generalized stereotypes, attitudes, or beliefs about the propensity of members of any racial, ethnic, religious, or group of a special national origin to engage in unlawful activity. Efforts to secure the safety of the Whatcom County Courthouse should not conflict with the obligation to protect the Constitution and Civil Rights of county employees or visitors to the Courthouse. It is illegal under federal law for government or private sector employees to discriminate on the basis of race, color, national origin, religion, sex, sexual orientation or ancestry.

Members of certain religious groups wear head coverings, veils, or other garments as part of their religious observances. Care must be taken that in such cases the screeners use tact and diplomacy when performing their inspections. Some religious groups carry symbols of their religion or other articles require by their religion. Sikhs may carry a sheathed ceremonial sword known as a kirpan. While it is part of their observance it is still a weapon, i.e. knife, and as such should not be allowed in the judicial areas of the Courthouse. In some cases a miniature kirpan may be worn on a necklace or bracelet. These too should be examined using the same criteria used for knives to see if they qualify as a weapon.

In the event an alarm is triggered in the area of a head covering during a screening inspection the subject should be politely asked to either remove the head covering or return when the object within that triggered the alarm has been removed.
EXHIBIT B
COURTHOUSE SECURITY SERVICES

Sample Afterhours Security Schedule

<table>
<thead>
<tr>
<th>Date</th>
<th>Location</th>
<th>Purpose</th>
<th>Start</th>
<th>End</th>
</tr>
</thead>
<tbody>
<tr>
<td>02/04/18</td>
<td>Rotunda/1st Floor</td>
<td>Diking District Election</td>
<td>5:00 pm</td>
<td>9:00 pm</td>
</tr>
<tr>
<td>02/12/17</td>
<td>Council Chambers</td>
<td>County Council</td>
<td>5:00 pm</td>
<td>11:00 pm</td>
</tr>
<tr>
<td>02/16/17</td>
<td>3rd Floor</td>
<td>Mock Trial</td>
<td>7:00 am</td>
<td>6:00 pm</td>
</tr>
<tr>
<td>02/26/17</td>
<td>Council Chambers</td>
<td>County Council</td>
<td>5:00 pm</td>
<td>11:00 pm</td>
</tr>
<tr>
<td>02/27/17</td>
<td>5th Floor</td>
<td>Teen Court</td>
<td>5:00 pm</td>
<td>8:30 PM</td>
</tr>
</tbody>
</table>

On occasion provide security for outside contractors, i.e. carpet installation, carpet cleaning, etc.
EXHIBIT C
(COMPENSATION)

The Contract Number shall be included on all billings and correspondence.

The maximum consideration for this agreement is $160,000/year; including afterhours meetings. Itemized invoices detailing security personnel and hours worked must be submitted.

<table>
<thead>
<tr>
<th>Security Services - 2018 Pricing</th>
</tr>
</thead>
<tbody>
<tr>
<td>SITE NAME Whatcom County Courthouse</td>
</tr>
<tr>
<td>HPW 120</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Wage Level 1</th>
<th>Pay</th>
<th>Vac Hours</th>
<th>Bill Rate</th>
<th>Hour/OT</th>
<th>Total Reg Hours</th>
<th>Total Reg Cost</th>
</tr>
</thead>
<tbody>
<tr>
<td>80</td>
<td>$13.25</td>
<td>21.93</td>
<td>32.89</td>
<td></td>
<td>4,160</td>
<td>$ 91,218.40</td>
</tr>
<tr>
<td>Site Supervisor</td>
<td>$15.00</td>
<td>24.50</td>
<td>36.75</td>
<td></td>
<td>2,080</td>
<td>$ 50,960.00</td>
</tr>
<tr>
<td>Total Officers</td>
<td>120</td>
<td>$ 14.13</td>
<td>0</td>
<td>$23.21</td>
<td>$34.82</td>
<td>$ 6,240</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Benefits &amp; Insurance</th>
</tr>
</thead>
<tbody>
<tr>
<td>Officer Medical</td>
</tr>
<tr>
<td>Annual Health Benefit Cost</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Vacation Pay</th>
</tr>
</thead>
<tbody>
<tr>
<td>Vacation Wages (Based on Annual Anniversary Bonus)</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Additional Costs</th>
</tr>
</thead>
<tbody>
<tr>
<td>Training - Annual Refresher Training</td>
</tr>
<tr>
<td>Washington State Sick Leave</td>
</tr>
<tr>
<td>Annual Holiday Pay Premium Costs</td>
</tr>
<tr>
<td>Subtotal Additional Costs</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Pricing will increase 3% each year for 3 years</th>
</tr>
</thead>
<tbody>
<tr>
<td>Total Average Monthly Billing</td>
</tr>
<tr>
<td>Total Estimated Annual Billing</td>
</tr>
</tbody>
</table>
EXHIBIT D
(E-VERIFY)

The E-Verify contractor program for Whatcom County applies to contracts of $100,000 or more and sub contracts for $25,000 or more. Contractor represents and warrants that it will register and participate in the status verification system for all newly hired employees. The term "employee" as used herein means any person that is hired to perform work related to the Whatcom County funded project. As used herein, "status verification system" means the Illegal Immigration Reform and Immigration Responsibility Act of 1996 that is operated by the United States Department of Homeland Security, also known as the E-Verify Program, or any other successor or electronic verification systems replacing the E-Verify Program. Contractor agrees to maintain records of such compliance and, upon request of the County, to provide a copy of each such verification to the County. Contractor further represents and warrants that any person assigned to perform services hereunder meets the employment eligibility requirements of all immigration laws of the State of Washington. Contractor understands and agrees that any breach of these warranties may subject Contractor to the following: (a) termination of this Agreement and ineligibility for any Whatcom County contract for up to three (3) years, with notice of such cancellation/termination being made public, or (b) the loss of any license, permit, certification or other document granted to Contractor by an agency, department or County entity for the right to do business in the Count of Whatcom for up to one (1) year, or (c) both. In the event of such termination/cancellation, Contractor would also be liable for any additional costs incurred by the County due to contract cancellation or loss of license or permit. Contractor will review and enroll in the E-Verify program through this website: www.uscis.gov
# WHATCOM COUNTY COUNCIL AGENDA BILL

**Title:** Medical Examiner Service Agreement

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

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

The County Executive respectfully requests approval to enter into a 3 year contract for services agreement for the provision of Medical Examiner Services.

## COMMITTEE ACTION: 

## COUNCIL ACTION:

**Related County Contract #:**

**Related File Numbers:**

**Ordinance or Resolution Number:**

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

TO: Whatcom County Council

FROM: Tawni Helms, Administrative Coordinator
Through: Jack Louws, County Executive

RE: Contract with Bayside Pathology, Inc. for Medical Examiner Services

DATE: January 18, 2018

Enclosed are two (2) originals of a contract for services between Whatcom County and Bayside for Medical Examiner Services for your review and signature.

- **Background and Purpose**
  Dr. Goldfogel was appointed Medical Examiner for Whatcom County on June 23, 1992. He has served in this capacity since that time. This is a 3 year agreement for Dr. Goldfogel to continue providing Medical Examiner services to Whatcom County.

  This agreement provides reimbursement for all medical examiner services consistent with the Whatcom County Code, Charter, and Washington State law. Under this agreement Dr. Goldfogel will provide all staffing, supplies and other expenses except for space rental of Medical Examiner office and the morgue.

  This agreement includes a 15% increase over the 2017 agreement and an annual CPI-U inflation adjustment increase each subsequent year.

<table>
<thead>
<tr>
<th>Period</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>January 1, 2018 through December 31, 2018</td>
<td>$572,056 ($46,261 per mo.)</td>
</tr>
<tr>
<td>January 1, 2019 through December 31, 2019</td>
<td>$572,056 + CPI adjustment</td>
</tr>
<tr>
<td>January 1, 2020 through December 31, 2020</td>
<td>2019 rate + CPI adjustment</td>
</tr>
</tbody>
</table>

  Additionally, upon receipt of invoice the County will reimburse up to $30,000 on an annual basis for up to 4 weeks of substitute Medical Examiner coverage.

- **Funding Amount and Source**
  The funding source is the General Fund.

- **Differences from Previous Contract**
  This is a 3 year service agreement with options to renew. Either party may terminate this Agreement at any time by giving 90 days’ written notice to the other party of the intent to terminate.

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

V2.0
**WHATCOM COUNTY CONTRACT INFORMATION SHEET**

<table>
<thead>
<tr>
<th>Originating Department:</th>
<th>Executive Office</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Division/Program:</strong> (i.e. Dept. Division and Program)</td>
<td>Non-Departmental/Medical Examiner</td>
</tr>
<tr>
<td>Contract or Grant Administrator:</td>
<td>Tawni Helms</td>
</tr>
<tr>
<td>Contractor’s / Agency Name:</td>
<td>Bayside Pathology</td>
</tr>
</tbody>
</table>

**Is this a New Contract?** Yes ☒ No ☐ If not, is this an Amendment or Renewal to an Existing Contract? Yes ☐ No ☒

- If Amendment or Renewal, (per WCC 3.08.100 (a)) Original Contract #: 
- Does contract require Council Approval? Yes ☒ No ☐ If No, include WCC: (see Whatcom County Codes 3.06.010, 3.08.090 and 3.08.100)

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

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

**Is this contract the result of a RFP or Bid process?** Yes ☐ No ☒ If yes, RFP and Bid number(s): Contract Cost Center: 2100

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:**
- 2018: $572,056. + substitute coverage*
- 2019: $572,056. + CPI adj. + coverage*
- 2020: $2019 rate + CPI adj. + coverage*
- *up to $30,000/yr. for up to 4 wks. sub ME

**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:** This three year agreement provides reimbursement for all medical examiner services consistent with the Whatcom County Code, Charter, and Washington State Law.

**Term of Contract:** 3 year agreement

| Expiration Date: | 12/31/2020 |

**Contract Routing:**
1. Prepared by: Tawni Helms
2. Attorney signoff: Daniel L. Gibson ☒
3. AS Finance reviewed:
4. IT reviewed (if IT related):
5. Contractor signed:
6. Submitted to Exec.:
7. Council approved (if necessary):
8. Executive approved:
9. Original to Council:

---

V2.0
CONTRACT FOR SERVICES
Bayside Pathology, Inc.

Bayside Pathology, Inc., hereinafter called Contractor, and Whatcom County, hereinafter referred to as County, agree and contract as set forth in this Agreement, including:
- General Conditions, pp. 1 to 8.
- Exhibit A (Scope of Work), p. 9.
- Exhibit B (Compensation), p. 10.
- Exhibit C (Certificate of Insurance), p. 11.

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

The term of this Agreement shall commence on the 1st day of January 2018, and shall, unless terminated or renewed as elsewhere provided in the Agreement, terminate on the 31st day of December 2020.

The general purpose or objective of this Agreement is to provide reimbursement for all medical examiner services consistent with the Whatcom County Code, Charter, and Washington State law, as more fully and definitively described in Exhibit A hereto. The language of Exhibit A controls in case of any conflict between it and that provided here.

The maximum consideration for the initial term of this agreement or for any renewal term shall not exceed $572,056 for 2018, $572,056, plus annual Seattle CPI-U as of previous June for 2019, and 2019 contract amount plus Seattle CPI-U as of previous June for 2020. In addition, Whatcom County will reimburse up to $30,000 each year for no more than 4 weeks of professional ME substitute coverage. The Contract Number, set forth above, shall be included on all billings or correspondence in connection therewith.

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

IN WITNESS WHEREOF, the parties have executed this Agreement this ___ day of ______________, 20__.

CONTRACTOR:

Bayside Pathology, Inc.
Gary Goldfogel, M.D., President

Gary Goldfogel, M.D. President

STATE OF WASHINGTON )
COUNTY OF ________________ ) ss.

On this ___ day of __________, 20__, before me personally appeared Gary Goldfogel, M.D., to me known to be the President of Bayside Pathology, Inc. and who executed the above instrument and who acknowledged to me the act of signing and sealing thereof.

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

WHATCOM COUNTY:

Approved as to form:

Prosecuting Attorney Date

Approved:

Professional Services Agreement
Medical Examiner Services

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Accepted for Whatcom County:

By: ____________________________
Jack Louws, Whatcom County Executive

STATE OF WASHINGTON )
) ss
COUNTY OF WHATCOM )

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

________________________________________
NOTARY PUBLIC in and for the State of Washington, residing at
________________________________________
My commission expires ____________________

CONTRACTOR INFORMATION:

Gary Goldfogel, M.D.

Address:
1500 N. State Street
Bellingham, WA 98225

Mailing Address:
Same

Contact Name: Gary Goldfogel, M.D.
Contact Phone: 360.738.4557
Contact FAX 360.734.0467
Contact Email: ggoldfogel@gmail.com
GENERAL CONDITIONS

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

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

1.0 Permitted Use of Facility:
The premises owned by the County known as 1500 N. State Street, Bellingham has county-designated space to be used for the operation of the Medical Examiner Office and Morgue. A single parking space is provided for the ME as further described on Attachment A, floor plan. Use will be restricted to those services described in Exhibit A. All improvements will require the approval of the County unless otherwise specifically agreed upon in writing by both parties.

The Contractor shall be responsible for:
- security of his/her space, records, and operations
- janitorial services and necessary supplies
- appropriate and adequate disposal of all hazardous waste generated by the service performed
- adherence to County maintenance and operations guidelines; i.e. protocols for exhaust fans, etc.
- phone lines
- timely notification of equipment repair and/or replacement needs

The County shall be responsible for:
- maintenance and repairs of the building exterior as well as the HVAC, electrical and plumbing systems
- repair and replacement of capital equipment
- reasonable cost of water, heat, and power

Series 10-19: Provisions Related to Term and Termination

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

Either party may terminate this Agreement at any time by giving 90 days' written notice to the other party of the intent to terminate.

10.2 Extension:
The duration of this Agreement may be extended by mutual written consent of the parties, for a period of up to one year, for each extension beyond December 31, 2020, and for a total of no longer than three years beyond December 31, 2020. For each period of extension, consent of the parties shall be deemed to have been given and the contract shall be extended as provided herein, unless either party notifies the other in writing no less than ninety (90) days of its intent to terminate the contract.

11.1 Termination for Default:
Termination of the contract with the Medical Examiner for default and/or other good cause shall be by decision of the County Council upon the recommendation of the Whatcom County Medical Examiner Council.

The Whatcom County Medical Examiner Council is described as follows:
(a) Composition of Council. This council shall be composed of the following individuals or officially designated alternates invited to attend:
(1) Whatcom County Executive
(2) Whatcom County Prosecuting Attorney
(3) Whatcom County Sheriff
(4) Whatcom County Health Officer
(5) Member of the State Death Investigation Council
(6) City of Bellingham Police Chief
(7) Police Chief of another city in Whatcom County

Professional Services Agreement  
Medical Examiner Services  

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It is understood that in the absence of the Prosecuting Attorney, the designated alternative is limited to the Chief Criminal Deputy Prosecutor.

The state death investigation council member shall be recommended by the medical examiner and approved by the medical examiner council membership. The police chief position for a city other than Bellingham shall be selected by the cities’ police chiefs and rotate periodically.

The advisory council shall meet at least once a year to review the medical examiner function. A majority of the members of the council may call for a special meeting, if necessary.

(b) Authority of the Medical Examiner Council. The Medical Examiner Council has been formed for the following purposes:
(1) To review the policies and procedures of the Whatcom County Medical Examiner;
(2) To review the performance of the medical examiner and make annual written reports to the county council and executive;
(3) To report to the county and medical examiner the various jurisdictional needs for the medical examiner function.

Series 20-29: Provisions Related to Consideration and Payments

20.1 Accounting and Payment for Contractor Services:
Payment to the Contractor for services rendered under this Agreement shall be as set forth in Exhibit "B." Where Exhibit "B" requires payments by the County, payment shall be based upon written claims with sufficient documentation to support the total dollar payment requested, so as to comply with municipal auditing requirements.

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

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

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

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

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

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

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

The Contractor acknowledges that the entire compensation for this Agreement is specified in Exhibit "B" and the Contractor is not entitled to any benefits including, but not limited to: vacation pay, holiday pay, sick leave pay, medical, dental, or other insurance benefits, or any other rights or privileges afforded to employees of the County.

Contractor will defend, indemnify and hold harmless the County, its officers, agents or employees from any loss or expense, including, but not limited to, settlements, judgments, setoffs, attorneys’ fees or costs incurred by reason of claims or demands because of breach of the provisions of this paragraph.

30.2 Assignment and Subcontracting:
The performance of all activities contemplated by this agreement shall be accomplished by the Contractor. No portion of this contract may be assigned or subcontracted to any other individual, firm or entity without the express and prior written approval of the County. The Contractor may obtain and oversee substitute professional coverage for no more than 4 weeks per year when the ME is unavailable for any reason. Any such coverage shall be consistent with this contract and the standards of the College of American Pathology for autopsies and costs for coverage are eligible for reimbursement up to contracted amount.

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

31.2 Patent/Copyright Infringement: Not Applicable

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

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

34.1 Proof of Insurance:
The Contractor shall carry for the duration of this Agreement insurance with the following minimums:

1) Commercial General Liability coverage –
   a) Property Damage - $1,000,000.00 per occurrence;
   b) General Liability & Bodily injury- $1,000,000.00 per occurrence
A Certificate of insurance that also identifies the County as an additional insured for the above-stated coverage is attached hereto as Exhibit "C". This insurance shall be considered as primary and noncontributory and shall waive all rights of subrogation. The County insurance shall not serve as a source of contribution.

2Professional Liability - $1,000,000 per occurrence:
If the professional liability insurance is a claims made policy, and if the contractor discontinues coverage either during the term of this contract or within three years of completion, the contractor agrees to purchase tail coverage for a minimum of three years from the completion date of this contract or any amendment to this contract.

34.3 Defense & Indemnity Agreement:
The County agrees to defend, indemnify, and save harmless the Contractor from and against all loss or expense, including but not limited to judgments, settlements, attorneys; fees and costs by reason of any and all claims and demands upon the Contractor, for work performed by Contractor for the County that falls within the scope of services provided for herein. In case of any claim or suit brought against Contractor by any third party for damages alleged to have been incurred by such party for work performed, or failure to perform work, under the terms of this contract, Contractor shall immediately tender his defense of such claims and/or suits to the County and shall cooperate fully with the County in the defense of such claims and/or suits. Failure to so tender and cooperate in the defense of those claims and/or suits shall release the County from its duty to defend and indemnify as provided for herein.

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

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

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

35.2 Non-Discrimination in Client Services: Not Applicable

36.1 Waiver of Noncompetition: Not Applicable

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

37.1 Administration of Contract:
This Agreement shall be subject to all laws, rules, and regulations of the United States of America, the State of Washington, and political subdivisions of the State of Washington. The Contractor also agrees to comply with applicable federal, state, county or municipal standards for licensing, certification and operation of facilities and programs, and accreditation and licensing of individuals.

The County hereby appoints, and the Contractor hereby accepts, the Whatcom County Executive, and his or her designee, as the County's representative, hereinafter referred to as the Administrative Officer, for the purposes of administering the provisions of this Agreement, including the County's right to receive and act on all reports and documents, and any auditing performed by the County related to this Agreement. The Administrative Officer for purposes of this agreement is:

Professional Services Agreement
Medical Examiner Services

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37.2 Notice:
Except as set forth elsewhere in this Agreement, for all purposes under this Agreement except services of process, notice shall be given by the contractor to the County's Administrative Officer under this Agreement. Notice to the Contractor or all purposes under this Agreement shall be given to the address provided by the Contractor hereinafter in the "Contractor Information" section. Notice may be given by delivery or by depositing in the US Mail, first class, postage prepaid.

38.1 Certification of Public Works Contractor's Status under State Law: Not Applicable

38.2 Certification Regarding Federal Debarment, Suspension, Ineligibility and Voluntary Exclusion - Lower Tier Covered Transactions: Not Applicable

38.3 E-Verify: Not Applicable

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

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

40.2 Contractor Commitments, Warranties and Representations: Not Applicable

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

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

42.1 Disputes:

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

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

c. Detailed Claim:
The Contractor shall not be entitled to claim any such additional compensation, or extension of time, unless within thirty (30) days of the accomplishment of the portion of the work from which the claim arose, and before final payment by the County, the Contractor has given the

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County a detailed written statement of each element of cost or other compensation requested and of all elements of additional time required, and copies of any supporting documents evidencing the amount or the extension of time claimed to be due.

d. Arbitration:
Other than claims for injunctive relief brought by a party hereto (which may be brought either in court or pursuant to this arbitration provision), and consistent with the provisions hereinabove, any claim, dispute, or controversy between the parties under, arising out of, or related to this Agreement or otherwise, including issues of specific performance, shall be determined by arbitration in Bellingham, Washington, under the applicable American Arbitration Association (AAA) rules in effect on the date hereof, as modified by this Agreement. There shall be one arbitrator selected by the parties within ten (10) days of the arbitration demand, or if not, by the AAA or any other group having similar credentials. Any issue about whether a claim is covered by this Agreement shall be determined by the arbitrator. The arbitrator shall apply substantive law and may award injunctive relief, equitable relief (including specific performance), or any other remedy available from a judge, including expense, costs and attorney fees to the prevailing party and pre-award interest, but shall not have the power to award punitive damages. The decision of the arbitrator shall be final and binding and an order confirming the award or judgment upon the award may be enforced in any court having jurisdiction. The parties agree that the decision of the arbitrator shall be the sole and exclusive remedy between them regarding any dispute presented or pled before the arbitrator. At the request of either party made not later than forty-five (45) days after the arbitration demand, the parties agree to submit the dispute to nonbinding mediation, which shall not delay the arbitration hearing date; provided that either party may decline to mediate and proceed with arbitration.

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

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

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

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

The Medical Examiner (ME) is a physician certified in anatomic pathology who is authorized to investigate sudden, unexpected, violent, suspicious or unnatural deaths. The purpose of the ME is to bring trained medical evaluation into the investigation of those deaths that are a concern to the public health, safety and welfare.

The office and function of the ME is established by the Revised Code of Washington (RCW) 68.50. There are several reasons why a ME is to be utilized in the determination of the cause and manner of death. They include: (1) murder shall be determined and recognized; (2) the innocent shall be exonerated; (3) criminal and civil court proceedings will be provided with documented and impartial medical advice; (4) unrecognized hazards to public health shall be revealed; and (5) industrial and/or workplace hazards shall be made known to the public.

In order to reach and provide these services, the ME by statute assumes jurisdiction over human remains in these cases. The ME, after a thorough investigation, is to determine the cause and manner of death.

The ME is available personally or will provide ME coverage 24 hours per day, 365 days per year. The ME shall perform the following functions and have the following authority:

1. Arrange for the transportation of bodies.
2. Investigate all deaths as previously described in this paragraph.
3. Be available to law enforcement and in turn have access to law enforcement expertise, experience and personnel and assistance.
4. Create and file such medical records as are needed or required by statute and good medical procedure.
5. Extend and receive the full cooperation from all levels of county government appropriate to the investigation of death as determined by the ME.
6. Authority and duty to serve as a representative to the trauma quality assurance committee of St. Joseph Hospital.
7. Teach paramedics and emergency technicians, police and fire department trainees regarding any techniques and/or requirements of death investigations.
8. Liaison and work with the County Health Department regarding issues of public health, infectious diseases, toxins and poisons.
9. Be a representative on the Whatcom County Disaster Management Committee.
10. Create and oversee sexual assault protocol, transfer all evidence form hospital emergency department, create and maintain chain of evidence custody record, obtain appropriate laboratory testing of patient specimens, create summary report and opinion report for prosecution and law enforcement, work with emergency room and Health Department to treat victims for possible pregnancy or transmission of sexually transmitted diseases.
11. Provide courtroom testimony and consultation services for the prosecuting attorney, public defender, and law enforcement agencies on autopsies, interpretation of injuries on both living and deceased, toxicology testing and interpretation (including legal ethanol analyses).
12. Maintain and oversee the personnel, equipment, supplies, etc. to perform the duties of the Medical Examiner Office.
13. Obtain and oversee substitute professional coverage when the ME is unavailable for any reason. Any such coverage shall be consistent with this contract and the standards of the College of American Pathology for autopsies.
14. Administration of indigent cremation burial program on behalf of Whatcom County.
15. Create and maintain all documents, reports, and evidence necessary to perform the function of the Medical Examiner Office in accordance with relevant legal and professional standards.
16. Maintain current certification, stature, and licensure to perform the duties of Medical Examiner.
17. Maintain and oversee the morge facility.
18. Makes recommendations as necessary as a member of Child Death Review Committee along with DSHS, Health Department, schools, courts, Prosecutor, Sheriff, and Police Department.

The ME shall not have authority or responsibility over the personal affairs of the deceased or the responsibility or authority for notifying the next of kin to the deceased. These functions shall remain with the appropriate police and/or law enforcement agency. The ME shall not have authority or responsibility for making probate arrangements of the deceased.

The County in consultation with the Medical Examiner will develop specific procedures that assure ongoing and adequate Medical Examiner Services should existing contractor be unable to perform the services of a Medical Examiner. The Medical Examiner will cooperate with the County to the fullest extent possible in the development of the procedures. For auditing purposes the Medical Examiner will submit on a biannual basis, an autopsy report with the number of autopsies performed and the corresponding case number for each to allow for state reimbursement as per RCW 43.79.445.
EXHIBIT "B"
(COMPENSATION)

All payments under this contract are considered reimbursement for services rendered. Except as outlined below, maximum consideration for Medical Examiner Services shall be $572,046 for 2018 with an annual inflation adjustment increase based on the Seattle CPI-U as of the previous June. Annual Medical Examiner compensation includes $13,000 for lab studies, x rays and phone lines.

Upon invoice, Whatcom County will reimburse Medical Examiner up to $30,000 for up to 4 weeks of professional ME substitute coverage each year. Invoices will include documentation and receipts as appropriate for allowable reimbursement.

For the period of January 1, 2018 through December 31, 2018 $572,046, plus up to $30,000 for substitute ME coverage
For the period of January 1, 2019 through December 31, 2019 $572,046 + CPI adjustment + up to $30,000 for substitute ME coverage
For the period of January 1, 2020 through December 31, 2020 2019 rate + CPI adjustment + up to $30,000 for substitute ME coverage

In the event a catastrophe should occur in Whatcom County, with multiple deaths in excess of any reasonable expectation (for these purposes four or more deaths happening in or around the same event), the Contractor shall be permitted to request the contract be reopened to review the possible need for additional compensation, and the parties shall in good faith seek to address the request for additional compensation.

The ME will provide the County with monthly invoices for Medical Examiner services. Additional payment as outlined in Exhibit "A" for ME substitute coverage is for reimbursement only and shall not exceed $30,000 per year for up to 4 weeks of coverage. Copies of receipts must be attached to invoice for reimbursement. Payment will be made no more than one time per month. The Contract Number, set forth above, shall be included on all billings or correspondence in connection therewith.
# WHATCOM COUNTY COUNCIL AGENDA BILL

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<th>CLEARANCES</th>
<th>Initial</th>
<th>Date</th>
<th>Date Received in Council Office</th>
<th>Agenda Date</th>
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## TITLE OF DOCUMENT:
Department Updates to Council

## ATTACHMENTS:

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<th>Should Clerk schedule a hearing?</th>
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<th>( ) NO</th>
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## SUMMARY STATEMENT OR LEGAL NOTICE LANGUAGE:

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<td>1/16/2018</td>
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<td>1/30/2018</td>
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<td>Criminal Justice and Public Safety (Sheriff's Office)</td>
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<td>Natural Resources (WSU Ext.)</td>
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<td>4/10/2018</td>
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<td>4/24/2018</td>
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<td>5/22/2018</td>
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<td>Finance &amp; Admin Servs (Finance)</td>
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<td>6/19/2018</td>
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<td>6/19/2018</td>
<td>Criminal Justice and Public Safety (Juvenile Court)</td>
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<td>Finance &amp; Admin Servs (Prosecuting Attorney)</td>
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<td>7/24/2018</td>
<td>Finance &amp; Admin Servs (IT)</td>
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<tr>
<td>8/7/2018</td>
<td>Criminal Justice and Public Safety (Public Defender)</td>
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<td>8/7/2018</td>
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<td>9/11/2018</td>
<td>Public Works &amp; Health (Public Works)</td>
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<td>Criminal Justice and Public Safety (District Court)</td>
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<td>Division Head:</td>
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<td>Dept. Head:</td>
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<td>Purchasing/Budget:</td>
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<td>Executive:</td>
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**TITLE OF DOCUMENT:**
Discussion of the Criminal Justice & Public Safety Committee work plan for 2018

**ATTACHMENTS:**

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

**SUMMARY STATEMENT OR LEGAL NOTICE LANGUAGE:** (If this item is an ordinance or requires a public hearing, you must provide the language for use in the required public notice. Be specific and cite RCW or WCC as appropriate. Be clear in explaining the intent of the action.)
Discussion of the Criminal Justice and Public Safety Committee's work plan for 2018

**COMMITTEE ACTION:**

**COUNCIL ACTION:**

<table>
<thead>
<tr>
<th>Related County Contract #:</th>
<th>Related File Numbers:</th>
<th>Ordinance or Resolution Number:</th>
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</thead>
</table>

Please Note: Once adopted and signed, ordinances and resolutions are available for viewing and printing on the County’s website at: www.co.whatcom.wa.us/council,
**TITLE OF DOCUMENT:**
Resolution initiating proposed Whatcom County Comprehensive Plan and Zoning Ordinance amendments.

**ATTACHMENTS:**
1. Cover letter
2. Draft Resolution Initiating Comprehensive Plan and Zoning Amendments

<table>
<thead>
<tr>
<th>SEPA review required?</th>
<th>Yes</th>
<th>No</th>
</tr>
</thead>
<tbody>
<tr>
<td>SEPA review completed?</td>
<td>Yes</td>
<td>No</td>
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</table>

1 SEPA will be completed on those amendments initiated by the Council prior to final Council action.

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

Whatcom County Code 2.160.050 indicates that proposed Comprehensive Plan amendments are to be “initiated” for further review by a majority vote of the County Council. Whatcom County Code 20.90.030 also allows the Council to initiate zoning amendments. Planning and Development Services is forwarding the proposed docket so that the Council can determine which amendments to initiate for further review.

**COMMITTEE ACTION:**

**COUNCIL ACTION:**

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

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

FROM: Matt Aamot, Senior Planner

THROUGH: Mark Personius, Interim Director

DATE: February 12, 2018

SUBJECT: Resolution Initiating Comp Plan & Zoning Amendments

Pursuant to state and local law, proposed comprehensive plan and zoning amendments are initiated for further review by the County Council each year. This year, there are eight new applications and a number of previous applications (initiated by Council in past years) on the proposed docket.

New Applications

Whatcom County has submitted or received new proposals relating to the following topics for consideration in 2018:

- Capital Facility Planning
- Density Credit Program - Comprehensive Plan Amendments
- Repeal Cherry Point-Ferndale Subarea Plan
- Motorized Trail Systems on State DNR Managed Lands
- Critical Areas Ordinance - On-Going Agriculture
- Critical Areas Ordinance - Critical Areas Monitoring
- Whatcom County Code/Title 20 Amendments
- Wind Energy System Amendments

The Council should determine which of the above proposals to initiate for further review in 2018. Initiated amendments will be submitted for SEPA review, evaluated by the Planning Department, and go to a public hearing before the Planning
Commission prior to returning to the County Council for a final decision. If a comprehensive plan amendment is not initiated by Council, it will not go forward.

Regarding the new suggested zoning text amendment for which no fee was paid (relating to motorized trail systems on State DNR managed lands), WCC 20.90.040(4) states:

Interested persons may suggest revisions to WCC Title 20 . . . 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.

The Council may initiate the suggested zoning text amendment, in which case no fees will be required. Alternatively, under current code (which is proposed for modification – see Agenda Bill No. 2018-056), if the Council chooses not to initiate this suggested zoning amendment, the applicant may initiate the amendment by paying the required application fees.

**Previous Applications**

In addition to the new applications, the following projects were initiated for review in previous years. They are included in the proposed resolution, as review has not been completed:

- Urban Fringe Subarea Plan Update;
- Mineral Resource Lands – County-wide Designation Process;
- New Marine Resource Lands Section in the Comprehensive Plan;
- Water Resources - Growth Management Act Compliance;
- Wireless Communication Facilities;
- Permit Review Procedures;
- Sign Regulations Update;
- Vacation Rental Regulations;
- Code Enforcement Amendments;
- Boundary Line Adjustments;
- Weddings and Special Events;
- Bellingham Development Standards;
- Agricultural Strategic Plan Implementation; and

Thank you for your consideration of the proposed resolution. We look forward to discussing it with you.
RESOLUTION NO. ______

INITIATING COMPREHENSIVE PLAN AND ZONING AMENDMENTS

WHEREAS, the Growth Management Act (RCW 36.70A.470) requires the County to consider the proposed docket of comprehensive plan and development regulation amendments on at least an annual basis; and

WHEREAS, the provisions of WCC 2.160.050 indicate that Comprehensive Plan amendments are to be “initiated” for review by approval of a resolution by the County Council. WCC 20.90.030 indicates that the Council may also initiate zoning amendments; and

WHEREAS, the Whatcom County Planning and Development Services Department has forwarded a docket of proposed Comprehensive Plan and zoning amendments to the County Council for consideration;

NOW, THEREFORE, BE IT RESOLVED that the Whatcom County Council hereby initiates for formal review the amendments shown on attached Exhibit A.

APPROVED 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
<table>
<thead>
<tr>
<th>File #</th>
<th>File Name</th>
<th>Applicant</th>
<th>Description</th>
<th>Location</th>
<th>Fee Waiver Requested?</th>
</tr>
</thead>
<tbody>
<tr>
<td>PLN2018-00001</td>
<td>Capital Facilities Planning</td>
<td>Whatcom County</td>
<td>Amend the capital facilities element of the Whatcom County Comprehensive Plan, including the Six-Year Capital Improvement Program (Appendix F) and the Whatcom County 20-Year Capital Facilities Plan (Appendix E).</td>
<td>County-wide</td>
<td>N/A</td>
</tr>
<tr>
<td>PLN2018-00002</td>
<td>Density Credit Program –</td>
<td>Whatcom County</td>
<td>Amend the Whatcom County Comprehensive Plan to reflect a shift in emphasis from a traditional transfer of development rights program to a density credit program. Density credits allow development incentives, such as increased density, in exchange for a voluntary contribution towards preserving agricultural lands and open space.</td>
<td>N/A</td>
<td>N/A</td>
</tr>
<tr>
<td>PLN2018-00003</td>
<td>Repeal Cherry Point-Ferndale</td>
<td>Whatcom County</td>
<td>Repeal the Cherry Point-Ferndale Subarea Plan, which was adopted in 1981. The proposal would also amend related provisions in the Whatcom County Comprehensive Plan and Zoning Code.</td>
<td>Cherry Point-Ferndale Subarea</td>
<td>N/A</td>
</tr>
<tr>
<td>PLN2018-00004</td>
<td>Motorized Trail Systems</td>
<td>State Department of Natural Resources</td>
<td>Amend the Commercial Forestry zoning district by adding “motorized trail systems and associated motorized trailheads” as a conditional use. Add definitions of “motorized trail system” and “off-road vehicle park” to the Zoning Code.</td>
<td>Commercial Forestry zone (definitions apply County-wide)</td>
<td>Yes - suggested amendment</td>
</tr>
<tr>
<td>PLN2018-00005</td>
<td>CAO On-Going Agriculture</td>
<td>Whatcom County</td>
<td>The Critical Areas Ordinance (CAO) was adopted by the County Council in December 2017 (Ordinance 2017-077). Section 4(a) of this Ordinance states “Planning and Development Services staff shall work with the farming community to develop creative solutions that would allow farmers to maintain or attain ‘ongoing agriculture’ status pursuant to applicable laws.</td>
<td>N/A</td>
<td>N/A</td>
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<tr>
<td>PLN2018-00006</td>
<td>CAO Critical Areas Monitoring</td>
<td>Whatcom County</td>
<td>Proposed code amendments to the Critical Areas Ordinance related to ongoing agriculture shall be processed with all due haste, but the first proposal shall be brought to Council for consideration no later than July 1, 2018.”</td>
<td>N/A</td>
<td>N/A</td>
</tr>
<tr>
<td>PLN2018-00007</td>
<td>WCC/Title 20 Amendments</td>
<td>Whatcom County</td>
<td>The Critical Areas Ordinance (CAO) was adopted by the County Council in December 2017 (Ordinance 2017-077). Section 4(b) of this Ordinance states “Planning and Development Services will continue to implement Whatcom County Comprehensive Plan policies 10K-15, 10K-16, 10L-17 and 10L-18, and goal 10G, as well as bring forward a plan to enhance groundwater quality sampling as called for in best available science, in order to monitor the functions and values of critical areas and to develop baseline data to use for such monitoring. An update of the implementation of these policies will be presented to Council no later than January 2019.”</td>
<td>N/A</td>
<td>N/A</td>
</tr>
<tr>
<td>PLN2018-00008</td>
<td>Wind Energy System Amendments</td>
<td>Whatcom County Planning Commission</td>
<td>Review and, if needed, revise the Whatcom County Zoning Code and other sections of the Whatcom County Code to implement Comprehensive Plan policies and/or address issues identified in the administration of the codes. Additionally, any revisions needed to achieve consistency with the Growth Management Act may also be considered.</td>
<td>N/A</td>
<td>N/A</td>
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<tr>
<td>PLN2017-00001</td>
<td>Urban Fringe Subarea Plan Update</td>
<td>Whatcom County</td>
<td>Review and update the Urban Fringe Subarea Plan and related provisions of the Whatcom County Comprehensive Plan.</td>
<td>Bellingham Urban Fringe</td>
<td>N/A</td>
</tr>
<tr>
<td>PLN2017-00002</td>
<td>Marijuana Production Facility—Buffer Waivers</td>
<td>Seth Stromme of Agape Research</td>
<td>Amend the Whatcom County Zoning Code to allow marijuana production facilities in the Agriculture zone closer to churches when a waiver is signed by the legal representatives of the church.</td>
<td>Agriculture Zoning-District</td>
<td>Yes (suggested amendment)</td>
</tr>
<tr>
<td>PLN2017-00004</td>
<td>MRL Countywide Designation Process</td>
<td>Whatcom County</td>
<td>Through a county-led countywide assessment, seek to identify and designate potential commercially significant mineral resource lands, to meet future demand, compatible with water resources, agricultural lands, forest lands and other GMA goals pursuant to Comprehensive Plan Policy 8R-1.</td>
<td>County-wide</td>
<td>N/A</td>
</tr>
<tr>
<td>PLN2017-00005</td>
<td>New Marine Resource Lands Section</td>
<td>Whatcom County</td>
<td>Create a new Marine Resource Lands section in the Comprehensive Plan (Chapter 8) pursuant to Comprehensive Plan Policy 8T-1.</td>
<td>Marine Areas</td>
<td>N/A</td>
</tr>
<tr>
<td>PLN2017-00006</td>
<td>Water Resources—GMA Compliance</td>
<td>Whatcom County</td>
<td>Amend the Whatcom County Comprehensive Plan and development regulations to address exempt wells in closed basins, in accordance with the Washington Supreme Court's decision in Hirst v. Whatcom County (Oct. 2016) and Senate Bill 6091 (Jan. 2018).</td>
<td>County-wide</td>
<td>N/A</td>
</tr>
<tr>
<td>PLN2017-00007</td>
<td>WCC/Title 20 Amendments</td>
<td>Whatcom County</td>
<td>Review and, if needed, revise the Whatcom County Zoning Code and other sections of the Whatcom County Code to implement Comprehensive Plan policies and/or address issues identified in the administration of the codes. Additionally, any revisions needed to achieve consistency with the Growth Management Act may also be considered.</td>
<td>N/A</td>
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<tr>
<td>PLN2016-00064</td>
<td>CAO-Update</td>
<td>Whatcom County</td>
<td>Update the Critical Areas Ordinance, in accordance with the Growth Management Act.</td>
<td>N/A</td>
<td>N/A</td>
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<tr>
<td>PLN2016-00006</td>
<td>Wireless Communication Facilities</td>
<td>Whatcom County</td>
<td>Review and update provisions in Chapter 20.13 to ensure consistency with new 2015 FCC rules (80 FR 1238) which are designed to implement and enforce Section 6409(a) of the Middle Class Tax Relief and Job Creation Act of 2012. The sections to be reviewed and updated will include WCC 20.13.010 – Purpose; WCC 20.13.020 – Definitions; WCC 20.13.040 – Permitted Uses; and WCC 20.13.120 – Application requirements and conditions of issuance.</td>
<td>N/A</td>
<td>N/A</td>
</tr>
<tr>
<td>PLN2016-00008</td>
<td>Permit Review Procedures</td>
<td>Whatcom County</td>
<td>Review and revise Whatcom County Code 2.33 (Permit Review Procedures and other procedures), including updating the code for consistency with state law.</td>
<td>N/A</td>
<td>N/A</td>
</tr>
<tr>
<td>PLN2016-00009</td>
<td>Sign Regulations Update</td>
<td>Whatcom County</td>
<td>Review and revise Whatcom County Code 20.80.400 (Sign Regulations), including updating the code for consistency with the U.S. Supreme Court’s decision in Reed v. Town of Gilbert (2015).</td>
<td>N/A</td>
<td>N/A</td>
</tr>
<tr>
<td>PLN2014-00020</td>
<td>Vacation Rental Regulations</td>
<td>Whatcom County</td>
<td>Amend Whatcom County Code Title 20 (Zoning) &amp; Title 23 (Shoreline Management Program) to allow vacation rentals under certain conditions as a use within certain zones and shoreline designations.</td>
<td>N/A</td>
<td>N/A</td>
</tr>
<tr>
<td>PLN2016-00011</td>
<td>Cherry Point Amendments</td>
<td>Whatcom County</td>
<td>Review proposed amendments to the Cherry Point section of Chapter Two — Land Use of the Comprehensive Plan.</td>
<td>N/A</td>
<td>N/A</td>
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<tr>
<td>PLN2015-00003</td>
<td>Code Enforcement Amendments</td>
<td>Whatcom County</td>
<td>Create a new Whatcom County Code (WCC) Title 19, called “Code Enforcement,” to establish an efficient system to address enforcement of building, critical areas and zoning codes. The proposal would consolidate the existing code enforcement provisions from WCC 15, 16.16, and 20 into a new WCC Title 19. The proposed amendments include provisions that would allow the County to record a document at the Whatcom Auditor’s office indicating that there is a code violation on a property.</td>
<td>N/A</td>
<td>N/A</td>
</tr>
<tr>
<td>PLN2015-00004</td>
<td>Point Roberts Character-Plan Amendments</td>
<td>Whatcom County/Arthur Reber</td>
<td>Amend the Point Roberts Subarea Plan including the &quot;Point Roberts Character Plan&quot; to ensure consistency between Character Plan development regulations and administrative procedures, the Official Whatcom County Zoning Ordinance (WCC Title 20), and Whatcom County Permit Review Procedures (WCC 2.33). Amend the Point Roberts Character Plan to address timelines for Character Plan Advisory Committee review of projects, roof materials, exterior finish, fire hydrant appearance, screening dumpsters, utilities &amp; other uses, signs rules, and Character Plan Advisory Committee timelines for responding to alleged code violations.</td>
<td>The amendment relates to Point Roberts</td>
<td>N/A</td>
</tr>
<tr>
<td>PLN2014-00001</td>
<td>Boundary Line Adjustments</td>
<td>Jay Irwin</td>
<td>Amend Section 20.83.110 of the Whatcom County Zoning Ordinance relating to boundary line adjustments. The amendment would allow boundary line adjustments to nonconforming parcels to resolve encroachments such as fences, trees and other occupational indicators. The amendment would also allow boundary line adjustments that modify the boundaries between two nonconforming parcels based</td>
<td>N/A</td>
<td>N/A</td>
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<td>PLN2014</td>
<td>Weddings and Special Events</td>
<td>Whatcom County</td>
<td>Amend the Whatcom County Zoning Ordinance to allow “Weddings and Special Events” in specific zone districts through a conditional use permit. Amend WCC 20.97 to define “Special Events” and amend the parking space requirements in WCC 20.80.580.</td>
<td>N/A</td>
<td>N/A</td>
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<tr>
<td>PLN2013</td>
<td>Bellingham Development Standards</td>
<td>Whatcom County</td>
<td>Review and potentially revise the Whatcom County Code to adopt City of Bellingham Development Standards for the Bellingham Urban Growth Area (UGA).</td>
<td>These amendments relate to the Bellingham UGA</td>
<td>N/A</td>
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<td>-00003</td>
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<tr>
<td>PLN2012</td>
<td>Agricultural Strategic Plan</td>
<td>Whatcom County</td>
<td>Resolution 2011-023 was approved by the County Council on 7/26/2011 declaring support for the Whatcom County Agricultural Strategic Plan. An immediate priority in this plan is to review the Rural Study Areas as listed in the 2007 Rural Land Study and make recommendations for possible changes in accordance with Resolution 2009-040 (100,000 acre target), Resolution 2011-023 (the Agricultural Strategic Plan), and RCW 36.70A.170 and .177. Other immediate and short-term priorities in this plan include developing tools that can be incentives for agricultural operators within the priority agricultural areas. These activities may lead to proposed changes to the agricultural portions of the Comprehensive Plan and zoning regulations.</td>
<td>Proposal relates to Agricultural and Rural lands</td>
<td>N/A</td>
</tr>
<tr>
<td>-00007</td>
<td>Implementation</td>
<td></td>
<td></td>
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<tr>
<td>PLN2012-00009</td>
<td>MRL Expansion – North Star Rd.</td>
<td>Ferndale Ready Mix &amp; Gravel</td>
<td>Amend the comprehensive plan designation from Rural to Mineral Resource Lands (MRL) and amend the zoning map to expand a MRL overlay zone on approximately 19.7 acres on the west side of North Star Rd., south of Brown Rd. The underlying zoning is Rural one dwelling/five acres (R5A).</td>
<td>Parcel # 390110 212100; Within the SW ¼ of section 10, T39N, R1E, W.M.</td>
<td>N/A</td>
</tr>
</tbody>
</table>
WHATCOM COUNTY COUNCIL AGENDA BILL

TITeL OF DOCUMENT:

Amend the Urban Fringe Subarea Plan and make related amendments to the Whatcom County Comprehensive Plan and Whatcom County Zoning Code (Title 20).

ATTACHMENTS:

1. Memorandum
2. Draft Ordinance with Exhibits A, B, and C
3. Planning Commission Findings

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

Should Clerk schedule a hearing? (X) Yes ( ) NO

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

Amend the Urban Fringe Subarea Plan, Whatcom County Comprehensive Plan, and Whatcom County Zoning Code (Title 20). The proposed amendments to the Zoning Code relate to the following zoning districts: Urban Residential Medium Density, Urban Residential Mixed, Gateway Industrial, Light Impact Industrial, and Heavy Impact Industrial.

COMMITTEE ACTION:

2/13/2018: Presented and Discussed

COUNCIL ACTION:

1/30/2018: Introduced 7-0

Related County Contract #: Related File Numbers: Ordinance or Resolution Number:
County Planning File # PLN2017-00001.

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

January 17, 2018

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

FROM: Matt Aamot, Senior Planner

THROUGH: Mark Personius, Assistant Director

RE: Urban Fringe Subarea Plan and Related Amendments
    (PLN2017-00001)


County staff worked with City of Bellingham staff over a four month period on developing the proposed changes to the Urban Fringe Subarea Plan, County Comprehensive Plan, and County Zoning Code. Some of the proposed changes to the Subarea Plan include:

- Modifying the boundaries of the Subarea to match the Bellingham Urban Growth Area (UGA), so that the subarea no longer includes rural and agricultural lands in the vicinity of the UGA (pp. 6, 31, and 32).
- Modifying Policy 1.12 to reflect current City of Bellingham policy regarding extension of public water and sewer outside city limits (p. 8).
- Deleting Policy 1.15, which requires transfer of development rights for rezones that increase residential densities (p. 9).
- Identifying comparable city zoning for different areas (pp. 10, 12, 14, 16, 17, 19, 22, 24, 25, and 27).
- Deleting Policy 2.17, which requires City impact fees for development located in the UGA, outside city limits (p. 13).
- Deleting the General Manufacturing (GM) text and policies because there is no longer any GM zoning in the Urban Fringe Subarea (pp. 21-22).
• Modifying Policy 4.32 by inserting a reference to WCC 8.34 relating to disclosure of airport noise (p. 26).

• Inserting new Policy 4.33 encouraging the City of Bellingham to adopt airport/land use compatibility rules applicable to properties around the airport (p. 27). This concept was suggested by the Port of Bellingham and will become even more important if the City annexes property adjacent to the Bellingham International Airport.

• Inserting text acknowledging the existence of Recreation and Open Space zoning within the Urban Fringe Subarea (p. 27).

• Updating criteria for evaluating UGAs (pp. 29-30).

• Deleting “Comprehensive Plan Land Use & Official Zoning” maps from the Subarea Plan (pp. 33-48). Land use designations already exist in the Whatcom County Comprehensive Plan and zoning maps.

• Deleting the “Analysis and Rationale for Adjusting Bellingham’s 1985 Urban Service Area” that was originally from the 1997 Urban Fringe Subarea Plan (pp. 49-66). Some of these areas have been annexed, some are in the current UGA, and some were not included in the UGA.

• Deleting the “Five Year Periodic Review” section (pp. 66 and 67). The Growth Management Act now requires periodic review of all UGAs every eight years (RCW 36.70A.130).

• Updating the “Comprehensive Plan Amendments” section that relates to both the state mandated 8-year review and amendments proposed by individual property owners (pp. 67-69).

• Updating the implementation section (pp. 69-70).

• Deleting several other sections, including sections relating to the interlocal agreement, design standards, Guide Meridian Improvement Plan, creative development techniques, and plan revisions (pp. 70-72).

The proposed amendments update the Subarea Plan for consistency with the Whatcom County Comprehensive Plan, Whatcom County Zoning Code, and City of Bellingham policy. The amendments also propose deleting policies that may be in conflict with state law. Finally, the amendments propose deleting information that is outdated or no longer necessary. The Whatcom County Planning Commission held a public hearing and issued recommendations on this matter on January 11, 2018.

Thank you for your review and consideration of the proposal. We look forward to discussing it with you.
ORDINANCE NO. ________________

ADOPTING AMENDMENTS TO
THE URBAN FRINGE SUBAREA PLAN,
WHATCOM COUNTY COMPREHENSIVE PLAN,
AND WHATCOM COUNTY ZONING CODE

WHEREAS, The Whatcom County Council initiated (docketed) the proposed amendments for further review in March 2017; and

WHEREAS, The Whatcom County Planning Commission held public meetings and issued recommendations on the proposed amendments; and

WHEREAS, The County Council considered Planning Commission recommendations; and

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

FINDINGS OF FACT

Background Information

1. The subject proposal consists of amendments to the:
   a. Urban Fringe Subarea Plan;
   b. Whatcom County Comprehensive Plan Policy; and
   c. Whatcom County Zoning Code (Title 20).

2. The Whatcom County Comprehensive Plan was updated in August 2016 (Ordinance 2016-034). This update included the county-wide urban growth area (UGA) review. The existing Bellingham UGA was retained in this process. The Urban Fringe Subarea Plan update involves review of the text, goals, policies, and maps of the Subarea Plan. However, the Subarea Plan update is not intended to re-open the UGA review process completed in 2016.

3. The Whatcom County Comprehensive Plan states "... The next Urban Fringe Plan update will only include the Bellingham UGA ..." (p. 2-24). Therefore, the Urban Fringe Subarea Plan boundary is being modified to match the Bellingham UGA boundary. The Urban Fringe Subarea will no longer include Rural and other lands outside the UGA.
Whatcom County Comprehensive Plan Policy 2L-2 is to “Retain and periodically review the adopted Subarea Plans” including the Urban Fringe Subarea Plan. The Urban Fringe Subarea Plan was adopted in 1997 (with amendments in 1999, 2004, and 2009).

The County Council passed Resolution #2017-016 in March 2017 initiating review and update of the Urban Fringe Subarea Plan and related provisions of the Whatcom County Comprehensive Plan.

State Environmental Policy Act

A Determination of Non-significance was issued by the SEPA Responsible Official on September 29, 2017.

Comprehensive Plan/Subarea Plan Approval Criteria

The criteria of WCC 2.160.080, summarized below, must be satisfied in order to approve a comprehensive plan amendment.

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

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

- 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:
  - The anticipated effect upon the rate or distribution of population growth, employment growth, development, and conversion of land as envisioned in the Comprehensive Plan.
  - The anticipated effect upon 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.
  - Anticipated impact upon designated agricultural, forest and mineral resource lands.

- The amendment does not include or facilitate spot zoning.

- Transfer of development rights may be required if an urban growth area is expanded.
Subarea Plans

8. The GMA, in a section entitled "Optional Elements," states that a "comprehensive plan may include, where appropriate, subarea plans, each of which is consistent with the comprehensive plan" (RCW 36.70A.080(2)).

9. The Western Washington Growth Management Hearings Board has stated that:

\[ \ldots \text{Subarea plans are optional elements of a comprehensive plan. While a jurisdiction has discretion to utilize subarea plans, RCW 36.70A.080(2) requires that subarea plans be consistent with the comprehensive plan and are subject to the goals and requirements of the GMA. Subarea plans are, as the prefix "sub" implies, a subset of the comprehensive plan of a jurisdiction and they typically augment or amplify policies contained in the comprehensive plan. There is no GMA requirement that a subarea plan contain all the mandatory elements required by RCW 36.70A.070. } \ldots \text{ (Campbell v. San Juan County, Case No. 09-2-0014, Final Decision and Order, January 27, 2010).} \]

10. The Urban Fringe Subarea Plan is an optional element that Whatcom County has chosen to include, at the County's discretion, in the County's Comprehensive Plan.

Intergovernmental Coordination / Public Participation

11. GMA planning goals are set forth in RCW 36.70A.020. The GMA citizen participation and coordination planning goal is to "Encourage the involvement of citizens in the planning process and ensure coordination between communities and jurisdictions to reconcile conflicts" (RCW 36.70A.020(11)).

12. County and City of Bellingham staff met over a four month period (April – August 2017) to discuss proposed changes to the Urban Fringe Subarea Plan, related changes to the Whatcom County Comprehensive Plan, and related changes to the Whatcom County Zoning Code.


Urban Growth

15. GMA planning goal # 1 is to "Encourage development in urban areas where adequate public facilities and services exist or can be provided in an efficient manner" (RCW 36.70A.020(1)). Under the GMA, urban growth areas have been designated pursuant to RCW 36.70A.110.
16. County-wide Planning Policy F-11 states “The county and the City of Bellingham shall establish, through the Urban Fringe Subarea Plan update, the policies, zoning and criteria to comply with current state Growth Management law.”

17. County-wide Planning Policy F-12 states “...The revised Urban Fringe Subarea Plan and a new Interlocal Agreement between the City of Bellingham and the county will address sequence and timing for annexations, subdivisions, and urban levels of development.”

18. The Whatcom County Comprehensive Plan contains goals and policies supporting the Bellingham Urban Growth Area designation including Goal 2U and Policies 2U-1 through 2U-10.

19. The Bellingham UGA was adopted by the Whatcom County Council in 1997, when the Comprehensive Plan was originally adopted pursuant to the GMA (Ordinance 97-023).

20. The Bellingham UGA was reduced in size in the 2009 UGA review (Ordinance 2009-071).

21. The Bellingham UGA was retained in the 2016 UGA review (Ordinance 2016-034).

22. The amended Urban Fringe Subarea Plan includes a map of the existing Bellingham UGA, which is consistent with the UGA boundaries in the Whatcom County Comprehensive Plan.

**Low Density Sprawl**

23. GMA planning goal # 2 is to “Reduce the inappropriate conversion of undeveloped land into sprawling, low-density development” (RCW 36.70A.020(2)).

24. The Whatcom County Comprehensive Plan, Urban Fringe Subarea Plan, and Whatcom County Zoning Code protect land from sprawling low-density development because:

   a. The Whatcom County Comprehensive Plan encourages net densities of 6 to 24 dwellings/acre in Bellingham (Goal 2P).

   b. In the Lake Whatcom Watershed, urban residential zoning in the Bellingham UGA allows one dwelling/five acres if public water and sewer are available. When public water and sewer are not provided, the maximum density is one dwelling/ten acres.

   c. Outside the Lake Whatcom Watershed, urban residential zoning in the
Bellingham UGA may be developed at urban densities if public water and sewer are provided. When public water and sewer are not provided, the maximum density is one dwelling/ten acres.

Transportation

25. GMA planning goal # 3 is to “Encourage efficient multimodal transportation systems that are based on regional priorities and coordinated with county and city comprehensive plans” (RCW 36.70A.020(3)).

26. County-wide Planning Policy 3-2 states that “Whatcom County jurisdictions shall encourage alternative modes of transportation to the single occupancy vehicle. . .”

27. Transportation planning is primarily addressed in the Whatcom County Comprehensive Plan. However, Urban Fringe Subarea Plan Policy 1.6 is to “Promote development that supports and enhances efficient public transportation and an intermodal transportation system.” Additionally, other policies in the Urban Fringe Subarea Plan address transportation issues in a variety of land use designations in the Subarea.

Housing

28. GMA planning goal # 4 is to “Encourage the availability of affordable housing to all economic segments of the population of this state, promote a variety of residential densities and housing types, and encourage preservation of existing housing stock” (RCW 36.70A.020(4)).

29. County-wide Planning Policy G-2 states that “The county and the cities shall plan for a range of housing types and costs commensurate with their affordable housing needs.”

30. Housing is primarily addressed in the Whatcom County Comprehensive Plan. Urban residential zones in the UGA allow a variety of densities and housing types upon provision of public water and sewer. However, Urban Fringe Subarea Plan Policy 1.3 is to “Provide opportunities for a diversity of housing types in the Urban Growth Area.” The City of Bellingham generally does not extend public water and sewer outside city limits. Therefore, higher density housing in the Bellingham UGA typically occurs after annexation.

Economic Development

31. GMA planning goal # 5 is to “Encourage economic development throughout the state that is consistent with adopted comprehensive plans, promote economic opportunity for all citizens of this state, especially for unemployed and for disadvantaged persons, promote the retention and expansion of existing businesses and recruitment of new businesses, recognize regional differences impacting economic development opportunities, and encourage
growth in areas experiencing insufficient economic growth, all within the capacities of the state's natural resources, public services, and public facilities” (RCW 36.70A.020(5)).

32. County-wide Planning Policy I-7 states:

   Economic vitality and job development shall be encouraged in all the cities and in designated areas of the county consistent with community growth policies, particularly addressing adequacy of transportation corridors, public transportation, impacts on the environment, and the ability of the area to provide urban services.

33. Economic development issues are primarily addressed in the Whatcom County Comprehensive Plan. However, the Urban Fringe Subarea contains policies relating to commercial, industrial, and airport zones to facilitate economic opportunities in the Bellingham UGA.

Property Rights

34. GMA planning goal # 6 states that “Private property shall not be taken for public use without just compensation having been made. The property rights of landowners shall be protected from arbitrary and discriminatory actions” (RCW 36.70A.020(6)).

35. The Attorney General’s Advisory Memorandum and Recommended Process for Evaluating Proposed Regulatory or Administrative Actions to Avoid Unconstitutional Takings of Private Property (December 2015) has been reviewed by legal counsel and no warning signals that are associated with the takings analysis have been identified for the subject amendments.

Permitting

36. GMA planning goal # 7 states “Applications for both state and local government permits should be processed in a timely and fair manner to ensure predictability” (RCW 36.70A.020(7)).

37. Permitting issues are primarily addressed in the Whatcom County Comprehensive Plan on a county-wide basis.

Resource Lands and Industries

38. GMA planning goal # 8 is to “Maintain and enhance natural resource-based industries, including productive timber, agricultural, and fisheries industries. Encourage the conservation of productive forest lands and productive agricultural lands, and discourage incompatible uses” (RCW 36.70A.020(8)).
39. County-wide Planning Policy I-9 states:

The County and the cities recognize the need for the protection and utilization of natural resources and resource lands including agricultural, mineral, forestry and fishing. As part of a broad based economy, productive timber, agriculture and fisheries industries should be supported in a sustainable manner.

40. The Urban Fringe Subarea Plan boundary is being revised to match the Bellingham UGA boundary. There are no designated agriculture, forestry, or mineral resource lands within the revised Urban Fringe Subarea boundary.

Open Space/Recreation/Fish & Wildlife

41. GMA planning goal # 9 is to “Retain open space, enhance recreational opportunities, conserve fish and wildlife habitat, increase access to natural resource lands and water, and develop parks and recreation facilities” (RCW 36.70A.020(9)).

42. County-wide Planning Policy H-1 states:

Adequate open space is vital to the quality of life and sense of place in Whatcom County. The county, cities, Port of Bellingham, and other appropriate jurisdictions should coordinate protection of linked greenbelts, within and between Urban Growth Areas, parks, and open space to protect wildlife corridors and to enhance recreational opportunities, public access and trail development.

43. Open space, recreation, and fish & wildlife habitat are primarily addressed in the Whatcom County Comprehensive Plan. However, Urban Fringe Subarea Plan Policy 1.16 is to “Promote a coordinated effort to identify and prioritize interconnected natural areas and features for preservation to protect water quality and provide habitat, recreation, open space and wildlife corridors.”

Environment

44. GMA planning goal # 10 is to “Protect the environment and enhance the state's high quality of life, including air and water quality, and the availability of water” (RCW 36.70A.020(10)).

45. County-wide Planning Policy N-1 states:

The cities, and the county, in cooperation with other municipal corporations, tribal governments, federal and state agencies, and public and private utilities shall cooperate in the protection of water resources and in drawing upon said water to support growth.
46. The environment is primarily addressed in the Whatcom County Comprehensive Plan. However, Urban Fringe Subarea Plan Policy 1.16 is to “Promote a coordinated effort to identify and prioritize interconnected natural areas and features for preservation to protect water quality and provide habitat, recreation, open space and wildlife corridors.”

Public Facilities

47. GMA planning goal # 12 is to “Ensure that those public facilities and services necessary to support development shall be adequate to serve the development at the time the development is available for occupancy and use without decreasing current service levels below locally established minimum standards” (RCW 36.70A.020(12)).

48. County-wide Planning Policy D-3 states “Cities shall develop a plan to provide urban level water and sewer services within their Urban Growth Areas. . .”

49. The City of Bellingham, Water District 2, Water District 7, the Lake Whatcom Water and Sewer District and several other purveyors currently plan and provide water service to various parts of the UGA. The City of Bellingham plans water service for unserved parts of the UGA, but physical service is typically provided after annexation.

50. The City of Bellingham and the Lake Whatcom Water and Sewer District currently plan and provide sewer service to various parts of the UGA. The City of Bellingham plans sewer service for unserved parts of the UGA, but physical service is typically provided after annexation.

51. The City of Bellingham Fire Department provides service inside the city limits. Fire Districts 4, 8, South Whatcom Fire Authority, and North Whatcom Fire & Rescue currently serve the Bellingham UGA.

52. The Bellingham, Meridian, and Ferndale School Districts serve the UGA.

53. Capital facility planning for water, sewer, fire protection, and schools is primarily addressed in the Whatcom County Comprehensive Plan (Chapter 4 and Appendix E – Whatcom County 20-Year Capital Facilities Plan). However, Urban Fringe Subarea Plan Policy 1.5 is to “Direct urban growth and development into areas where City public water and sewer services are available or can be readily provided.”

Historical and Archaeological

54. GMA planning goal # 13 is to “Identify and encourage the preservation of lands, sites, and structures, that have historical or archaeological significance” (RCW 36.70A.020(13)).
55. The historical and archaeological resources are addressed in the Whatcom County Comprehensive Plan.

**Accommodation of Growth**

56. RCW 36.70A.110(2) indicates that the county and each city within the county shall include areas and densities sufficient to permit the urban growth that is projected to occur in the county or city for the succeeding twenty-year period in the UGA.

57. RCW 36.70A.115 indicates that Counties and cities shall ensure that, taken collectively, adoption of and amendments to their comprehensive plans and/or development regulations provide sufficient capacity of land suitable for development within their jurisdictions to accommodate their allocated housing and employment growth, including commercial, industrial, medical, governmental, educational and institutional uses.

58. State rules relating to the GMA indicate that the land capacity analyses required under RCW 36.70A.115 are primarily to take place at the periodic UGA reviews that counties and cities undertake every eight years. However, land capacity estimates are recommended during review of other comprehensive plan and development regulation amendments, if they increase or decrease allowed densities (WAC 365-196-325(1)(b) and (d)).

59. A land capacity analysis for the Bellingham UGA was conducted at the time of the 2016 Comprehensive Plan update/UGA review demonstrating that it can accommodate allocated population and employment growth.

60. The Urban Fringe Subarea Plan update will not increase or decrease allowed densities. Therefore, a new land capacity analysis is not required.

61. The Comprehensive Plan update/UGA review was completed in 2016. The Urban Fringe Subarea Plan update is intended to provide consistency with the Whatcom County Comprehensive Plan. The Urban Fringe Subarea Plan update is not intended to re-open the UGA review process.

**Interlocal Agreement**

62. The *Interlocal Agreement Between the City of Bellingham and Whatcom County Concerning Planning, Annexation and Development within the Bellingham UGA* was approved by both jurisdictions in April 2012.

63. The Interlocal Agreement states:

Whatcom County will review the UGA in accordance with the schedule in RCW 36.70A.130 to ensure that the UGA can accommodate the urban growth projected to occur in the 20-year planning period established by the Whatcom County Comprehensive Plan. The County
and City will collaborate throughout the UGA review process. The City will submit recommendations to the County in accordance with the schedule for joint County and City review of the UGA and the County will consider the recommendations prior to making any changes to the City’s UGA. . . (Section 2.C, pp. 4 and 5).

64. Whatcom County, in consultation with the City of Bellingham, concluded the UGA review process in August 2016 with the adoption of Ordinance 2016-034. Pursuant to RCW 36.70A.130, the next UGA review must occur by 2024. This Urban Fringe Subarea Plan update is not intended to re-open the UGA review process.

65. The Interlocal Agreement states “For residential zoning districts in annexation areas, the City agrees to adopt appropriate urban densities consistent with the State GMA, City Comprehensive Plan, the Urban Fringe Subarea Plan and the overall density goals of the County Comprehensive Plan (Section 3.E, p. 8).

66. Comparable city zoning is identified for residential areas in the Urban Fringe Subarea Plan.

Further Studies/Changed Conditions


68. The periodic update of the Whatcom County Comprehensive Plan was completed in August of 2016 (Ordinance 2016-034) in accordance with RCW 36.70A.130. The Whatcom County Comprehensive Plan provides direction for land use policy in Whatcom County. Subarea plans are to be consistent with the comprehensive plan (RCW 36.70A.080). The subject amendments to the Urban Fringe Subarea Plan provide consistency with the Whatcom County Comprehensive Plan.

69. Some of the information in the Subarea Plan has become outdated or unnecessary. For example, some of the Bellingham UGA has been annexed and there is no longer General Manufacturing zoning within the UGA. Additionally, it is no longer necessary to include City of recommendations from the 1997 Subarea Plan two decades later in an updated Subarea Plan.

70. A new Interlocal Agreement was approved by Whatcom County and the City of Bellingham in 2012. Additionally, Whatcom County Comprehensive Plan Policy 2U-5 addresses reviewing and updating the Interlocal Agreement. Therefore, it is not necessary to address the Interlocal Agreement in detail in the Subarea Plan.

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Public Interest

71. It is in the public interest to amend the Urban Fringe Subarea Plan in order to:
   
a. Eliminate inconsistency with the Whatcom County Comprehensive Plan;
   
b. Eliminate inconsistency with the Whatcom County Zoning Code and maps;
   
c. Eliminate inconsistency with City of Bellingham policy; and
   
d. Delete outdated and unnecessary information.

Spot Zoning

72. The Whatcom County Zoning Code defines illegal spot zoning as follows:

   "Illegal spot zoning" means a zoning action by which a smaller area is
   singled out of a larger area or district and specially zoned for a use
   classification totally different from, and inconsistent with, the
   classification of surrounding land and not in accordance with the
   Comprehensive Plan. Spot zoning is zoning for private gain designed to
   favor or benefit a particular individual or group and not the welfare of
   the community as a whole (WCC 20.97.186).

73. There are no proposed rezones associated with the Urban Fringe Subarea
    Plan update.

Transfer of Development Rights for Expanding UGAs

74. There are no UGA expansions associated with the Urban Fringe Subarea Plan
    update.

Zoning Text Amendments

75. WCC 20.90.050 indicates that proposed zoning amendments must be
    evaluated in relationship to the goals and policies of the Whatcom County
    Comprehensive Plan.

76. The subject proposal includes text amendments for the following zoning
    districts:

   a. Urban Residential Medium Density (URM);
   
b. Urban Residential Mixed (UR-MX);
   
c. Gateway Industrial (GI);
d. Light Impact Industrial (LII); and

e. Heavy Impact Industrial (HII).

77. Whatcom County Comprehensive Plan Goal 2D is to “Refine the regulatory system to ensure accomplishment of desired land use goals in a fair and equitable manner.”

78. The text amendments in the URM and UR-MX zones include eliminating requirements imposing City of Bellingham impact fees on development in the UGA. This amendment recognizes that the County would have to conduct the analysis, and adopt an ordinance, as required by RCW 82.02.050-.110 prior to imposing City of Bellingham impact fees in unincorporated areas. In order for any impact fees to be fair and equitable, they must meet the requirements of state law.

79. Whatcom County Comprehensive Plan Goal 1A is to “Ensure that government activities, regulations and policies are transparent, accountable and easy to understand.”

80. The text amendments to the GI, LII, and HII zones are primarily housekeeping amendments. These amendments recognize that maps will be deleted from the Subarea Plan. They also replace the term “Urban Fringe Subarea” with “Bellingham Urban Growth Area” as it is a more descriptive term that may provide the public with a better sense of where the regulations apply. These amendments should make the zoning code a little easier to understand.

**CONCLUSIONS**

1. The Urban Fringe Subarea Plan and Whatcom County Comprehensive Plan amendments are consistent with the approval criteria of WCC 2.160.080.

2. The Whatcom County Zoning Code amendments are consistent with the Comprehensive Plan.
NOW, THEREFORE, BE IT ORDAINED by the Whatcom County Council that:

Section 1. Amendments to the Urban Fringe Subarea Plan are hereby adopted as shown on Exhibit A.

Section 2. Amendments to the Whatcom County Comprehensive Plan are hereby adopted as shown on Exhibit B.

Section 3. Amendments to the Whatcom County Zoning Code (Title 20) are hereby adopted as shown on Exhibit C.

Section 4. Adjudication of invalidity of any of the sections, clauses, or provisions of this ordinance shall not affect or impair the validity of the ordinance as a whole or any part thereof other than the part so declared to be invalid.

ADOPTED this ______ day of ______________, 2018.

WHATCOM COUNTY COUNCIL
WHATCOM COUNTY, WASHINGTON

ATTEST:

Dana Brown-Davis, Council Clerk

Rud Browne, Chairperson

APPROVED as to form:

( ) Approved  ( ) Denied

Civil Deputy Prosecutor

Jack Louws, Executive

Date: ____________________

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Exhibit A

Urban Fringe Subarea Plan Amendments (2018)

Whatcom County Planning Commission Recommendations
January 11, 2018
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Comprehensive Plan Update

Amendment/Update to the Whatcom County Comprehensive Plan
For the Urban Fringe Subarea
Including the portion of Bellingham's Northern Urban Growth Area

I. Comprehensive Land-Use Planning

Introduction

Rationale: The Introduction includes information that is already addressed in the Whatcom County Comprehensive Plan, outdated, or unnecessary in a subarea plan.

A. Statutory Authority

Statutory authority for county comprehensive land-use planning is established in the Washington State Planning Enabling Act, RCW 36.70 in which it is stated that "each planning agency shall prepare a comprehensive plan for the orderly physical development of the county or any portion thereof." The 1984 Urban Fringe Subarea Comprehensive Plan that was developed in response to this authority, as well as in recognition of the principle that Whatcom County land-use decisions should be made in a coordinated and responsible manner by both the public and private sectors, envisioned a review and update of the Plan every five years. Subarea planning recognizes the diversity of communities, life styles and interests in Whatcom County. It affords citizens a more direct influence in the planning for their particular community.

B. Required and Optional Elements

The Planning Enabling Act RCW 36.70A and the Growth Management Act, provide counties with a list of required and optional elements to include in their Comprehensive Plan. Required elements include a Land-Use Element indicating the distribution, location, and extent of the uses of land for agriculture, timber production, housing, commerce, industry, recreation, open spaces, public utilities, and public facilities. Plans should also include provisions and standards for population densities, building intensities, estimates of future
population growth, protection of quality and quantity of ground water used for public water supplies, and review drainage, flooding, storm water runoff & Puget Sound water quality. Other required elements are housing, capital facilities, utilities, rural lands, and transportation. Optional elements include conservation, solar energy, and recreation.

In addition to these elements, counties must classify, designate, and preserve agricultural, forestry, and mineral resource lands of long-term significance. The Urban Fringe Subarea Plan is the Land Use Plan for the Subarea and Bellingham's Urban Growth Area.

C. Definition and Application

The Whatcom County Comprehensive Plan is defined as an official public document to be utilized by both the public and private sectors as a policy guideline for making orderly and desirable decisions concerning the future use of land in the county. The plan has been formulated by the Whatcom County Planning Commission and is comprehensive, general, and long-range in nature. Comprehensive, in that it encompasses major geographic areas of the county and the functional elements that bear on physical development; general, in that it summarizes major policies and proposals and is not, by statute, a detailed regulation; and long-range, in that it not only addresses current issues, but also anticipated problems and possibilities of the future.

The purpose of this subarea plan is to foster a responsible process of land use decision making. The goals, policies and land use plan map contained herein serve to update and amend the Whatcom County Comprehensive Plan, particularly the 1984 Urban Fringe Subarea component of the Whatcom County Comprehensive Plan.

D. Subarea Planning Concept

Because of the county's diverse physical and cultural make-up, the Planning Commission elected to divide the western one-third of the county into ten logical geographic areas denoted as "subareas." These geographic areas were delineated to address various land use-related issues that appeared to be unique to particular areas of the county. The criteria utilized by the Commission to delineate the subarea boundaries include natural and physical features; political subdivisions, such as special purpose districts (sewer, water, fire, school, etc); existing land use patterns; and the presence of a city or town (where applicable) to act as a nucleus for the area. Thus, subareas are planning units determined through the application of criteria and considered as a practical means of revising the Comprehensive Plan in a consistent orderly fashion.
E. Whatcom County Planning Process

The Whatcom County comprehensive planning process is defined as a continual program of evaluating goals, conducting various land-related studies, and then utilizing such goals and studies to fashion a balanced and practical set of land use policies and proposals for the future use of land in our county. Stated differently, the planning process serves as a blueprint for the logical development of the comprehensive plan, as well as the formulation of effective implementation tools.

The process describes, through a logical sequence, the various land-use related factors that must be considered to effect the formulation of responsible and meaningful land-use policies and proposals. These factors concern the following: the definition of county-wide goals; the inventory and analysis of land-use, community facilities and utilities, transportation facilities and environmental-resource characteristics; the forecasting of population levels and the county's economic vitality; the comprehension of issues, both technical and citizen-related; the development of policies to resolve and/or address the relevant issues; and the transformation of policies into the plan map and attendant implementation tools.

The planning process is continual. It involves not only the formulation of the comprehensive plan document and its implementation through the application and use of various regulatory tools, but also continual monitoring and periodic updating. The success of the planning process in Whatcom County relies heavily upon the county's ability to keep the major components of the plan current. Thus, the plan should be updated every five years by the Planning Commission and such revisions should adhere to the various sequential stages of the planning process. Issues in the Bellingham Urban Growth Area should continue to be addressed through joint planning efforts.

F. Implementation and Plan Format

The implementation of this updated Comprehensive Plan will be accomplished by several different actions. The Comprehensive Plan Map designations will be revised in accordance with recommendations made in response to issues and public input. This document comprises the policies that correspond to the Comprehensive Plan Map designations. A revised zoning map will be prepared to correspond to revised Comprehensive Plan Map designations. Revisions to uses and specific regulations in the zoning ordinance may also be made in response to revised goals, policies, and issues specific to the Urban Fringe Subarea. In addition to the above, an Interlocal Agreement between Bellingham and Whatcom County, governing policies and procedures for annexations, utility extensions, and development in the Northern Urban Growth Area will be adopted. The Interlocal Agreement can be revised in the future to reflect changes needed in response to changing conditions.
The results of this planning process will become two separate published documents: 1) a component of Whatcom County’s Comprehensive Plan— which includes recommendations for county zoning designations in Bellingham’s Northern Urban Growth Area of the Urban Fringe Subarea, future Bellingham zoning designations after annexation, and policies and zoning designations for areas outside Bellingham’s Northern Growth Area; and 2) a component of Bellingham’s Comprehensive Plan which will also include Urban Growth Areas in the Lake Whatcom Subarea, and Chuckanut Lake Samish Subarea. An Action Plan section of this Plan lists specific future actions to address issues that are important to the Subarea.

II. Existing Goals and Policy Framework

A. Growth Management Act (GMA)

The State Legislature adopted the Growth Management Act (GMA) in 1990 and 1991, requiring jurisdictions in the fastest growing areas of the state to update their comprehensive plans in accordance with GMA-stated goals. This legislation was intended to recognize that uncoordinated and unplanned growth poses a threat to the environment, to sustainable economic development and to the health, safety and high quality of life enjoyed by residents of this state. Planning under GMA needs to occur in a coordinated and comprehensive manner drawing on the cooperation of related jurisdictions. Consistent with this directive, the City of Bellingham and Whatcom County have coordinated efforts through the Urban Fringe planning process to produce decisions on appropriate future land use patterns and urban growth boundary for approximately 6,000 acres of county land in the Urban Fringe Subarea.

Rationale: The future land use patterns and urban growth area boundary are adopted in the Whatcom County Comprehensive Plan. The existing Urban Fringe Subarea Plan covers the Bellingham UGA and adjacent lands. However, the Whatcom County Comprehensive Plan states “...The next Urban Fringe Plan update will only include the Bellingham UGA ...” (p. 2-24). Therefore, the Rural and Agricultural areas will no longer be addressed in the Subarea Plan and the plan no longer covers 6,000 acres.

B. County-wide Planning Policies

As a requirement of by the Growth Management Act, county-wide planning policies have been to be adopted by Whatcom County with concurrence by all cities. In compliance with this requirement, Whatcom County, Bellingham, and the other incorporated cities in Whatcom County adopted a set of The County-wide Planning Policies which establish a county-wide framework for developing and adopting city and county comprehensive plans and assure that city and county plans are consistent.

Rationale: The GMA requires the legislative authority of a county to adopt county-wide planning policies in cooperation with cities (RCW 35.70A.210(2)). The GMA does not require adoption by cities.
C. **Whatcom County Comprehensive Plan: Visions for Bellingham Goals**

The Whatcom County Comprehensive Plan sets the boundaries of the 10 urban growth areas (UGAs) in Whatcom County, including the Bellingham UGA. The County, in coordination with the cities, conducts the UGA review as part of the Comprehensive Plan update required by the GMA every eight years. The Whatcom County Comprehensive Plan also contains text, goals, and policies relating to the Bellingham UGA. As part of Bellingham’s Comprehensive Plan Update process, a Visioning process was undertaken which resulted in the Bellingham City Council adopting a set of goals to guide growth and development. These goals are included, by reference, as part of this Plan in the interest of promoting consistency as dictated by the Growth Management Act. Called Visions for Bellingham, these goal statements provided the basis for the production of the 1995 Bellingham Comprehensive Plan.

**Rationale:** The Whatcom County Comprehensive Plan provides direction for land use in the County, including in the Urban Fringe Subarea. The Visions for Bellingham document is more than 20-years old and, therefore, need not be referenced in the Subarea Plan.

D. **Urban Fringe Subarea Plan – Geographic Area**

The Urban Fringe Subarea Plan applies to the Bellingham UGA. This Subarea Plan does not apply to land outside the UGA boundaries.

**Rationale:** The Whatcom County Comprehensive Plan states “... The next Urban Fringe Plan update will only include the Bellingham UGA ...” (p. 2-24). Therefore, the Rural and Agricultural areas around the UGA will no longer be addressed in the Urban Fringe Subarea Plan.

III. **Population Forecasts/Land Supply**

Projections of future population size are an essential component of land use planning. As required by GMA, the Washington State Office of Financial Management developed a 20-year population projection for Whatcom County. These population projections and an analysis of the capacity of land presently zoned for urban-residential development help determine additional land supply needs for the next 20 years of growth. By incorporating population forecasts into the planning process, Whatcom County and the City of Bellingham will ensure, as much as possible, that future needs for employment, transportation, affordable housing, utility, parks and other amenities will be met within the planning period. Population and employment projections are adopted in the Whatcom County Comprehensive Plan.
IV. **Comprehensive Urban Fringe Subarea Plan Designations and Policies**

A. **General Policies Applicable to the Urban Fringe Subarea and Bellingham's Urban Growth Area**

The following list of policies *is—are* intended to *facilitate—ensure* cooperation between Whatcom County and the City of Bellingham in directing and managing urban and rural development in the Urban Fringe Subarea. *In adopting these policies—both jurisdictions agree to:*

1.1 Provide for land uses in the Subarea and Bellingham's Northern Urban Growth Area that conform to the Growth Management Act, Whatcom County Comprehensive Plan, Goals, Visions for Bellingham, and County-wide Planning Policies and other agency plans that consider the provision of urban services to the planning area.

1.2 Promote the integrity and character of each neighborhood planning area within Bellingham's Northern Urban Growth Area. Encourage and provide opportunities for a maximum degree of citizen participation in the governmental planning and decision making process.

1.3 Provide opportunities for a diversity of housing types in the Urban Growth Area.

1.4 Direct new high density residential, commercial and industrial development to appropriate zoning districts, toward existing urban development and along major transportation routes to support land use and transportation plans.

1.5 Direct urban growth and development into areas where existing City public water and sewer services utilities and services are available or can be readily provided. Expanded.

1.6 Promote development that supports and enhances efficient public transportation and an intermodal transportation system.

1.7 **Maintain and update, as appropriate, the adopted interlocal agreement between Whatcom County and the City of Bellingham. Adopt an interlocal agreement that sets agreed upon development standards within Bellingham's Urban Growth Area, and which may include application of such standards as the City of Bellingham's design and development standards and guidelines and impact fee ordinances to all development in the Urban Growth Area.** Such agreements shall undergo a full citizen involvement process.

**Rationale:** The interlocal agreement between Whatcom County and the City of Bellingham was updated in 2012. It is effective through the year 2022. Whatcom County Comprehensive Plan Policy 2U-5 addresses reviewing and updating the interlocal.
1.8 Cooperate and coordinate with the City of Bellingham, special districts, and other governmental agencies to ensure efficient provision of a full range of urban services in the Urban Growth Area.

1.9 Continue joint City and County site plan review for all new residential, commercial, industrial, and Airport Operations development in the Urban Growth Area.

1.10 Recognize that the City of Bellingham will be the primary provider of urban services and facilities within its designated urban growth area.

1.11 Permit development concurrent with public facilities and services needed to support that development.

1.12 Consistent with the adopted City policy, areas in Bellingham’s UGA will be eligible to receive city water and sewer service upon annexation or as otherwise allowed by the Bellingham Municipal Code, only in the following two circumstances:

- Upon annexation to the City;
- Prior to annexation, the City Council will consider requests to extend utilities only if the proposed development uses the County’s transfer of development rights (TDR) program to purchase or otherwise transfer development rights from the Lake Whatcom Watershed to designated development rights from the Lake Whatcom Watershed to designated-receiving areas.

Rationale: Bellingham Municipal Code (BMC) 15.36.010 indicates that the City only provides new water and sewer service after annexation, with a few exceptions. The BMC formerly allowed water and sewer extensions in the UGA, outside city limits, if TDRs were utilized. However, the TDR exception was repealed by Ordinance 2011-05-025, which was adopted by the Bellingham City Council in 2011.

1.13 Minimize land use conflicts in the Urban Growth Area through the use of appropriate buffering mechanisms, design standards, and locational criteria, promoting compatibility between land uses, especially among residential, commercial, industrial and Airport Operations designations.

1.14 Designate appropriate zones within the Urban Growth Area as receiving areas for transfer of development rights from the Lake Whatcom watershed in order to promote increased densities within the Urban Growth Area and decrease densities within the watershed to help protect water quality.
1.15 Require the purchase of transfer of development rights from the Lake Whatcom watershed in order to rezone property to increase residential densities.

**Rationale:** RCW 82.02.020 states in part:

... no county, city, town, or other municipal corporation shall impose any tax, fee, or charge, either direct or indirect, on the construction or reconstruction of residential buildings, commercial buildings, industrial buildings, or on any other building or building space or appurtenance thereto, or on the development, subdivision, classification, or reclassification of land... 

This section does not prohibit voluntary agreements with counties, cities, towns, or other municipal corporations that allow a payment in lieu of a dedication of land or to mitigate a direct impact that has been identified as a consequence of a proposed development, subdivision, or plat...

Staff consulted with the Whatcom County Prosecuting Attorney’s Office, who provided the opinion that requiring the purchase of TDRs in exchange for a rezone would constitute a fee or charge on a “reclassification of land” (rezone) and, therefore, is not allowed under this state law. Additionally, the exception for “voluntary agreements” does not apply to reclassifications of land.

1.16 Promote a coordinated effort to identify and prioritize interconnected natural areas and features for preservation to protect water quality and provide habitat, recreation, open space and wildlife corridors.

1.17 **Unincorporated areas added to the City’s UGA in the future should be pre-zoned by the City.**

**Rationale:** The City of Bellingham recommended this policy in an e-mail of August 30, 2017.

B. **Land-Use-Zoning Designations, Locational Criteria and Policies**

**Urban Residential Designations**

**Urban Residential-Density**

2.1 The Urban Residential **zoningplan** designation (UR) is located in Bellingham’s Urban Growth Area and can be urbanized at such time that a full range of urban services can be efficiently provided. The primary purpose of the Urban Residential designation is to promote an orderly...
transition from rural land uses and densities to urban land uses and
densities. Comparable City zoning for the Urban Residential designation is Residential, Single.

**Rationale:** The Whatcom County Comprehensive Plan does not include an "Urban Residential" land use designation, although there is an "Urban Residential" zoning designation.

2.2 The **rationale underlying the Urban Residential zoning** designates certain land in the UGAurban growth areas of cities for future urban purposes and encourages interim uses that are complementary and compatible with future urban densities and services. The designation intends to encourage the responsible growth of urban areas by assuring that a full range of urban services is available to support urban level densities.

2.3 **Locational Criteria**

Areas Appropriate for Urban Residential zoning designation include the following:

2.3.1 Land areas **inadjacent to the City of Bellingham UGA or the Urban Service Area** that are of sufficient size to adequately accommodate the projected demands for residential and associated uses, transportation and public uses, for the twenty-year planning period.

**Rationale:** Multiple zoning districts provide land for the 20-year planning period, not just the UR zone.

2.3.2 Land areas where a full range of urban services presently exists or can be economically and efficiently provided in the **planning period, near future**.

2.3.3 Areas that contain an adequate supply of vacant land suitable for urban development.

2.3.4 The boundaries of the Urban Residential designation should be well defined, logical, provide a physical "sense of community" and be capable of being expanded to accommodate additional urban growth as the need arises.

2.3.5 The Urban Residential zoning district **allows urban density development (outside the Lake Whatcom Watershed)** is implemented when a full range of urban services are provided. In areas where such services do not exist, the maximum density is one dwelling unit per ten acres.

**Rationale:** The UR zone does not allow new urban development in the Lake Whatcom Watershed even if public water and sewer are available in the UGA. One dwelling/five acres is allowed in the UR zone in the Watershed if public water and sewer are available (WCC 20.20.252).
2.4 The Urban Residential designation is intended to be urban with urban uses and services and is to promote an orderly transition from rural land uses and densities to urban land uses and densities.

2.5 The predominant land use pattern within the Urban Residential zoning designation should be residential, allowing single family residential, neighborhood scale commercial in specific designated areas, parks and other public uses.

2.6 The Urban Residential designation allows three (3) dwelling units per acre within the Lake Whatcom watershed and adjacent to Bellingham Bay. The designation allows six (6) dwelling per acre in the Seaview area adjacent to Bellingham Bay and in the Dewey Valley east of Hannegan Road.

Rationale: The Zoning Ordinance establishes the densities in various areas. The Urban Residential zone normally allows urban densities when public water and sewer are available. However, the maximum density is one dwelling/five acres in the Lake Whatcom Watershed if public water & sewer are available. If public water & sewer are not available, the density is one dwelling/ten acres (WCC 20.20.252).

2.7 Consideration should be given to design standards for development in the Urban Residential designation. Wetland systems and sensitive areas should be preserved and incorporated into the development site design plan. Access shall be provided on residential streets.

Rationale: Design standards for residential subdivisions in the UR zone are contained in WCC 20.20.310. Wetlands are now regulated by the Critical Areas Ordinance.

2.8 Existing mobile home parks will be allowed to remain as non-conforming uses. New mobile home parks may develop at underlying density of the zone. Citing standards should be developed to allow for location of mobile home parks and subdivisions in the future.

Rationale: The Urban Residential zoning district does not allow new mobile home parks.

Urban Residential - Medium Density

2.9 The Urban Residential Medium Density zoning designation (URM) is located in Bellingham's Urban Growth Area and can be developed at allowed urban densities upon provision of annexation or with annexation agreements in place. The designation is intended to be developed with a full range of urban services. The designation should provide for affordable housing types such as apartments, townhouses, condominiums, mobile home parks, subdivisions and other compatible non-residential uses with minimum net density of 10 dwelling units per acre and a maximum
The designation promotes an orderly transition from low density uses to higher density urban uses where predominantly residential uses complemented by compatible neighborhood scale recreation and commercial services are appropriate.

2.11 Locational Criteria

2.11.1 The URM zoning density classifications of six to twenty-four units per acre should be applied to areas in the Urban Growth Area that are either adjacent to existing or planned residential developments containing similar density levels or adjacent to existing or planned commercial or light industrial developments.

2.11.2 Higher density developments should be located to take advantage of good access to public transit that is sustainable over the long term, arterial routes of travel, and commercial services and employment centers.

2.12 The predominant land use pattern includes single family detached dwelling units, apartments, condominiums, rooming houses, mobile home parks and retirement and convalescent centers, parks and other public uses.

2.13 For those URM areas currently served by sewer and water, a mix of housing types and densities is encouraged consistent with the adopted zoning Plan for the Urban Growth Area.

2.14 A mix of housing types and range of densities within the URM designation is encouraged particularly in areas close to industrial, commercial and other urban employment centers, adjacent to arterials and major connector streets, and where there is access to transit, parks and other recreational areas.

2.15 Special consideration should be given to site design for all development in the Urban Residential Medium designation. Specific wetland systems and sensitive environmental areas should be preserved and incorporated into the development site design plan consistent with City ordinances. Access should be from residential roads.

Rationale: Design standards for residential subdivisions in the URM zone are contained in WCC 20.22.310 and facility design standards are in WCC 20.22.651. Wetlands are now regulated by the Critical Areas Ordinance.
2.16 This designation also provides a receiving area for transfer of development rights credits.

Rationale: The Urban Residential Medium Density (URM) zoning district states "In the Urban Fringe Subarea, this district serves as a zoning overlay for the purpose of designating a receiving area for transfer of development rights credits . . ." (WCC 20.22.012). However, later on in the URM text, it states: "Areas designated in the Comprehensive Plan and assigned a URM-24 zone district in the Urban Fringe Subarea, are considered receiving areas . . ." (WCC 20.22.669). Only the URM-24 zone allows for increased density based upon TDRs. However, there are no longer any URM-24 zones in the Urban Fringe (Bellingham UGA). Therefore, URM zone does not function as a TDR receiving area in the Bellingham UGA at the current time.

2.17 The City of Bellingham's design and development standards and guidelines and impact fee ordinances shall apply to all development in the Bellingham Urban Growth Area.

Rationale: The County would have to conduct the analysis, and adopt an ordinance, as required by RCW 82.02.050-.110 prior to imposing impact fees in the URM zone. Additionally, the City of Bellingham generally does not extend public water and sewer outside city limits. Therefore, urban density residential development typically does not occur until after annexation. The Subarea Plan is a policy document, rather than a regulatory document. Therefore, "should" has been substituted for "shall."

2.18 In order to develop at densities greater than ten dwelling units per acre, areas designated for provisional rezone to URM-24 all of the following must occur:

- Property owner(s) shall prepare a site plan showing the design and layout of proposed lots, multi-family structures, road and pedestrian connections to adjacent parcels, delineated wetlands, and protected critical areas, buffers and open space.

- Property owner(s) shall purchase or transfer sufficient development rights from the Lake Whatcom Watershed to achieve the requested density increase, based on the TDR ratios established in the Whatcom County Code.

- Property owner(s) shall comply with City of Bellingham design and development standards and guidelines, including residential multi-family design standards and any other conditions imposed by the City of Bellingham through approved Utility Service Zone Extension Agreements.
• Property owner(s) shall apply to the County for a site-specific rezone pursuant to Chapter 20.90 WCC in conjunction with submittal of a subdivision or binding site plan application for the subject parcel or parcels.

Rationale: There are no URM24 zones in the Bellingham UGA. Therefore, this section should be deleted.

Urban Residential – Mixed Use

2.192.18 It is the purpose of this zone designation to provide an orderly transition from rural to urban development by limiting densities and uses until services are available and then to provide for mixed uses in a manner that encourages a range of densities and dwelling unit types and pedestrian access to convenience shopping and jobs while maintaining an overall single family character and property values for the neighborhoods created within this designation. Comparable City zoning for the Urban Residential - Mixed designation is Residential, Single.

2.202.19 Locational Criteria

Areas appropriate for Urban Residential - Mixed (UR-MX) zoning designation include the following:

2.20.1 Land areas within the City-of-Bellingham's UGAnorthern Urban Growth Area that are of sufficient size to adequately accommodate the projected demands for residential, commercial, transportation and public uses - for the twenty-year planning period.

Rationale: Multiple zoning districts provide land for the 20-year planning period, not just the UR-MX zone.

2.20.2 Land areas where a full range of urban services presently exists or can be economically and efficiently provided in the planning period near future.

2.20.3 Areas that contain an adequate supply of vacant land suitable for urban development.

2.21 Commercial uses will be clustered in a single center which is no larger than (2) two acres, excluding areas used for multi-family. The commercial uses shall not exceed 2,500 square feet per building.

2.22 This designation also provides a receiving area for transfer of development rights credits.
2.23 The Urban Residential - Mixed (UR-MX) zoning designation is located in Bellingham's UGANorthern Urban Growth Area and can be developed at allowed densities upon provision of annexation or with annexation agreements in place. The designation is intended to be developed with a full range of urban services. The designation should provide for affordable housing types such as apartments, townhouses, condominiums, subdivisions and other compatible non-residential uses; with a net density of at least 6 dwelling units per acre as the lowest allowable single family density.

2.24 Multi-family dwelling units **shall** not comprise more than 25% of the total dwelling units in one development proposal.

2.25 Special consideration shall be given to site design for all development in the Urban Residential - Mixed designation. Specific wetland systems and sensitive environmental areas shall be preserved and incorporated into the development site design plan consistent with City ordinances.

Rationale: Design standards for the UR-MX zone are referenced in WCC 20.24.653. Wetlands are now regulated by the Critical Areas Ordinance. They are also addressed in WCC 20.24.161(3)(e)).

2.26 Residential development should be located within walking distance of transit stations, designated commercial centers, parks and recreational areas, and other employment centers where appropriate.

Rationale: This change will provide greater consistency with WCC 20.24.010.

2.27 **Neighborhood centers allow a mix of commercial, professional office, day care, and residential uses.** Establishment of neighborhood commercial centers **shall** require conditional use permit approval. Once a site has been approved, the full range of permitted uses shall be allowed.

Rationale: A neighborhood center requires a conditional use permit in the UR-MX zone pursuant to WCC 2.24.161. Other uses, such as single family residences, may also be located on the site of a neighborhood center. However, depending on the circumstances, this may require further review by the hearing examiner (i.e. for change of the site plan or subdividing the land).

2.28 Establishment of mobile home parks **shall** require conditional use permit approval.
2.29 Commercial development should occur in nodes. Linear strips will be discouraged.

2.30 Businesses in the neighborhood centers will have their fronts located on arterial or collector streets; or located adjacent to a public square or neighborhood park; and be are no less than one-half mile from an existing or approved commercial center or other commercial use or zone, proposed similar center or other commercial area or zone.

Rationale: This language provides greater consistency with the existing language in WCC 2.24.161(2).

2.31 Neighborhood centers should be visible and accessible to pedestrians from the streets and clearly defined through lighting, landscape, landmarks, and/or open space.

2.32 Parking for neighborhood centers will be located at the rear of the buildings with access from alleys or side streets.

Rationale: The UR-MX zone applies this language to neighborhood centers (WCC 2.24.161(3)).

Commercial Designations

3.1 The Urban Fringe Subarea Comprehensive Plan provides two types of commercial zoning designations in the Urban Growth Area, and addresses the needs and opportunities for the City of Bellingham, the Urban Growth Area, and larger regional area. The policies and locational criteria for land zoned within a commercial designation, applies only to land within the Bellingham Urban Growth Area.

Rationale: The proposal is to amend the Urban Fringe Subarea Plan boundary so that it coincides with the Bellingham UGA boundary. Therefore, the above statement is no longer necessary.

General Commercial

3.2 The General Commercial zoning designation is intended to provide a broad range of retail goods and services that will benefit a large trade area commensurate with demand. The designation also intends to facilitate safe and efficient circulation systems, provide methods to attain compatibility with surrounding noncommercial areas, and promote site design that will efficiently use available commercial land. Building design should take into account aesthetic and compatibility concerns.

Rationale: The Whatcom County Comprehensive Plan does not include a "General Commercial" land use designation, although there is a "General Commercial" zoning designation.
3.3 **Locational Criteria**

Areas appropriate for the General Commercial designation should conform to the following criteria:

3.3.1 Parcels that are served by arterials and/or collectors.

3.3.2 Parcels that have the potential of being served by urban level of service.

3.3.3 The designation should be located where there is a public need.

3.4 Whatcom County acknowledges existing patterns of commercial uses within the Urban Fringe Subarea. To provide for additional future commercial development, certain areas are designated General Commercial allowing a range of commercial uses including sales and servicing of vehicles, mobile homes and boats; eating and drinking establishments; professional offices, service and retail establishments; commercial indoor and outdoor recreation; commercial wholesaling; multi-family dwellings; and public uses that are necessary for the function of the designation.

3.5 Ensure compatibility between General Commercial developments and the surrounding residential areas by identifying eiting performance, design, and development standards.

3.6 Encourage the location of new commercial development in proximity to other existing commercial uses, or oriented to serve part of a planned development.

**Neighborhood Commercial**

3.7 The primary purpose of the Neighborhood Commercial zone is to provide convenience goods and services to the surrounding neighborhoods. Neighborhood Commercial areas are generally located near in residential areas. The Neighborhood Commercial designation is implemented by the Neighborhood Commercial zone. Comparable City zoning would be Neighborhood-Commercial, Neighborhood.

**Rationale:** The Whatcom County Comprehensive Plan does not include a "Neighborhood Commercial" land use designation, although there is a "Neighborhood Commercial" zoning designation.

3.8 **Locational Criteria**

Areas suitable for the Neighborhood Commercial designation should conform to the following criteria:
3.8.1 Parcels are served by arterials or collector streets. The designation is centrally located to the neighborhood it would serve.

3.8.2 The designation **does not** exceed five (5) acres.

3.8.3 The designation is to be located on property where ownership patterns and land parcelization is conducive for development.

3.9 The Neighborhood Commercial designation provides convenience goods and services to surrounding neighborhoods of urban residential densities, and should be discouraged in rural areas.

**Rationale:** The proposal is to amend the boundaries of the Urban Fringe Subarea Plan to match the Bellingham UGA. The Rural Comprehensive Plan designation will no longer be within the boundaries of the Urban Fringe Subarea.

3.10 Ensure compatibility between neighborhood commercial developments and the surrounding residential areas by identifying and applying *citing* performance, *design*, and development standards.

**Industrial and Airport Designations**

4.1 The Urban Fringe Subarea Comprehensive Plan provides **four** types of industrial and airport zoning designations: Heavy Impact Industrial, General Manufacturing, Light Impact Industrial, Gateway Industrial, and Airport Operations in the Urban Growth Area. These designations, and addresses the needs and opportunities for the City of Bellingham, the Urban Growth Area, and the larger regional area. Each designation intends to meet a range of industrial needs. The policies and locational criteria for land zoned within an industrial designation, applies only to land within the Bellingham Urban Growth Area.

**Rationale:** There is no longer any General Manufacturing zoning in the Bellingham UGA. Additionally, there is a pending proposal to annex the remaining Gateway Industrial zoning district into the City of Bellingham. If this annexation is approved by the City Council, the Gateway Industrial text, goals, and policies will be deleted.

**Heavy Impact Industrial**

**Intent Statement:**

4.2 The underlying rationale of the Heavy Impact Industrial zoning designation in the Urban Fringe Subarea is to acknowledge existing heavy industrial uses situated in proximity to Bennett Drive, Marine Drive, and Roeder Avenue; to endorse a diverse economic base; and
to attain compatibility between industrial activities and adjoining residential land uses.

4.3 **Locational Criteria**

Areas appropriate for the Heavy Impact Industrial designation should conform to the following criteria:

4.3.1 Parcels that are generally flat, well drained, with sufficient soil bearing capacities.

4.3.2 Parcels within the existing Heavy Impact Industrial designation with sufficient land to provide buffers to non-industrial uses.

4.3.3 Proximity to transportation corridors (including direct access to identified truck routes not requiring the use of residential streets) and opportunities for interconnecting transportation modes (rail, truck routes, water and air) and urban services including sewer, water, storm drainage, fire and police protection and labor supply pools.

4.4 The Heavy Impact Industrial *zoning* designation takes advantage of truck, rail, freeway, air and water transportation access as well as proximity to potential labor pools. A full range of urban services should be available to the heavy industrial areas including sewer, water, storm drainage, and police and fire protection. The Heavy Impact Industrial area is implemented by the Heavy Impact Industrial zone. Comparable City zoning is Industrial, Planned. This zoning will ensure that uses allowed by Whatcom County zoning (Urban Fringe Subarea Heavy Impact Industrial and Light Impact Industrial) will be allowed as outright permitted uses, subject to appropriate development standards. Commercial uses, that are not accessory to the primary industrial use, will be prohibited.

**Rationale:** The Whatcom County Comprehensive Plan does not include a Heavy Impact Industrial (HII) land use designation, although there is a HII zoning designation. Some land uses in the HII zone require a conditional use permit and are not outright permitted uses. The HII zone allows certain commercial uses that are incidental to the primary industrial uses.

4.5 It is the policy of Whatcom County to evaluate the short and long range impacts to existing public facility, utility and transportation systems resulting from industrial development. If it is determined that industrial development will cause financial and physical impacts which exceed the scheduled capital improvement programs of various systems, Whatcom County will request industrial users to financially participate in the costs of upgrading these said systems.
4.6 Whatcom County should work with the City of Bellingham to manage and improve direct truck access to and from the HII area which minimizes truck traffic flows in adjacent and surrounding residential areas situated in the county and city.

4.7 Whatcom County **will** encourage the appropriate governmental authorities, including, the Northwest **Clean Air Agency**, Air Pollution Authority; Department of Ecology and Environmental Protection Agency, to monitor pollution control and nuisance abatement. Whatcom County should assure that the design and location of industrial development will include consideration of pollutant sources and abatement methods, **as well as environmentally-sensitive and critical** areas which may be situated in or in proximity to the industrial area. The location, development, expansion and operation of industries should move toward minimizing pollution of all forms and its impact on other areas.

4.8 When practical, Whatcom County encourages industrial operations to take place within enclosed structures with the intent of minimizing potential light, glare, odors and noise impacts to adjoining residential uses.

4.9 Because the HII areas adjoins existing and planned residential areas situated in Whatcom County and the City of Bellingham, it is necessary to move toward obtaining mutual compatibility with **thesesaid** residential areas. To obtain mutual compatibility, it is the policy of Whatcom County to permit those existing uses and future uses which will minimize hazards, pollution, nuisances and odors to surrounding residential areas. The following uses will not be permitted in the Heavy Impact Industrial zoning district situated in the Urban Fringe Subarea: manufacturing and processing of asbestos and products derived therefrom; petroleum refining and the primary manufacture of products derived directly therefrom; primary manufacturing of rubber, plastics, chemicals, paper, and primary metal industries. **Light Impact Industrial uses shall be allowed in Areas 1A, 1B, and 1C of the Shoreline Industrial Area.**

*Rationale: The Whatcom County Zoning Code establishes where light impact industrial uses may be located in the HII zone.*

4.10 With the intent of fostering and promoting compatibility with surrounding residential land uses both in the county and the City of Bellingham, it is the policy of Whatcom County to require industrial users to provide a buffer which is situated on industrial land and adjoins the aforementioned—residential areas. **Said-The** buffer may alternately be provided off-site by written agreement in the form of a deed restriction on the off-site parcel that runs with the land and that **shall be** filed with
the County Auditor. The off-site buffer agreement will be written so that it may be revised or rescinded in the event that land uses or zoning designations are changed in such a way that the buffer is no longer necessary.

4.11 Because certain existing industrial users are located adjacent to Bellingham Bay and use the shoreline or water transport for a portion of their operation, it is the policy of Whatcom County to require consistency with the Whatcom County Shoreline Management Program for proposed industrial uses or the expansion of industrially related uses which are proposed within the jurisdictional area of the Program.

General Manufacturing

4.12 The General Manufacturing designation intends to provide fully-serviced urban areas for industrial activities which are less-intensive than the County's Heavy Impact Industrial uses, but may be more-intensive than Light Impact Industrial uses. General Manufacturing uses include manufacturing, fabrication, processing, and distribution of finished products, which will have a minimal impact on surrounding non-industrial land-use areas. General Manufacturing operations may function independently or other industrial areas or may supplement the operations of Light Impact Industrial or Heavy Impact Industrial areas.

4.13 Locational Criteria

Areas appropriate for the General Manufacturing designation should conform to the following criteria:

4.13.1 Parcels that are generally flat, well drained, with sufficient soil bearing capacities. Areas of steep slopes, wetlands, and environmentally sensitive areas are not appropriate for general manufacturing activities.

4.13.2 The size of General Manufacturing areas should be between twenty (20) and several hundred acres commensurate with public need.

4.13.3 Proximity to transportation corridors, rail, freeway, air service, public transit, urban services and direct access to identified truck routes.

4.13.4 Sufficient land to provide buffers between industrial operations and adjoining residential areas.

4.14 The General Manufacturing designation takes advantage of truck, rail, freeway and/or air transportation access, as well as proximity to potential labor pools. A full range of urban services should be available to General
Manufacturing area. The General Manufacturing designation is implemented by the General Manufacturing zone. Comparable City zoning is Industrial, Planned, uses limited to those in the General Manufacturing zone.

4.15 The General Manufacturing zone allows uses related to manufacturing, fabrication, processing and distribution of finished products and non-product uses such as warehousing, and storage facilities, whereby industrial activities will have a minimal impact on surrounding non-industrial areas.

4.16 To minimize the impact of development on adjacent residential areas, screening and landscaped buffers are required.

4.17 Truck traffic should be directed away from residential and rural areas.

Rationale: There is no longer any General Manufacturing zoning in the Bellingham UGA.

Light Impact Industrial

4.18 The underlying rationale of the Light Impact Industrial zoning designation is to supply supplies a reasonable amount of land for light impact industrial uses which are dependent upon proximity to other industries; are dependent upon an urban labor supply; will promote efficient public and private expenditure and will be compatible with surrounding non-industrial areas. The Light Impact Industrial designation is implemented by the Light Impact Industrial zone. Comparable City zoning is Industrial, Planned and/or Institutional, Planned. At the time of annexation, the City will determine what uses within the Industrial, Planned designation are appropriate for specific LII areas.

Rationale: The Whatcom County Comprehensive Plan does not include a "Light Impact Industrial" land use designation, although there is an "Light Impact Industrial" zoning designation.

4.19 Locational Criteria

Areas appropriate for the Light Impact Industrial zoning designation should conform to the following criteria:

4.19.1 The Light Impact Industrial designation should consist of a number of parcels of sufficient size to accommodate zoning zone and buffer requirements. Said buffer may be provided off-site by written agreement in the form of a deed restriction on the off-site parcel that runs with the land and that is shall be filed with the County Auditor. The off-site buffer agreement will be written so that it may be revised or rescinded in the event that land uses or zoning designations are changed in such a way that the buffer is becomes no longer necessary.
4.19.2 Parcels that are generally flat, well drained, with sufficient soil bearing capacities. Areas of predominantly steep slopes, wetlands, and environmentally sensitive other critical areas are not appropriate for Light Impact Industrial activities zoning districts.

4.19.3 Proximity to major transportation corridors, international transportation routes with all-weather access capability, and proximity to urban services.

4.19.4 Sufficient land to provide buffers between industrial operations and adjoining residential areas.

4.20 The Light Impact Industrial designation allows a range of uses related to industries which do not emit smoke, glare, noise, vibrations, odors and other nuisance factors which create unacceptable off-site impacts.

4.21 Part of the area bounded by Slater Road, the Burlington-Northern railroad tracks and Silver Creek has been annexed is designated Light Impact Industrial because of existing industrial uses, and services provided by the City of Ferndale. Whatcom County will not permit expansion of the UGA in this area this industrial zone to ensure protection of Silver Creek, maintain the rural character of the surrounding area, and preserve a natural buffer area between the Cities of Ferndale and Bellingham.

Gateway Industrial

Whatcom County’s economy is significantly influenced by its proximity to Canada and the large population in Vancouver, B.C., and this role is anticipated to continue in the future. The I-5 corridor and the Bellingham International Airport function as gateways into Whatcom County and the City of Bellingham. It is through these gateways that travelers form their first impressions of the community. To augment the positive impact of international markets, it is desirable to provide a reasonable supply of land for a variety of light industrial uses that would be attractive to travelers using the major international traffic corridors. The Gateway Industrial zoning district limits uses in this zone to those appropriate for a light industrial park setting. In order to foster the economic vitality of the area, commercial uses are also allowed within ¼ mile of a full freeway interchange; however, the design standards and buffering requirements included in the Gateway Industrial zoning text are intended to limit commercial uses to uses designed to serve the airport, industrial users, adjacent residential areas and the travelling public, and are compatible with a light industrial park setting.

Rationale: The Whatcom County Zoning Code (WCC 20.65) defines the land uses allowed in the Gateway Industrial zone. A wider range of commercial uses are allowed within ¼ mile of a freeway interchange, but some commercial uses are also allowed more than ¼ mile from a freeway interchange.
Light industrial parks frequently are large land areas that are master planned for aesthetic and functional compatibility, but can be composed of small tracts of land in different ownerships, where by industrial uses occur independently but under overall design standards. To take advantage of the opportunity to present a positive business image of Bellingham and Whatcom County to travelers and because of the relatively small parcel sizes in the area, standards for site, landscaping, building, and signage design have been made integral parts of the comprehensive plan and are included in the Gateway Industrial zoning text, rather than being adopted as part of a master plan by an individual developer.

4.22 The Gateway Industrial designation is intended to provide concentrated areas, located in proximity to major transportation corridors that will present a favorable image of Bellingham and Whatcom County to travelers. In addition, in areas immediately adjacent to full freeway interchanges, uses that serve the traveling public are provided. The designation intends to facilitate safe and efficient circulation systems, provide methods to attain compatibility among mixed uses, and promote site design that is visually compatible with surrounding areas, including the Bellingham International Airport. The underlying rationale of the Gateway Industrial designation is to supply a reasonable amount of land for industrial developments during the current planning period. Urban services must be available and will be extended in an efficient and rational growth pattern. The Gateway Industrial designation is implemented by the Gateway Industrial zone. Comparable Bellingham zoning is Industrial, Planned, with provisions of County Gateway Industrial.

Rationale: The Whatcom County Comprehensive Plan does not include a "Gateway Industrial" land use designation, although there is a "Gateway Industrial" zoning designation. Supplying adequate land for industrial development over the 20-year planning period is achieved by designating multiple city and County industrial zoning districts, not just through the Gateway Industrial District in the County. The City of Bellingham recommends deleting "with provisions of County Gateway Industrial" because City zoning will be applied, and the City will determine appropriate land uses, upon annexation.

4.23 Locational Criteria

Areas suitable for the Gateway Industrial designation should conform to the following criteria:

4.23.1 Proximity to major transportation corridors, Bellingham International Airport, transportation routes with all-weather access capability, and proximity to urban services.
4.23.2 Public water, sewer, on-site storm water drainage, and sufficient fire and police protection should either be presently available or should be feasibly provided during the planning period.

4.23.3 Proximity to potential labor pool.

4.23.4 Sufficient land to provide buffers between industrial operations and adjoining residential areas.

4.24 The Gateway Industrial designation should use limited areas having industrial access and traveler visibility in a manner that promotes the long range economic vitality of Bellingham and Whatcom County. Uses should be directly related to the access opportunities, or in certain areas, serve the traveling public.

4.25 The Gateway Industrial designation should enhance and maintain the natural and economic resources of Bellingham and Whatcom County through land use patterns that avoid linear strip development, while providing for safe and efficient vehicular movement, by requiring that individual sites are designed in a clustered or concentrated form of development instead of lining the road frontage. In addition, site design standards are contained within the zoning text to aid in the compatibility of mixed uses and the visual harmony with the surrounding areas.

Airport Operations

The Bellingham International Airport originated in 1940 as a single runway and developed into a three-runway configuration in 1941 when the Army Corp of Engineers supervised its construction with national defense funds. In 1947, the airport transferred ownership from the federal government to Whatcom County and in 1957 from the County to the Port of Bellingham.

The federal government recognizes Bellingham International Airport as an integral part of the national aviation system and has supported development at the airport over the years through a variety of programs and projects including land acquisition; runway and taxiway construction and maintenance; lighting systems; crash/fire/rescue building construction; airport planning and others which have allowed the airport to expand and meet the traveling needs of a growing population. The Comparable City designations are Institutional and Planned Airport Operations.

4.26 The primary purpose of the present designation, Airport Operations zoning designation, is to provide sufficient area for existing and future regional airport operations to serve the interest of Whatcom County. The District should be located and implemented consistent with the goals, objectives and policies of the appropriate subarea comprehensive plan. The District should accommodate regional airport facilities and be served
by adequate public services. The District should provide uses related to the operation of an airport. Other uses should be consistent with allowed only upon land designated by the Bellingham International Airport Master Plan, Port’s Master Plan.

4.27 Locational Criteria

4.27.1 The Airport Operations (AO) District is located and implemented consistent with the goals, objectives and policies of the Subarea Comprehensive-Plan.

4.27.2 The AO District should accommodate regional airport facilities and be served by adequate public services.

4.28 Whatcom County and the City of Bellingham encourage the Port of Bellingham to work closely with the Federal Aviation Administration to comply with federal laws relating to airport noise and enforce Public Laws 96-193 (the Aviation Safety and Noise Abatement Act) and 90-411 (noise certification provisions prescribed for new subsonic aircraft) as well as to continue to develop operational procedures to minimize noise generated by general aviation activity at the airport.

Rationale: Public Law 96-193 (the "Aviation Safety and Noise Abatement Act of 1979") and Public Law 90-411 ("Control and Abatement of Aircraft Noise and Sonic Boom," approved in 1968) were adopted many years ago. Sometimes federal laws are amended over time, so a general reference has been inserted above.

4.29 Encourage buffer greenbelts around the Airport Operations (AO) District to minimize impacts of noise generated by general aviation activities at the airport.

4.30 Whatcom County and the City of Bellingham recognize the existing and planned orientation of runways at the Bellingham International Airport. To minimize hazard and nuisance adjacent to and in the vicinity of the airport, land uses and densities should be compatible with airport uses.

4.31 Residential development is discouraged in the day-night average sound level (Ldn) of 65+ noise exposure contours as mapped in the Bellingham International Airport Master Plan. Builders are encouraged to include adequate sound insulation for residential structures located close to the airport.

4.32 Whatcom County will promote disclosure of airport noise through implementation of WCC 8.34. Whatcom County shall require plat language including a "hold-harmless" agreement concerning the normally expected activities and noise associated with airport operations for
proposed subdivisions which are situated within the projected Ldn 65 noise exposure contour. These "hold harmless" agreements shall be included in property deeds for parcels situated within the projected Ldn 65 noise exposure contour.

**Rationale:** The County Zoning Ordinance and the Land Division Regulations do not require such "hold harmless" agreements. However, WCC 8.34, entitled "Airport Disclosure," was adopted by the County Council in 2005 as part of a package of airport/land use compatibility planning measures under the GMA. WCC 8.34 requires building permits, short plats and discretionary development permits for within one mile of the runway to contain a disclosure statement about airport noise.

4.33 **Encourage the City of Bellingham to adopt airport/land use compatibility rules applicable to properties in the vicinity of the airport.**

**Rationale:** The Port of Bellingham, in an e-mail of 6/8/2017, requested policy language to address land use/compatibility for land uses in the City of Bellingham. The above policy would encourage the City to address this issue, although it is not as specific as the language suggested by the Port.

**Recreation and Open Space**

The primary purpose of the Recreation and Open Space zoning designation is to ensure the continued public provision of a variety of services, optimizing public investments, conserving recreation and open space resources and uses, and promoting compatibility between public functions and surrounding land uses. Comparable City zoning for the Recreation and Open Space designation is Public.

**Rural**

See Whatcom County Comprehensive Plan for Goals and Policies relating to Rural lands.

**Agriculture**

See Whatcom County Comprehensive Plan for Goals and Policies relating to Agricultural lands.

**Rationale:** The Whatcom County Comprehensive Plan addresses Rural and Agricultural goals and policies. Additionally, the Comprehensive Plan states "... The next Urban Fringe Plan update will only include the Bellingham UGA ..." (p. 2-24). Therefore, the Rural and Agricultural areas around the UGA will no longer be addressed in the Urban Fringe Subarea Plan.
V. **Urban Growth Area**

A. **Urban Growth Areas Defined**

Under the Growth Management Act (GMA), cities and counties are required to designate areas where urban growth **is** encouraged and areas where urban development **is** discouraged. Urban growth, as defined by the GMA,

"refers to growth that makes intensive use of land for the location of buildings, structures and impermeable surfaces to such a degree as to be incompatible with the primary use of such land for the production of food, other agricultural products, or fiber, or the extraction of mineral resources, ...(RCW 36.70A.030(19))."

The purpose of designating urban growth areas is to promote compact urban development; ensure efficient use of land resources; and facilitate the economic provision of urban services. Urban growth areas should include areas and densities sufficient to provide for the urban growth that is projected to occur in the next twenty years. Urban growth requires urban levels of service, including: storm and sanitary sewer systems, domestic water systems, transportation, fire and police protection, public transit, schools, parks and other public utilities associated with urban areas.

Since the intent of the GMA legislation is to ensure concurrency of certain facilities and services with projected growth and development, urban growth should be located first in areas already characterized by urban growth. These areas should have existing public facilities and service capacities to serve the development of the area. Second, urban growth should be located in areas that will be served by a combination of existing and planned public facilities and services; and finally in areas adjacent to areas characterized by urban growth, where adequate public facilities and services are not presently available.

Compliance with the GMA requires cities to complete an analysis of the availability and need of land within and adjacent to its boundary for natural resources, open space, housing, commerce, industry, transportation and the location and need for public facilities and services. The City of Bellingham in cooperation with Whatcom County has analyzed these needs to identify areas appropriate for inclusion in the City's Urban Growth Area. The City and County will work together to direct the rate, amount, type, timing and location of urban growth.

**Rationale:** The GMA requires counties to periodically review their comprehensive plans and UGAs to ensure they can accommodate the urban growth projected to occur in the county for the succeeding twenty-year period (RCW 36.70A.130(3)). Whatcom County and the cities worked together in a coordinated and consistent manner to develop a land capacity analysis and review and, as needed, update their comprehensive plans and UGAs in 2016. The GMA requires the next UGA review by 2024. The subarea plan update is not intended to undertake a new UGA review process.
B. Factors Affecting Urban Growth Areas

Land use development in the City of Bellingham and adjacent urban areas is the result of a variety of economic, social and physical variables. The direction, type, and timing of growth are influenced by the topography, environmental constraints, market conditions, the extension of services including sewer and water, and the development of transportation systems.

In evaluating the areas adjacent to the City limits, a number of assumptions were made and specific criteria reviewed. Some of the primary assumptions include the following:

1. The City of Bellingham’s Urban Service Area, established in 1985 is the logical area for the major portion of the City’s Urban Growth Area to the north;

2. The Urban Service Area is characterized by urban growth and is partially to fully served with City sewer and water;

3. Some annexations occur prior to the extension of services and development;

4. As population in urbanized areas increases, demands for public facilities and services also will increase;

5. Bellingham will continue to be a primary public facility and service provider; there is a need to require development to pay impact fees in urban growth areas;

6. Some areas outside the Urban Service Area are characterized by urban development.

Rationale: The above assumptions are from the 1997 Urban Fringe Subarea Plan. It is not necessary to include these historical assumptions in the updated Urban Fringe Subarea Plan.

The criteria used for evaluating Bellingham's urban growth areas are based on an analysis and evaluation of the following:

1. GMA requirements;

2. Whatcom County Comprehensive Plan provisions relating to UGAs and UGA Reserves;

3. Population and employment projections;

4. Land supply needs for residential, commercial, industrial, and
recreational developments;

5. Urban service capacity, including sewer, water, and other infrastructure;

6. Existing and proposed future plans—recognizing consistency and compatibility with existing local and regional policies— including GMA goals, County-wide Planning Policies, and the City of Bellingham Comprehensive Plan; Visions for Bellingham Goals;

7. Protection of wetlands and associated systems, sensitive environmental other critical areas, and open space;

8. Impact on designated Resource Lands;

9. Existing land use; and

10. Requests for specific zoning by property owners.

VI. **Bellingham Urban Fringe Subarea Planning Area Maps**

The Bellingham Urban Fringe Subarea is divided into 16 planning areas; these areas have been divided up into such planning areas based on their geographic regions having similar features such as topography, land uses, infrastructure, service capacity, critical areas, and stream corridors. The Bellingham Subarea planning area maps implements zoning code designations which will achieve Comprehensive Plan goals.

**Rationale:** The Whatcom County Comprehensive Plan establishes basic land use designations and the Whatcom County Zoning Code establishes specific zoning designations throughout the county. There is no need to have a third set of maps in the subarea plan for designations that already exist on the zoning map. Therefore, only a map showing the new subarea boundaries is included below.
**Bellingham Urban Fringe Subarea**

- Bellingham Urban Fringe Subarea
- Urban Growth Area
- **Urban Growth Area Reserve**
- Incorporated City

**Rationale:** The Urban Fringe Subarea currently includes Rural and Agriculture lands adjacent to the Bellingham UGA. However, the Whatcom County Comprehensive Plan states "... The next Urban Fringe Plan update will only include the Bellingham UGA..." (p. 2-24). Therefore, the Urban Fringe Subarea boundary is being updated to match the Bellingham UGA boundary, as shown on the map above.
NOTE: Delete “Bellingham Urban Fringe Subarea” map and Maps 1-16 below.
Comprehensive Plan Land Use & Official Zoning Map

San Juan East Residential Planning Area

1. URMX (6-12)

2. URMX (6-10)

3. UR (6)

Legend:

- Land Use and Official Zoning Boundary
- City Limits

Note: Where numbers are in (), numbers refer to planned densities pursuant to the 1997 Bellingham Urban Fringe Subarea Plan

These areas to be removed from UGA
Comprehensive Plan Land Use & Official Zoning Map

San Juan West Residential Planning Area

Legend

- Land Use and Official Zoning Boundary
- City Limits

Future connection to Elwood and H-5
Future connection to

*Note: Where numbers are in ( ), numbers refer to planned densities pursuant to the 1997 Bellingham Urban Fringe Subarea Plan.
VII. Analysis and Rationale for Adjusting
Bellingham’s 1985 Urban Service Area

Introduction

Urban-Growth Areas

As required by the Washington Growth Management Act (GMA), and County-wide Planning Policies, projected population for the next 20-year planning period must be accommodated in urban growth areas. The City of Bellingham, in cooperation with Whatcom County, is evaluating the appropriateness of expanding or contracting its present Urban Service Area in defining an appropriate Urban Growth Area. The purpose of designating urban growth areas is to promote compact urban development, reduce urban sprawl, and ensure efficient use of land and financing of urban facilities and services to meet the needs of the projected population during the 20-year planning period.

Rationale: Whatcom County, in consultation with the City of Bellingham, completed the GMA-required UGA review in 2016. During that review process, the Bellingham City Council recommended maintaining the existing UGA boundary. The County Council concurred with this recommendation and did not modify the UGA boundary in the 2016 UGA review. The GMA requires review of UGAs every eight years. The City of Bellingham and Whatcom County are not considering changes to the UGA at the current time.

The criteria for evaluating those areas outside the existing urban-service area are based on an analysis and evaluation of the following:

- Adopted policy and visions statements
- Population projections
- Land supply, including residential, commercial and industrial
- Existing plan and zoning designations
- Existing land use and ownership patterns
- Environmental opportunities and constraints
- Transportation systems
- Availability and capacity of urban services and facilities and concurrency requirement
- Property owners requests

Rationale: Criteria for evaluating UGAs are included earlier in this Subarea Plan.

Fourteen smaller areas within the three Urban Fringe Subarea Analysis Areas have been identified and evaluated according to the criteria above for possible inclusion in Bellingham’s Urban Growth Area. Map 18 shows the areas evaluated.
**Marine Drive/Airport Analysis Area**

Five areas have been identified in the Marine Drive/Airport Analysis Area for evaluation as possible areas for inclusion in Bellingham’s Urban Growth Area. A description of the area, zoning, and existing services and uses are provided. Advantages and disadvantages to inclusion in Bellingham’s Urban Growth Area are listed below, followed by a specific recommendation from the Bellingham City Council.

**Area A:**

This area is located west of the Urban Service Boundary, generally in the vicinity of Marine Drive and Bancroft Road, and adjacent to Bellingham Bay. The area is zoned Rural Residential (RR1) one dwelling unit per acre. The topography is generally flat to rolling hills sloping in a southerly direction. Dense forests, pasture land, wetlands, and marshes predominate along the Bay. The area is primarily rural in character with scattered low density single family development on larger parcels, with a pocket of residential development approaching urban densities, primarily in the Bancroft subdivision. The Smith Garden is located south of Marine Drive and east of the Bancroft subdivision. Water District #2 and Fire District #8 serve the area.

**Advantages/Disadvantages**

1. **Advantages**

   a. Inclusion of this area would mean an increase in the land supply for residential development.

   b. The Bancroft Road area is more urban in character than adjacent areas.

   c. Soils have a rapid permeability and high seasonal water table and are poor filters for septic effluent; public sewer could reduce any ground water contamination.

2. **Disadvantages**

   a. Much of the area is rural in character and located away from urban development centers.

   b. The Bellingham International Airport noise and clear zone acts as a
barrier between the urban areas of the City and this area.

c.—Urban residential densities are not appropriate abutting airports because of noise and flight paths.

d.—Fire and police service constraints resulting from inadequate roadways in the areas, the barrier created by the Bellingham International Airport, and travel distance from existing fire facilities for extension of urban level fire protection services.

e.—Increased demand on existing City facilities and services would require new facilities and upgrading of existing facilities and services.

f.—Local opposition to being part of Bellingham’s Urban Growth Area.

**Bellingham City Council Recommendations**

This area should not be included in Bellingham’s Urban Growth Area.

**Area B.**

The area is located west of Bellingham International Airport, north of Marine Drive and in the general vicinity of Country Lane, Curtis and Wynn Roads. The area is zoned both Rural (R2A) one dwelling unit per two acres, and Rural Residential (RR1) one dwelling unit per acre. The topography is generally flat. Dense forested areas, wetlands, marshes, and pasture land make up the bulk of the area. It is rural in character with scattered low-density single family development. The Burlington Northern Railroad borders the area on the southwest and the Airport separates this area from the urban centers of the City. Water District #2 and Fire District #8 serve the area.

**Advantages/Disadvantages**

1.—Advantages

a.—Inclusion of this area would mean an increase in the land supply for residential development.

b.—Some property owners desire inclusion in Bellingham’s Urban Growth Area.

c. a. Soils have a rapid permeability and high seasonal water table and are poor filters for septic effluent; public sewer could reduce any ground water contamination.

2.—Disadvantages
a. Much of the area is rural in character and located away from urban development centers.

b. The Bellingham International Airport acts as a barrier between the urban areas within the City and this area.

c. Urban residential densities are not appropriate abutting airports because of noise and flight path patterns.

d. Fire and police service constraints resulting from inadequate roadways in the area, the barrier created by the Bellingham International Airport, and travel distance from existing fire facilities for extension of urban-level fire protection services.

e. Increased demand on existing City facilities and services would require new facilities and upgrading of existing facilities and services.

f. Some local opposition to being part of Bellingham’s Urban Growth Area.

**Bellingham City Council Recommendation**

This area should not be included in Bellingham’s Urban Growth Area.

**Area C**

This area is located adjacent to Slater Road and across from Ferndale’s City limits. Sunset Creek is the area's southeast boundary and the Burlington Northern RR is the western boundary. The area is characterized by industrial development and is within Ferndale's proposed Urban Growth Area; it is served by the City of Ferndale. The area is considered an anomaly since it is within the Urban Fringe Subarea and Bellingham's sphere of influence. The area is zoned Light Impact Industrial and is approximately 19 acres. The topography is fairly flat with shrubs and bushes and some trees along the creek.

**Advantages/Disadvantages**

1. **Advantages**

a. Inclusion of this area in Bellingham’s Urban Growth Area would add to the city’s folio of industrial land.

2. **Disadvantages**

a. City utilities are not available.

b. Fire and police service constraints resulting from distance from existing City facilities.
c. The area is within Ferndale’s proposed Urban Growth Area and is served by the City of Ferndale.

d. Separation of Urban Growth Areas is required by the County-wide Planning Policies.

**Bellingham City Council Recommendation**

This area should not be included in Bellingham’s Urban Growth Area.

**Area D:**

This area is located east of Interstate 5, adjacent to Slater Road on the south, and Pacific Highway on the east. It abuts Bellingham’s Urban Service Area boundary at the Port property on Pacific Highway. The area is approximately 30 acres and is currently zoned General Commercial. In 1989, a concomitant agreement was entered into between the property owners and Whatcom County to control land uses in the vicinity of the airport and ensure compatibility with airport activity, now and in the future.

The topography is fairly flat. Some forest-covered areas are located to the back of the lots and provide a backdrop for several businesses including a sign and custom awning shop, antique mall, auto repair shop, and carpet sales, and some low-density single-family residential development. The area has been partially cleared for commercial development. An ARCO service station and mobile home sales business are adjacent to Slater Road. Fire District #8 serves the area.

In 1996, this area was analyzed in Bellingham’s Supplemental Environmental Impact Statement (SEIS) along with other property extending east from this area to Northwest Drive and south from Slater Road to Stuart Road. The SEIS proposal evaluated the addition of approximately 889 acres to the City’s proposed urban growth area as industrial, and to change the proposed land designation for 139 acres from Urban Residential (UR4) to industrial. The 30 acres would remain commercial. In 1997, Bellingham City Council recommended adding this commercial area, identified as Area #3 in the SEIS, to Bellingham’s Final Urban Growth Area.

**Advantages/Disadvantages**

1. **Advantages**

   a. Inclusion of this area into the City’s Urban Growth Area would enable the City to participate in the joint land use planning for the area and have greater control of development following annexation.

   b. The designation is urban and recognizes existing commercial
developments.

c. The area fronts on Interstate-5 and takes access from Pacific Highway, a major transportation corridor linking Bellingham’s northern industrial and commercial areas with other regional transportation corridors to the north.

d. Urban development is already established in this area.

e. Joint land-use planning would increase the effectiveness of interlocal agreements made for the area.

f. There is property owner support for sewer and water services.

g. Bellingham has the capacity to serve the area with sewer and water.

2. Disadvantages

a. Increased demand on existing City facilities and services will require an upgrade in some existing City facilities and services.

b. City services could intensify and exacerbate a commercial strip at the entrance to the City.

Bellingham City Council Recommendation

This area should be included in Bellingham’s Urban Growth Area.

Area E.

The area is located adjacent to Pacific Highway and east of Interstate-5. The larger portion of the area is zoned Light Impact Industrial and two smaller lots are zoned Rural (R2A). Topography is fairly flat. Some of the area is forest covered. Several intermittent drainage channels flow through the property into Bear Creek which feeds into Silver Creek watershed. There are some wetlands which serve as natural retention for the Silver Creek watershed. Uses include Olivine incinerator facility, Motor Trucks, a church, and CPS Allwaste. The City provides water to Olivine. Sewer service is not provided.

This area has been incorporated into the Pacific Highway North (Industrial/Commercial) Area (Map 4b) in Bellingham’s proposed Urban Growth Area. Identified as planning Area 2, this area has existing urban development, fronts on Interstate 5, and is adjacent to Pacific Highway, a major transportation corridor linking Bellingham’s northern industrial and commercial areas with urban areas further north.

Advantages/Disadvantages
1. Advantages

a. Inclusion of this area into the City’s Urban Growth Area would enable the City to participate in the joint land use planning for the area, and have greater control of development following annexation.

b. The area is located between two sections of the Urban Service Area Boundary (AO to the north and LII to the south).

c. Urban development is already established in the area.

d. Joint land use planning for the area would increase the effectiveness of interlocal agreements made for the area.

e. Inclusion of this area, along with adjacent areas, would provide a more regular Urban Growth Area boundary.

2. Disadvantages

a. Increased demand on City facilities and services will require an upgrade in some existing City facilities and services.

Bellingham City Council Recommendation

This area should be included in Bellingham’s Urban Growth Area as planning Area 2, Pacific Highway North (industrial/commercial) Area of the Marine Drive/Airport Analysis Area. (see MAP 4B) The recommendation is based in part on: 1) public testimony at the November 24, 1996 Public Hearing on Bellingham’s Urban Growth Area; 2) analysis of Bellingham’s industrial land supply; 3) a need for industrial-zoned land in this area adjacent to three major transportation corridors; 4) proximity to Bellingham International Airport; 5) desire of some property owners with adjacent industrially zoned land; 6) larger parcels under one ownership; and 7) the City’s SEIS analysis.

I-5/Guide Meridian Analysis Area

Four areas have been identified in the I-5/Guide Meridian Analysis Area for evaluation as possible areas for inclusion in Bellingham’s Urban Growth Area. A description of the area, zoning, and existing services and uses are provided. Advantages and disadvantages to inclusion in Bellingham’s Urban Growth Area are listed, followed by a specific recommendation from the Bellingham City Council.

Area F:

This area is located adjacent to the City’s urban service area north of
Bellingham in the vicinity of Northwest Avenue and Aldrich Road. Larrabee Road forms part of its southern boundary. The area is adjacent to a portion of the Cordata Business Park PUD, scheduled for annexation to the City of Bellingham in 1997. The area is zoned Rural (R2A) and (R5A). The topography is generally flat to rolling hills, sloping in a south westerly direction. Dense forests and wet areas associated with Bear Creek and Silver Creek are found within the site. Characterized by single family residential development, some home occupations and small commercial businesses are along Northwest and Aldrich Roads. Water is provided in part by individual wells and the City of Bellingham. Fire District #8 serves the area.

Advantages/Disadvantages

1.– Advantages

a.– Inclusion of this area into the City’s Urban Growth Area would enable the City to participate in the joint land use planning for the area.

b.– The area is adjacent to one of the City’s rapidly urbanizing areas, and has City water.

c.– Request by some property owners to be included in the City’s Urban Growth Area.

d.– Proposed extension of future Horton Road and construction of an east/west connector will provide better circulation for this area.

e.– There are some pockets of urban development already established in the area.

f.– Joint land use planning for the area will increase the effectiveness of interlocal agreements made for the area.

g.– Inclusion of some properties would provide a more regular boundary.

h.– City ordinances and enforcement may provide greater protection of the Bear Creek corridor, Silver Creek tributaries and associated wetlands.

i.– Inclusion of some property would increase the land supply for residential development.

j.– Recognition of ownership pattern would allow Foxglove Fields development on the dry land portion of their ownership.

2.– Disadvantages

a.– Some property owners are opposed to inclusion in Bellingham’s Urban
Growth Area:

b. Increased demand on existing City facilities and services will require an upgrade in some City facilities and services.

**Bellingham City Council Recommendation**

The R2A area should be included in Bellingham’s Urban Growth Area as Area 2, Northwest/Aldrich Residential Area of the I-5/Guide Meridian Analysis Area. *(see MAP 8)*

**Area G**

This area is located north of the City, adjacent to the Urban Service Area, and is referred to for identification purposes as Cordata North. Smith Road is its northern boundary. The area is currently zoned Rural (R10A) which allows 1 dwelling unit per ten acres. The topography ranges from fairly flat to rolling hills. The area is primarily pasture land and has been used for commercial agricultural operations. The average parcel size is greater than ten acres and existing residential density is less than or equal to one dwelling unit per ten acres. The area has wetlands associated with Bear Creek and its tributaries which traverse and drain the site. The area is approximately 600 acres, and is presently being farmed.

**Advantages/Disadvantages**

1. **Advantages**

   a. Inclusion of this area in the City’s Urban Growth Area would enable the City to participate in the joint land use planning for the area.

   b. Sewer and water services could be extended to provide for development.

   c. The area is under one ownership and is master planned. A development proposal exists, which if reviewed and approved would provide additional land for residential development.

   d. Request by the property owner to be included in the Urban Growth Area.

2. **Disadvantages**

   a. The area is rural in character and is presently being farmed.

   b. The City of Bellingham does not have services available to this area.

   c. This land is less suitable for inclusion in Bellingham’s Urban Growth Area at this time than some other areas evaluated in terms of distance to urban services and cost to provide the full range of urban services.
d. Local opposition from adjacent rural property owners and residents to being part of Bellingham’s urban growth area.

e. Increased demand on existing City facilities and services would require new facilities and upgrading of existing facilities and services.

f. Development constraints resulting from wetland systems on the property.

g. Inclusion of this area in Bellingham’s UGA would lead to an irregular boundary.

**Bellingham City Council Recommendation**

This area should not be included in Bellingham’s Urban Growth Area. This area should be reconsidered during the periodic review in five years.

**Area H:**

This area is located north of the City, adjacent to the Urban Service Area and includes parcels on both sides of Guide Meridian in the vicinity of Kelly Road. The topography of the area is generally flat with some gently rolling hills. The area has both pastures and portions are forest covered. Some wetlands and tributaries are associated with Spring Creek which traverses the area. Much of the area has been already cleared for development. The area is currently zoned Rural (R5A) allowing one dwelling unit per five acres. There are existing home occupations, cottage industries, and other businesses operating along Guide Meridian. Water service is provided by Deer Creek Water Association. Fire District #8 serves the area west of Guide Meridian, and Fire District #4 serves the area east of Guide Meridian.

The Bellingham City Council recommends this area be included in the city’s Northern Urban Growth Area based in part on: 1) public testimony at the November 25, 1996 public hearing on Bellingham’s Urban Growth Area; 2) an analysis of Bellingham’s vacant industrial land supply and projected demand; 3) the analysis in the city’s SEIS; 4) existing mix of industrial and commercial uses in the area; 5) proximity to one of Bellingham’s rapidly growing urban areas; 6) location of the area on a major transportation corridor; and 7) proximity to City utilities. The Expansion Area comprises approximately 242 acres, and is shown on **Map 10, Guide Meridian/Mixed Use Area**.

**Advantages/Disadvantages**

1. Advantages
a. Inclusion of this area in the City’s Urban Growth Area would enable the City to participate in the joint land-use planning for the area.

b. The area is a gateway to Bellingham from the north and is an important area of influence for the City.

c. Increasing traffic volumes and congestion generated by Bellis Fair and adjacent commercial and industrial development along Guide Meridian has impacted this area. Because the Urban Service Boundary is irregular in this area, an opportunity exists to create a more regular boundary and limit urban sprawl and strip development patterns along Guide Meridian.

d. The area is adjacent to one of the City’s rapidly urbanizing areas.

e. Request by some property owners to be included in the City’s Urban Growth Area.

f. Proposed extension of an east/west connector would provide better circulation for this area. The City should participate in the planning of this facility and its intersection with Guide Meridian.

g. Some urban development is already established in the area.

h. Inclusion of property designed for industrial development meets identified need for developable industrially zoned land.

i. Joint land-use planning for the area would increase the effectiveness of interlocal agreements made for the area.

j. City ordinances and enforcement may provide greater protection for Spring Creek and associated wetlands.

2. Disadvantages

a. Increased demand on existing City facilities and services would require some new facilities and upgrading of some existing facilities and services.

Bellingham City Council Recommendation

This area should be included in Bellingham’s Urban Growth Area as Area 2, Guide Meridian Mixed-Use Area of the I-5/Guide Meridian Analysis Area. (See Map 10).

Area 1:

This area is located northeast of the City, adjacent to the Urban Service Area, extending approximately 1700 feet east of Guide Meridian. Access to the
existing dwelling units is off Guide Meridian at Kellogg and East Bakerview Road. The topography of the area is generally flat to rolling hills with slopes up to 15 percent. The area is generally rural in character with scattered single family residential development. The Calvary Temple Church property is located in this area. The area has both pasture and dense forested areas associated with the Spring Creek corridor. Spring Creek traverses part of the area and drains the area to the southwest. The area is currently zoned Rural (R5A) allowing one dwelling unit to five acres, and comprises approximately 229 acres.

This area includes the existing platted residential lots off of James Street north of East Bakerview Road, including Gooding Avenue, Frances Avenue, King Avenue, and Montgomery Road know as King Mountain. The area also includes the area west of James Street to the Calvary Temple property. The area provides a forested backdrop for the City of Bellingham and view lots for residential development. The area is currently zoned RR2 and R5A. The terrain is hilly with some slopes ranging from 15% to 40% in the northeastern portion of King Mountain. The extension of Kellogg Road through this area has been identified as a needed improvement to link Bellingham's regional retail/commercial area with James Street and areas east. The City of Bellingham took over former Water District #9 and currently provides water to the area. Fire District #4 serves the area. A fire station is located at the southwest corner of James Street and East Bakerview Road.

This expansion area has been enlarged to include property at the crest of King Mountain, and property east of James Street and north of East Bakerview Road, based in part on: 1) analysis of Bellingham's land supply; 2) existing urban residential development in the area; 3) existing utilities; 4) a need to improve transportation circulation in the area, and 5) desire for a more even and logical Urban Growth Area.

**Advantages/Disadvantages**

1. **Advantages**

   a. The area is within Bellingham's sphere of influence and adjoins a rapidly growing commercial, industrial and high density residential area of the City. Increasing traffic volumes and congestion generated by Bells Fair and adjacent commercial and industrial development along Guide Meridian impacts this area.

   b. Request by some property owners to be included in the City's Urban Growth Area.

   c. Proposed extension of Kellogg Road to James Street would provide better circulation for the area and larger vicinity, and would be partially provided by the Calvary-Temple Church.
d. The area has pockets of urban development close to employment centers at Kellogg Road, Meridian Street, and Bakerview/Hannegan industrial.

e. Inclusion would provide a more regular boundary.

f. City ordinances and enforcement may provide greater protection for the Spring Creek and associated wetlands and environmentally sensitive areas.

g. An opportunity exists to provide park land and open space between two developed areas.

h. Water is provided by the City of Bellingham.

i. Joint land use planning for the area would increase the effectiveness of interlocal agreements made for the area.

j. Request by some property owners to be included in the City’s Urban Growth Area.

2. Disadvantages

a. Increased demand on existing City facilities and services would require some new facilities and upgrading of some existing facilities and services.

Bellingham City Council Recommendation

This area should be included in Bellingham’s Urban Growth Area as Area 1, King Mountain Residential Area, which is situated in both the I-5/Guide Meridian and Squalicum Creek Analysis Areas. (See MAP 12).

Squalicum Creek Analysis Area

Five areas have been identified in the Squalicum Creek Analysis Area for evaluation as possible areas for inclusion in Bellingham’s Urban Growth Area. A description of the area, zoning, and existing services and uses are provided. Advantages and disadvantages to inclusion in Bellingham’s Urban Growth Area are listed, followed by a specific recommendation.

Area J.

This area is located on both sides of Hannegan Road north of the existing Urban Service Area boundary in the vicinity of the Mount Baker Motor Cycle Club. The terrain is generally flat adjacent to Hannegan Road and has been cleared. Baker Creek traverses the area. Queen Mountain lies to the northwest of the area. The area is currently zoned RSA. The East Bakerview/Hannegan Industrial site is to the south of this area and is zoned for general manufacturing and light industrial uses.
Bellingham City Council is recommending inclusion of this area in the city’s Northern Urban Growth Area based in part on: 1) public testimony at the November 24, 1996 public hearing on Bellingham’s Urban Growth Area; 2) an analysis of Bellingham’s industrial land supply; 3) an analysis of this area in the city’s SEIS; 4) proximity to existing industrially zoned areas and development in the adjacent area; 5) location of the area on two major transportation corridors (i.e., Hannegan and Bakerview Roads); and 6) proximity to City utilities. The Expansion Area comprises approximately 200 acres, and is identified as *Area 5, on Map 14, Bakerview/Hannegan Industrial Area*.

**Advantages/Disadvantages**

1. **Advantages**
   
   a. Inclusion of this area in the City’s Urban Growth Area would enable the City to participate in the joint land use planning for the area.
   
   b. Joint land use planning for the area would increase the effectiveness of interlocal agreements made for the area.
   
   c. This area could provide additional land for industrial development and expansion of adjacent industrial uses.
   
   d. Existing urban development in the area.
   
   e. Request by some property owners to be included in the Urban Growth Area.
   
   f. City ordinances and enforcement may provide greater protection for the Spring Creek and associated wetlands and environmentally sensitive areas.

2. **Disadvantages**
   
   a. Increased demand on existing City facilities and services would require some new facilities and upgrading of some existing facilities and services.
   
   b. Inclusion of properties adjacent to Hannegan would create a somewhat irregular Urban Growth Area Boundary.

**Bellingham City Council Recommendation**

This area should be included in Bellingham’s Urban Growth at this time.
Area L.

This area is located north of Dewey Valley Road and within the Urban Service Area. The terrain is generally flat along Mount Baker Highway, but drops off with slopes ranging from 0 to 15% toward the northwest. Pastures, forested areas, and some wetlands are associated with Squalicum Creek tributaries and Toad Creek. The area is generally rural in the valley with low-density single-family development. Some of the area is urban in character adjacent to the ridge along Mount Baker Highway.

Questions have been raised regarding the appropriateness of keeping the Dewey Valley in Bellingham’s Urban Growth Area. There are some advantages for retaining this area in Bellingham’s Urban Growth Area and some disadvantages. Two options are recommended for consideration.

Advantages/Disadvantages

1. Advantages

   a. Inclusion of this area in the City’s Urban Growth Area would enable the City to continue to participate in the joint land-use planning for the area.

   b. Joint land-use planning for the area would increase the effectiveness of interlocal agreements made for the area.

   c. Some areas are characterized by urban development along Mount Baker Highway and are close to employment centers at Bakerview/Hannegan Industrial and Sunset Mall.

   d. The area provides an opportunity for open space planning.

   e. Water is provided by the City of Bellingham along Mount Baker Highway.

   f. Exclusion of this area would provide more support for adding other areas that are more suitable for urban development and easier to serve.

2. Disadvantages

   a. Urban development would be inconsistent with existing rural pattern of development and character of the area.

   b. Increased demand on existing City facilities and services would require an upgrade in some existing City facilities and services.

Bellingham City Council Recommendation

Retain the area in Bellingham’s Urban Growth Area at the existing zoning designation and density, and provide development standards to protect the
sensitive environmental areas in the valley, including requiring clustering and setbacks from creeks.

**Area M:**

This area is located at the intersection of Mount Baker Highway and Britton Road in the vicinity of the BPA transmission lines. This area is approximately 18 acres and is zoned Rural-5A. Much of the area has been cleared and some commercial, industrial and non-conforming development exists.

**Advantages/Disadvantages**

1. **Advantages**

   a. Inclusion of the entire intersection of Mount Baker Highway and Britton Road in the Urban Growth Area and the rezone to Neighborhood Commercial would allow the City to participate in the joint planning of the area.

   b. It may be appropriate to recognize existing development in the area through inclusion of the area in Bellingham’s Northern Urban Growth Area.

   c. The area may be appropriate for a neighborhood commercial development to serve a growing residential area and high school population.

   d. Joint land-use planning for the area would increase the effectiveness of interlocal agreements made for the area.

   e. Water is provided by the City of Bellingham along Mount Baker Highway.

   f. Request by some property owners to be included in Bellingham’s Urban Growth Area as commercial.

2. **Disadvantages**

   a. Increased demand on existing City facilities and services will require an upgrade in some existing City facilities and services.

   b. Increased traffic impacts at the intersection of Mount Baker Highway and Britton Road.

**Bellingham City Council Recommendation**
This area should be included in the Urban Growth Area as **Area 1, Britton/Baker Residential Area** of the Squalicum Creek Analysis Area. **(See Map 16)**

**Area N:**

This area is located northeast of the Urban Service Area boundary in the vicinity of Emerald (Toad) Lake. Toad Lake is situated on the northwest slope of Squalicum Mountain and has grades of 45%. The area is characterized by steep slopes facing west and ranging from 15% to over 40%. Much of the area is densely forested. About 200 acres in the westerly portion of this area are accessed from Emerald Lake Road at Britton Road. The southeastern portion of the area is accessed from Toad Lake Road. Toad Lake Creek drains the area. Low density single family residential development characterizes this area, with a mix of vacation cabins, mobile homes and what appears to be assorted non-conforming structures in the immediate vicinity of the lake. Soils are generally not suitable for septic systems.

As part of the Bellingham’s 1994 Final Environmental Impact Statement on the City’s 20-year growth alternatives, this area was evaluated for possible inclusion in Bellingham’s Northern Urban Growth Area. Because of its steep slopes, narrow winding roads, and access constraints for fire and police protection vehicles, the City Council’s recommendation is to leave this area in the county and not include it in Bellingham’s Urban Growth Area. Development capacity of the area does not support the cost of new facilities and services.

**Advantages/Disadvantages**

1. **Advantages**
   
   a. Inclusion of this area in the City’s Urban Growth Area would enable the City to participate in the joint land use planning for the area.
   
   b. Joint land use planning for the area would increase the effectiveness of interlocal agreements made for the area.
   
   c. The area provides an opportunity for open space planning.

2. **Disadvantages**
   
   a. Urban development would be inconsistent with existing rural pattern of development and character of the area.
   
   b. Increased demand on existing City facilities and services will require an upgrade in some existing City facilities and services. Development capacity of the area does not support the cost of new facilities and services.
e.—Development is separated by terrain from major urban development centers.

d.—Growth is not anticipated to occur in this area.

e.—Fire and police service constraints resulting from inadequate facilities, distances from existing facilities and roadways in the area.

**Bellingham City Council Recommendation**

This area should be included in Bellingham’s Five Year Review.

**VIII. Five Year Periodic Review**

In order to assure sufficient flexibility in Bellingham’s Northern Urban Growth Area, and to respond to land supply and demand changes, the City and Whatcom County should review certain areas identified in this plan on a priority basis. At such time that a need for more land is justified by updated land supply, demand studies, and other planning criteria, including: changed conditions, availability and capacity of urban services, including sewer, water, and other infrastructure, transportation systems, land use and ownership patterns, property owner requests, environmental opportunities, and others, these areas would be considered.

Four areas have been identified for consideration during Bellingham’s Five Year Periodic Review. These areas, shown on Map 19, have a number of factors in common, including:

- These areas are adjacent to the existing Urban Service Area and recommended Urban Growth Area.

- These areas are within a larger urbanizing area or influence area.

- Environmental opportunities may exist for park and trail development.

- Some of these areas already have City water.

- Some of the property owners have requested to be included in the Urban Growth Area or to be zoned for urban development.

- Conditions around these areas may change during the next five years in such a way as to contribute to their potential designations within Bellingham’s Urban Growth Area.

- These areas have the capacity for logical expansion of existing or similar neighboring land uses.
Rationale: The GMA requires a county-wide review of all UGAs every eight years. The last review was completed in 2016 and the next review will be conducted by 2024. Additionally, UGA Reserves are now the areas slated for future consideration for UGA status. These areas are shown on the Whatcom County Comprehensive Plan map on a county-wide basis.

IX. Comprehensive Plan Amendments

The Urban Fringe Subarea Plan is a policy document that is used to guide the land use decisions affecting both the private and public sectors of the subarea. For the plan to function as an effective decision-making document, it must be flexible enough to weather changes in public attitudes, developmental technologies, economic forces, and legislative policy.

The plan envisions two general types of plan amendments, which will be conducted in accordance with the County’s Public Participation Plan. The first type is a review conducted every eight years. The GMA requires a periodic review of comprehensive plans every eight years to ensure that, among other things, UGAs have sufficient area and densities to accommodate the projected urban growth over the 20-year planning period. In association with this periodic review, new population and employment growth projections are formulated, a land capacity analysis is conducted, capital facility plans are updated, and UGA boundaries are reviewed. During the eight year review, the City of Bellingham issues recommendations on whether or not to expand the UGA. The County Council adopts updates to the Whatcom County Comprehensive Plan, including any changes to the UGA boundaries. The Urban Fringe Subarea Plan text, goals, and policies may be updated concurrent with or after the Whatcom County Comprehensive Plan update. This Periodic Review should re-examine the land use plan, including a re-evaluation of goals; updates of land-related elements; the reaffirmation of land use policies, proposals, and neighborhood planning areas within Bellingham’s Urban Growth Area; land supply and demand analysis; and consideration of urban development needs. It is the responsibility of both the Bellingham and Whatcom County Planning Commissions and Planning staff as well as the people of the subarea to initiate and participate in such a review.

To assure sufficient flexibility in the urban growth area and to respond to land supply and demand changes, the City of Bellingham and Whatcom County shall review certain areas identified in this plan on a priority basis. These "priority areas" shall receive first consideration for inclusion in Bellingham's Urban Growth Area when a need for more land is justified by updated land supply and demand studies.

The second type of amendment is that proposed and initiated by private property owners. The land uses illustrated on the Land Use Plan Map are the result of the application of the plan’s goals and policies.
However, it is reasonable to assume that private property owners may introduce land-use proposals that conflict with the plan map or policies of the plan itself. In such instances, an individual or agency may propose an amendment to the plan. Private applications for petitions for amendment of the Comprehensive Plan amendments addressed to either the Whatcom County Planning Commission or the County Council shall be processed in accordance with the procedures in the Whatcom County Code, statutory procedure for adoption or amendment of comprehensive plans. Plan amendments proposed initiated by either the public or private sector which would alter or expand the Bellingham UGA Urban Growth Area for the City of Bellingham shall require an amendment to the Whatcom County Comprehensive Plan and are reviewed by both the City of Bellingham and Whatcom County. The Bellingham City Council will issue a recommendation prior to a final decision by the Whatcom County Council—jointly—processed by Bellingham and Whatcom County Planning Departments, Planning Commissions, and Councils.

Individual applications for Comprehensive Plan amendments, rezones, and zoning text amendments shall be made in writing in accordance with forms supplied by Whatcom County. Applications shall be accompanied by an Environmental Checklist pursuant to the Washington State Environmental Policy Act (SEPA) and Whatcom County SEPA rules; appropriate fees as specified in the Whatcom County Fee Ordinance; maps and property information as specified on the application forms; and the names and addresses of the owners of property within 300 feet of the proposed amendment.

The steps in processing an amendment are: 1. schedule a Planning Commission public hearing; 2. publish legal notice in local newspaper at least 10 days before the hearing, mail notice to surrounding property owners, and post notice on the property at least 12 days before the hearing; 3. Planning staff report and recommendation to Planning Commission, approximately one week before the hearing; 3. Planning Commission public hearing; 4. Planning Commission recommendation forwarded to County Council; and 5. final Council action.

Rationale: Comprehensive Plan and rezone procedures are set forth in the Whatcom County Code and Public Participation Plan.

All proposed amendments to the plan or plan map and implementing zoning maps and regulations shall conform to the following criteria:

1. The amendment request shall conform with applicable Washington State laws governing Comprehensive Plan amendments.
2. The amendment request shall conform with the goals of the subarea plan.
3. The amendment request shall be consistent with the policies of this plan, the County-wide Planning Policies and the policies of the other elements and components of the Whatcom County Comprehensive Plan.

4. The amendment request shall be compatible with the existing and planned surrounding land uses.

5. The amendment request shall not result in unmitigated detrimental impacts to existing transportation systems.

6. The amendment request shall not place uncompensated burdens upon existing or planned service capabilities.

7. The amendment request shall demonstrate a land-use need which is currently not met by this plan.

8. The proponents of a rezone have the burden of proving that conditions supporting the existing zoning have substantially changed since the original zoning or most recent amendment; or that there was an error of fact made in the existing zoning designation.

9. A proposed rezone must bear a substantial relationship to the general welfare of the community.

10. A site-specific rezone that grants a discriminatory benefit to one group to the detriment of its neighbors or community at large must provide sufficient public advantage to outweigh said detriment.

Rationale: Approval criteria are set forth in the Whatcom County Code.

X. Implementation and Action Plan

The policies in this Plan are implemented by the Whatcom County Zoning Code and maps prior to annexation. After annexation, City of Bellingham Comprehensive Plan policies and regulations will apply. Recommended zoning are intended to work toward consistency with achieving county-wide land use planning goals and the particular issues which surfaced during the planning process for the Urban Fringe Subarea. Some of the policies, however, need to be implemented by other means if the area is to develop in the manner desired. Also, there are some processes under way which will not be completed before the update of this plan. This Action Plan provides an opportunity to respond to the results of those processes without the necessity to completely revise the comprehensive plan. For example, the Guide Meridian corridor is presently under study. The results of that study may indicate the need for some changes in the Guide Meridian Improvement Plan and a
need for design standards and performance-driven zoning along some parts of the Guide in the Subarea.

This section proposes activities which should be pursued by the public and private sectors no later than two years following the adoption of this comprehensive plan update.

1. **Re-Negotiate and Update the Interlocal Agreement Between Bellingham and Whatcom County**

Following the 1984 adoption of the Urban Fringe Subarea Comprehensive Plan, Bellingham and Whatcom County entered into an interlocal agreement in 1985. This was a constructive move toward addressing issues of timing and requirements for urban service and annexation in the designated Urban Reserve area as well as intergovernmental coordination in processing development permits. As part of the requirement for interlocal cooperation established in the Washington State Growth Management Act, Whatcom County anticipates adoption of general interlocal agreements between the County and the incorporated cities prior to adoption of this plan update. Any needed fine-tuning revisions should be undertaken within one year after adoption of the plan. The revised Interlocal Agreement will address such issues as balancing City and County revenues and expenditures when considering annexations, dealing with impacts of annexations on special district governments, coordinating city/county development and design standards for projects that will be processed without requiring annexation and the timing and phasing of future annexations.

**Rationale:** The interlocal agreement between Whatcom County and the City of Bellingham was updated in 2012. It is effective through the year 2022. Whatcom County Comprehensive Plan Policy 2U-5 addresses reviewing and updating the interlocal.

2. **Design Standards**

An issue that keeps coming up in the Urban Fringe Subarea is the lack of development design standards that deal with the appearance of commercial and industrial areas. The Guide Meridian corridor is a highly visible entrance to both Whatcom County and Bellingham and as such has a responsibility for creating a favorable first impression of our community. Consideration should be given to creating a design overlay district in this and possibly other areas where appearance is of importance to the economic vitality and future livability of the community.

**Rationale:** Only Light Impact Industrial zoning remains along the Guide Meridian in the Bellingham UGA (outside city limits). There is a pending annexation of this area. The City of Bellingham does not currently have design standards for industrial zones.
3. **Guide Meridian Improvement Plan**

The Guide Meridian Improvement Plan was adopted in 1985 and is both a component of the Urban Fringe Subarea Comprehensive Plan and a land use regulation for a special district. Its purpose is to assure that traffic concerns are adequately considered as development occurs in this corridor and as the State of Washington continues its program of upgrading this State highway. The plan originally applied to an area approximately one-eighth mile wide between the Bellingham City Limits and approximately one-eighth mile north of Horton Road. The need for updating this document stems from several sources. The City of Bellingham has annexed most of the affected area on the west side of Guide Meridian. Implementation of the Plan on a site-by-site basis has been inconsistent, varying with County permit administration staff. Also, development has proceeded at an accelerated pace in this area and traffic safety and congestion continue to be concerns. The Plan originally projected certain traffic volumes for the corridor to the year 1995. The traffic volume projected for 1995 was actually exceeded in 1992. The Whatcom County Council of Governments is presently coordinating a land use and access study of the Guide Meridian corridor in conjunction with Bellingham, Whatcom County and the Washington State Department of Transportation. Recommendations concerning future land use and access should be incorporated into any update of the Guide Meridian Improvement Plan.

**Rationale:** The majority of the area covered by the Guide Meridian Improvement Plan (all but about 10 acres) has been annexed by the City of Bellingham. The Guide Meridian Improvement Plan was repealed in 2016 (Ordinance 2016-035).

4. **Creative Development Techniques**

There are various alternatives for development regulations that have not been fully utilized by Whatcom County or Bellingham. These alternatives are generally intended to provide greater flexibility in land use than conventional zoning while at the same time preserving property rights, speeding up the permitting process, assuring environmental protection, and maintaining a liveable community. Creative techniques include such things as residential cluster options, planned unit developments, special area plans, performance zoning, and transferable development rights. In order to fully address the land use issues affecting the subarea and to fully implement the comprehensive plan, consideration needs to be given to using some or all of these techniques.

**Rationale:** Some of these techniques already exist in the Whatcom County Zoning Ordinance. Others may not be applicable because urban density residential development typically occurs after annexation, when public water and sewer are provided.
5. Plan Revisions in Response to the Whatcom County Comprehensive Plan Process and the Designation of Urban Growth Areas

As the Whatcom County Comprehensive Plan process is completed, revisions to the policies and designations in the portion of the subarea designated for rural and agricultural land uses may be indicated. Also, the subarea plan may need to be adjusted to reflect the designation of urban growth areas.

Rationale: The Whatcom County Comprehensive Plan update process was completed in 2016. The Comprehensive Plan now states “... The next Urban Fringe Plan update will only include the Bellingham UGA ...” (p. 2-24). Therefore, the Rural and Agricultural areas around the UGA will no longer be addressed in the Urban Fringe Subarea Plan. There were no changes to the UGA in the 2016 Update.
Exhibit B
Whatcom County Comprehensive Plan Amendments

Amend the Bellingham Urban Growth Area section of the Whatcom County Comprehensive Plan as follows:

Bellingham

Bellingham’s Urban Growth Area (UGA) was first established in 1997 as a result of a lengthy public involvement process. Three geographical areas comprise the City’s UGA: Bellingham’s Northern UGA, the Geneva/Watershed Resource Protection UGA, and the Yew Street UGA.

Background

In 1984, Whatcom County developed the Urban Fringe Subarea Plan (UFS Plan) applicable to approximately 20,000 acres located immediately north, west and east of Bellingham’s city limits. Recognizing that uncoordinated and unplanned growth poses a threat to the local environment and sustainable economic development, Bellingham and Whatcom County began a process in early 1990 to update the land use section of the Urban Fringe Subarea Plan. In September 1997, the Whatcom County Council adopted an updated plan. This Plan was subsequently amended in 1999, 2004, 2008 and 2009. The next Urban Fringe Plan update will only include the Bellingham UGA.

Urban Fringe Subarea Plan

The Whatcom County Comprehensive Plan, along with the Urban Fringe Subarea UFS Plan, provides the policy framework for addressing the impacts and opportunities of growth in Bellingham’s UGA. Together, these plans address county zoning designations, comparable City zoning upon annexation, land uses, development standards and Transfer of Development Rights from the Lake Whatcom Watershed to receiving areas in the UGA. They plan addresses a number of important objectives related to plan development, public participation, land use, housing, density, the natural environment, open space, parks, recreational opportunities, transportation, utilities and other public services. Urban Fringe Subarea Plan updates will be made in the context of the Growth Management Act planning goals, the Countywide Planning Policies, the UGA goals and policies of the Whatcom County Comprehensive Plan and Bellingham’s Comprehensive Plan.

Goal 2U: Evaluate every eight years or as necessary Bellingham’s Urban Growth Area to determine if the UGA is sufficient in size to accommodate twenty year growth projections, provide an adequate supply of affordable housing, industrial, commercial and recreational development and recognize historical development patterns and commitments for service.
Policy 2U-1: Consider new data, research and public participation when conducting the UGA review.

Policy 2U-2: Periodically update procedures for joint city/county review of development proposals in the UGA prior to annexation.

Policy 2U-3: Work with Bellingham to identify and establish a system of neighborhood parks, greenbelts and open space to serve the urban growth area as it develops.

Policy 2U-4: Review land supply analysis and consider appropriate urban growth area boundaries consistent with the Growth Management Act and Countywide Planning Policies.

Policy 2U-5: Review and update the interlocal agreement with Bellingham, prior to expiration of the current interlocal agreement, to provide for:
- Coordinated growth management and capital facility planning;
- timing and provision of utility services and other urban services;
- timing and procedures to be used for review of adequate land supply;
- timing of annexations;
- revenue sharing formulas prior to and after annexation;
- development standards and regulations;
- joint City/County review of development proposals in the UGA;
- affordable housing; and
- transfer of development rights within the City of Bellingham.

Policy 2U-6: Whatcom County and Bellingham should continue to coordinate protection and development within the Lake Whatcom Watershed.

Policy 2U-7: Whatcom County and Bellingham should designate receiving areas within the City of Bellingham and its UGA for Transfer of Development Rights from the Lake Whatcom Watershed.

Policy 2U-8: The City and Whatcom County should designate appropriate zoning and residential densities in Bellingham's UGA consistent with Whatcom County’s Comprehensive Plan and Bellingham’s Comprehensive Plan as amended.

Policy 2U-9: Annexation should be considered prior to or concurrently with the extension of City sewer and water and prior to urban development. Annexations should be a logical extension of the city boundaries and not create unincorporated islands.

Policy 2U-10: The Geneva and Hillsdale areas, located within the Lake Whatcom Watershed, are designated urban growth areas in order to allow the City of Bellingham to annex these areas. The
City has a long-term interest in the water quality of Lake Whatcom because the City is responsible for providing Bellingham with safe drinking water from the Lake. Whatcom County and the community also have long-term interests in the watershed based upon the special environmental sensitivity of the Lake Whatcom Watershed as a drinking water source and the Total Maximum Daily Load (TMDL) findings requiring a reduction of phosphorus inputs into the lake. Therefore, only non-urban densities should be allowed in that portion of the Urban Growth Area within the watershed.

Amend the Urban Growth Area Reserve section of the Whatcom County Comprehensive Plan as follows:

Bellingham Urban Area

The south Yew St. and the south Caitac areas have been designated as Urban Growth Area Reserves. Prior to redesignating the south Yew St. area to UGA, need for additional land capacity must be demonstrated, planning for adequate public facilities and services must be completed, and potential impacts on Lake Padden water quality must be addressed. Prior to redesignating the south Caitac area to UGA, need for additional land capacity must be demonstrated and planning for adequate public facilities and services must be completed. UGA Reserve areas should retain rural zoning until such time the unincorporated area is placed in the UGA.
Exhibit C
Whatcom County Zoning Code Amendments

Urban Residential Medium Density (URM) District

Amend the URM District (WCC 20.22) as follows:

20.22.012 Transferable development rights overlay.

In the Urban Fringe Subarea, this district serves as a zoning overlay for the purpose of designating a receiving area for transfer of development rights credits pursuant to Chapter 20.89 WCC. (Ord. 2004-021 § 1, 2004).

Rationale: TDR receiving areas are addressed in 20.22.669 below.

20.22.665 Bellingham Urban Growth Area.

(1) The city of Bellingham’s design and development standards and guidelines and impact fee ordinances shall apply to all development in the Bellingham Urban Growth Area.

Rationale: The County would have to conduct the analysis, and adopt an ordinance, as required by RCW 82.02.050-.110 prior to imposing impact fees in the URM zone. Additionally, the City of Bellingham generally does not extend public water and sewer outside city limits. Therefore, urban density residential development typically does not occur until after annexation.

2) Areas designated in the Urban Fringe Subarea Plan for provisional rezone to UR with density as high as 24 units per acre may be developed when all of the following occur:

(a) Property owner(s) shall prepare a site plan showing the design and layout of proposed lots, multifamily structures, road and pedestrian connections to adjacent parcels, delineated wetlands, and protected critical areas, buffers and open space.

(b) Property owner(s) shall purchase or transfer sufficient development rights from the Lake Whatcom watershed to achieve the requested density increase, based on the TDR ratios established in the Whatcom County Code.

(c) Property owner(s) shall comply with city of Bellingham development standards, residential multifamily design standards, and any other conditions imposed by the city of Bellingham through approved utility service zone extension agreements.
(d) Property owner(s) shall apply to the county for a site-specific rezone pursuant to Chapter 20.90 WCC in conjunction with submittal of a subdivision or binding site plan application for the subject parcel or parcels. (Ord. 2004-021 § 1, 2004).

Rationale: There are no areas designated for “provisional rezone” in the Urban Fringe Subarea. Therefore, the provisions above can be deleted.

20.22.669 Transfer of residential development rights.

Areas designated in the Comprehensive Plan and assigned a The URM-24 zoning districts in the Urban Fringe Subarea, are considered receiving areas for transfer of development rights from the Lake Whatcom watershed sending area. (Ord. 2004-021 § 1, 2004).

Rationale: The only URM24 zone in the County is in the Birch Bay UGA (there are none in the Urban Fringe Subarea). Pursuant to WCC 20.89.052(2), development rights from any sending area may be transferred to receiving areas in Birch Bay.
**Urban Residential Mixed (UR-MX) District**

Amend the UR-MX District (WCC 20.24) as follows:

20.24.050 Permitted uses

.052 Single-family attached dwellings; provided, that public sewer, water and, where identified by the appropriate Comprehensive Plan policies, stormwater collection and detention facilities serve the site, not more than four units are attached, and the number of dwelling units conforms to the density requirements of the district. **However, additional multifamily development shall not be allowed within the UR-MX Zones identified on Map 2 of the Urban Fringe Subarea Comprehensive Plan.**

Rationale: According to the County Zoning Code definitions, “Single-family attached dwelling” means a group of two or more single-family dwelling units, **each on a separate lot of record**, which are joined to one another by a common party wall, but having separate outside entrances, and for the purposes of this code include townhouses (WCC 20.97.421, underlining added). Additionally, “Multifamily development” means two or more dwelling units **on one lot except as provided in WCC 20.40.103 for agricultural housing (WCC 20.97.263, underlining added).** Single family attached dwellings are defined differently than multifamily development, and there is no overlap between the two. Therefore, it is unnecessary to state that multifamily developments are prohibited (in a certain area) in a section of the code that does not address multifamily dwellings in the first place. Additionally, there is already a prohibition on multifamily dwellings in this area in WCC 20.24.132(3)).

20.24.130 Administrative approval uses.

.132 Duplex and multifamily dwellings subject to the following limitations and the developer has conducted at least one neighborhood meeting prior to application for the purpose of hearing neighborhood concerns and suggestions regarding the proposal. Where being developed in an existing neighborhood characterized by residential development at densities of one dwelling per acre or greater, the uses listed in this section shall be administered as conditional uses rather than administrative approval uses; and are subject to the same criteria, requirements, bonuses and restrictions as if they were administrative approval uses:

(1) Duplex and multifamily dwelling units do not comprise more than 25 percent of the total dwelling units allowed for the entire site.

(2) Duplex and multifamily dwelling units are constructed at the same time as, or after, at least 50 percent of the single-family units in an approved development.

(3) **Multifamily development shall not be allowed within the UR-MX Zones located southeast of the Bellingham International Airport identified on Map 2, Bennett Drive Residential Area of the Urban Fringe Subarea Comprehensive Plan.**
Rationale: Map 2, which included the Bennett Dr. area southeast of the Airport, is proposed for deletion from the Urban Fringe Subarea Plan. Therefore, a written description of this area has been inserted above.

20.24.653 Bellingham Urban Growth Area.

In the Bellingham Urban Growth Area, the city of Bellingham’s design and development standards and guidelines and impact fees shall apply. (Ord. 2004-021 § 1, 2004; Ord. 2001-023 § 1, 2001; Ord. 97-046 § 2, 1997).

Rationale: The County would have to conduct the analysis, and adopt an ordinance, as required by RCW 82.02.050-.110 prior to imposing impact fees in the UR-MX zone. Additionally, the City of Bellingham generally does not extend public water and sewer outside city limits. Therefore, urban density residential development typically does not occur until after annexation.

20.24.700 Transfer of residential development rights.

.710 Areas designated in the Comprehensive Plan and assigned a The UR-MX Zone Districts, with the exception of the UR-MX District located southeast of the Bellingham International Airport, Bennett Drive Residential Area designated on Map 2 of the Urban Fringe Subarea Plan, are considered receiving areas for transfer of development rights from any sending area or base zone which has been established as linked to these areas. (Ord. 2016-035 § 1 (Exh. A), 2016; Ord. 2004-021 § 1, 2004; Ord. 2001-023 § 1, 2001; Ord. 98-083 Exh. A § 66, 1998; Ord. 97-046 § 2, 1997).

Rationale: Map 2, which depicted the Bennett Dr. area southeast of the Airport, is proposed for deletion from the Urban Fringe Subarea Plan. Therefore, a written description of this area has been inserted above. Additionally, the only UR-MX zoning districts in existence at the current time are located within the Bellingham UGA. Pursuant to WCC 20.89.052(1), only development rights from the Lake Whatcom watershed may be transferred to the Bellingham UGA.
Gateway Industrial (GI) District

Amend the “Permitted Uses” section of the Gateway Industrial District (WCC 20.65.050) as follows:

.055 The following uses within one-quarter mile of a freeway interchange; except, that where this boundary divides a single parcel up to 10 percent of the area of a parcel that lies outside of this boundary may be included within it for the purposes of lot coverage and open space provisions:

(1) Retail shops; provided, they do not exceed 10,000 square feet per shop in the Bellingham UGA.

Gateway Industrial District west of Interstate 5 and north of Airport Way, and west of Bennett Drive and south of Airport Way, shown on Map 3 of the Urban Fringe Subarea Plan (Planning Areas 1 and 2, identified on Map 6 of the 1997 Urban Fringe Subarea Plan). Retail shops in other Gateway Industrial areas shown on that map may not exceed 35,000 square feet per retail shop.

(2) Tourist information centers.

(3) Post offices.

(4) Repair garages, and towing services when based at a service station.

(5) Banks and/or bank machines.

(6) Hotels and motels.

(7) Indoor or outdoor commercial recreational facilities.

Rationale: There is only one Gateway Industrial zoning district remaining in the Bellingham UGA, so it is not necessary to describe the location of this district.

20.65.400 Height limitations.

Maximum building height shall not exceed 35 feet; except, that an additional foot in height is allowed for each one-foot increase in setback in the yard adjoining the interstate highway up to 45 feet in the Bellingham Urban Growth Area.

Gateway Industrial areas designated on Map 3 of the Urban Fringe Subarea. Height of structures, where applicable, shall also conform to the general requirements of WCC 20.80.675. (Ord. 2016-035 § 1 (Exh. A), 2016; Ord. 2013-057 § 1 (Exh. A), 2013; Ord. 99-040 § 1, 1999; Ord. 99-033 § 1, 1999).

Rationale: There is only one Gateway Industrial zoning district remaining in the Bellingham UGA, so it is not necessary to describe the location of this district.
20.65.450 Site design.

Within the Gateway Industrial areas, designated on Map 3 of the Urban Fringe Subarea Plan, In the Bellingham UGA, individual sites shall be designed in a clustered or concentrated form of development instead of lining the road frontage. (Ord. 2016-035 § 1 (Exh. A), 2016; Ord. 99-040 § 1, 1999).

Rationale: There is only one Gateway Industrial zoning district remaining in the Bellingham UGA, so it is not necessary to describe the location of this district.

20.65.550 Buffer area.

When a parcel situated within this district adjoins an Urban Residential, Urban Residential Medium Density, Rural or Residential Rural District, side and rear yard setbacks shall be increased to 25 feet. In the Bellingham UGA, Gateway Industrial District west of Interstate 5 and south of Airport Way, and west of Bennett Drive and less than 470 feet north of Airport Way, shown on Map 3 of the Urban Fringe Subarea Plan (Planning Areas 2 and 3, identified on Map 6 of the 1997 Urban Fringe Subarea Plan), buffer areas shall be increased to 100 feet for commercial or industrial projects which exceed 5,000 square feet of floor area in one building or complex or generate more than 50 vehicle trips per day. Said area shall be landscaped consistent with the requirements of WCC 20.80.345. Use of buffer areas and setbacks for bicycle and pedestrian trails is encouraged. (Ord. 2016-035 § 1 (Exh. A), 2016; Ord. 99-040 § 1, 1999; Ord. 99-033 § 1, 1999; Ord. 89-117, 1989).

Rationale: There are no County Urban Residential, Rural, or Residential Rural zoning districts adjacent to the Gateway Industrial zoning district. There is only one Gateway Industrial zoning district remaining in the Bellingham UGA, so it is not necessary to describe the location of this district.
**Light Impact Industrial (LII) District**

Amend the “Administrative approval uses” section of the Light Impact Industrial District (WCC 20.66.130) as follows:

.131 An adult business enclosed within a building, when located in a city’s urban growth area; provided, that:

(1) The building that contains the adult business and signs relating to the business are not within 1,000 feet of any of the following:

(a) The outside boundary of any parcel that already contains a public school, private school, or day care;

(b) The outside boundary of any parcel that already contains a church or other house of worship;

(c) An existing public park;

(d) The outside boundary of any parcel that already contains a public library;

(e) A residential or rural zoning district (including Urban Residential, Urban Residential Medium Density, Urban Residential-Mixed, Residential Rural, Rural one dwelling/two acres, Rural one dwelling/five acres, and Rural one dwelling/10 acres and residential zones within the city limits);

(f) Interstate 5 or a state highway; or

(g) The outside boundary of any parcel that already contains another adult business.

(2) Directional signs permitted under WCC 20.80.470 are not subject to the 1,000-foot buffer of subsection (1) of this section.

(3) Adult businesses are prohibited within the Light Impact Industrial Zone located southeast of the Bellingham International Airport and north of Alderwood Avenue, shown on Map 3 of the Urban Fringe Subarea Plan.

(4) An adult business shall not sell, provide or allow performances, films, publications, or other activities that are prohibited by state law or county ordinance.

(5) Planning and development services shall send a notice of the proposal to all owners of property within 1,000 feet of the external boundaries of the subject property at least 15 calendar days prior to the decision date. Public notice shall be published in the newspaper of record at least five calendar days prior to the decision date. This is in addition to the requirement of WCC 20.84.235(2). (Ord. 2016-035 § 1 [Exh. A], 2016; Ord. 2001-038 § 2, 2001).

Rationale: There is only one Light Impact Industrial district in the Bellingham UGA that is both southeast of the airport and north of Alderwood Ave. Therefore, it is not necessary to refer to a map (which is proposed for deletion).
Amend the “Prohibited uses” section of the Light Impact Industrial District (WCC 20.66.200) as follows:

.203 In the Bellingham Urban Growth AreaUrban Fringe Subarea the following uses are prohibited: petroleum refinery and the primary manufacturing of products thereof, primary manufacturing and processing of rubber, plastics, chemicals, paper, asbestos and products derived thereof, and primary metal industries. (Ord. 2016-011 § 1 (Exh. L), 2016; Ord. 99-078, 1999; Ord. 99-070 § 2, 1999).

Rationale: The term “Bellingham Urban Growth Area” is a more descriptive term that may provide the public with a better sense of where this prohibition applies.

Amend the “Performance standards” section of the Light Impact Industrial District (WCC 20.66.700) as follows:

20.66.708 Appearance.

New facilities developed in the Bellingham Urban Growth AreaFringe Subarea shall be designed, constructed, operated, and maintained so as to be harmonious and appropriate in appearance with the existing or intended character of the general vicinity, and such uses shall not change the essential character of the same area. (Ord. 99-078, 1999).

Rationale: The term “Bellingham Urban Growth Area” is a more descriptive term that may provide the public with a better sense of where this regulation applies.
**Heavy Impact Industrial (HII) District**

Amend the “Permitted uses” section of the Heavy Impact Industrial District (WCC 20.68.050) as follows:

.064 Uses allowed in the Light Impact Industrial Zone as permitted uses, WCC 20.66.100, shall be permitted outright within the Heavy Impact Industrial District in the Bellingham UGA shown on Map 1 of the Urban Fringe Subarea Plan.

Rationale: There are three Heavy Impact Industrial zoning districts in the Bellingham UGA, all of which are shown on Map 1 (which is proposed for deletion). Therefore, it is not necessary to describe the location of this district using a map.

Amend the “Conditional uses” section of the Heavy Impact Industrial District (WCC 20.68.150) as follows:

.152 Uses allowed in the Light Impact Industrial zone as permitted uses, WCC 20.66.100, subject to the following:

(1) Outside of the Bellingham Urban Growth Area Urban Fringe Subarea, approval shall be supported by a finding by the hearing examiner that allowing the use will not limit the supply of land available to meet the demand for future heavy industrial uses.

(2) Filing of a deed restriction acknowledging that heavy industrial uses are the preferred uses in the zone and agreeing not to protest proposed heavy industrial uses allowed in the zone in accordance with Chapter 20.68 WCC, and to refrain from legal action against any heavy industrial use in compliance with the regulations of WCC Title 20 and any conditions of approval which might have been proposed.

Rationale: The term “Bellingham Urban Growth Area” is a more descriptive term that may provide the public with a better sense of where this regulation applies.

Amend the “Prohibited uses” section of the Heavy Impact Industrial District (WCC 20.68.200) as follows:

.203 In the Bellingham Urban Growth Area Urban Fringe Subarea the following uses are prohibited: petroleum refinery and the primary manufacturing of products thereof, primary manufacturing and processing of rubber, plastics, chemicals, paper, asbestos and products derived thereof; and primary metal industries. (Ord. 2016-011 § 1 (Exh. L), 2016; Ord. 99-078, 1999; Ord. 99-070 § 2, 1999; Ord. 91-075, 1991).

Rationale: The term “Bellingham Urban Growth Area” is a more descriptive term that may provide the public with a better sense of where this regulation applies.
Amend the "Buffer area" section of the Heavy Impact Industrial District (WCC 20.68.550) as follows:

.552 To implement the buffer requirements of this district, minimum setbacks for heavy industrial buildings and accessory structures shall be established consistent with the following options:

(1) If a planting screen is not provided by the industrial user and no natural vegetative screening exists, the minimum setback(s) shall be 660 feet, as measured from the edge of the district boundary. The setback area may be used for security roads, parking, or open space.

(2) If natural sight-obscuring and dense vegetation exists, the minimum setback(s) shall be 250 feet, as measured from the district boundary; provided, that a minimum width of 50 feet of natural vegetation is retained. The remainder of the setback(s) may be used for security roads, parking, or open space.

(3) If a 50-foot buffer planting screen is established, pursuant to WCC 20.80.345, the minimum setback(s) shall conform to the setback requirements of WCC 20.80.200, as measured from the district boundary. In addition, security roads may be situated within the minimum buffer setback; provided, that the 50-foot wide buffer planting is established.

(4) When a parcel situated within this district is located within the Bellingham Urban Growth Area Fringe Subarea and adjoins an Urban Residential District or residential district within the city limits, setbacks for heavy industrial buildings and/or uses shall be increased to 100 feet and landscaped in accordance with the requirements of WCC 20.80.345.

(5) In no case shall the northern and western boundaries of the Cherry Point Heavy Industrial area not contiguous to another industrial zone be less than 660 feet, nor the natural vegetation removed except for parking and security or protective uses in accordance with Heavy Impact Industrial Policy 1.05 of the Cherry Point-Ferndale Subarea Comprehensive Plan.

Rationale: The term “Bellingham Urban Growth Area” is a more descriptive term that may provide the public with a better sense of where this regulation applies.

Amend the "Performance standards" section of the Heavy Impact Industrial District (WCC 20.68.700) as follows:

20.68.708 Appearance.

New facilities developed in the Bellingham Urban Growth Area Fringe Subarea shall be designed, constructed, operated, and maintained so as to be harmonious and appropriate in appearance with the existing or intended character of the general vicinity, and such uses shall not change the essential character of the same area. (Ord. 99-078, 1999).

Rationale: The term “Bellingham Urban Growth Area” is a more descriptive term that may provide the public with a better sense of where this regulation applies.
WHATCOM COUNTY
PLANNING COMMISION

Urban Fringe Subarea Plan,
Whatcom County Comprehensive Plan,
and Zoning Amendments

FINDINGS OF FACT AND REASONS FOR ACTION

Background Information

1. The subject proposal consists of amendments to the:
   a. Urban Fringe Subarea Plan;
   b. Whatcom County Comprehensive Plan Policy; and
   c. Whatcom County Zoning Code (Title 20).

2. The Whatcom County Comprehensive Plan was updated in August 2016 (Ordinance 2016-034). This update included the county-wide urban growth area (UGA) review. The existing Bellingham UGA was retained in this process. The Urban Fringe Subarea Plan update involves review of the text, goals, policies, and maps of the Subarea Plan. However, the Subarea Plan update is not intended to re-open the UGA review process completed in 2016.

3. The Whatcom County Comprehensive Plan states “... The next Urban Fringe Plan update will only include the Bellingham UGA ...” (p. 2-24). Therefore, the Urban Fringe Subarea Plan boundary is being modified to match the Bellingham UGA boundary. The Urban Fringe Subarea will no longer include Rural and other lands outside the UGA.


State Environmental Policy Act

6. A Determination of Non-significance was issued by the SEPA Responsible Official on September 29, 2017.
Comprehensive Plan/Subarea Plan Approval Criteria

7. The criteria of WCC 2.160.080, summarized below, must be satisfied in order to approve a comprehensive plan amendment.

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

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

- 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:
  
  o The anticipated effect upon the rate or distribution of population growth, employment growth, development, and conversion of land as envisioned in the Comprehensive Plan.

  o The anticipated effect upon 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.

  o Anticipated impact upon designated agricultural, forest and mineral resource lands.

- The amendment does not include or facilitate spot zoning.

- Transfer of development rights may be required if an urban growth area is expanded.

Subarea Plans

8. The GMA, in a section entitled “Optional Elements,” states that a “comprehensive plan may include, where appropriate, subarea plans, each of which is consistent with the comprehensive plan” (RCW 36.70A.080(2)).

9. The Western Washington Growth Management Hearings Board has stated that:

   ...Subarea plans are optional elements of a comprehensive plan. While a jurisdiction has discretion to utilize subarea plans, RCW 36.70A.080(2) requires that subarea plans be consistent with the comprehensive plan and are subject to the goals and requirements of the GMA. Subarea plans are, as the prefix “sub” implies, a subset of the comprehensive plan of a jurisdiction and they typically
augment or amplify policies contained in the comprehensive plan. There is no GMA requirement that a subarea plan contain all the mandatory elements required by RCW 36.70A.070. . . (Campbell v. San Juan County, Case No. 09-2-0014, Final Decision and Order, January 27, 2010).

10. The Urban Fringe Subarea Plan is an optional element that Whatcom County has chosen to include, at the County’s discretion, in the County’s Comprehensive Plan.

Intergovernmental Coordination / Public Participation

11. GMA planning goals are set forth in RCW 36.70A.020. The GMA citizen participation and coordination planning goal is to “Encourage the involvement of citizens in the planning process and ensure coordination between communities and jurisdictions to reconcile conflicts” (RCW 36.70A.020(11)).

12. County and City of Bellingham staff met over a four month period (April – August 2017) to discuss proposed changes to the Urban Fringe Subarea Plan, related changes to the Whatcom County Comprehensive Plan, and related changes to the Whatcom County Zoning Code.


Urban Growth

15. GMA planning goal # 1 is to “Encourage development in urban areas where adequate public facilities and services exist or can be provided in an efficient manner” (RCW 36.70A.020(1)). Under the GMA, urban growth areas have been designated pursuant to RCW 36.70A.110.

16. County-wide Planning Policy F-11 states “The county and the City of Bellingham shall establish, through the Urban Fringe Subarea Plan update, the policies, zoning and criteria to comply with current state Growth Management law.”

17. County-wide Planning Policy F-12 states “. . . The revised Urban Fringe Subarea Plan and a new Interlocal Agreement between the City of Bellingham and the county will address sequence and timing for annexations, subdivisions, and urban levels of development.”

18. The Whatcom County Comprehensive Plan contains goals and policies supporting the Bellingham Urban Growth Area designation including Goal 2U and Policies 2U-1 through 2U-10.
19. The Bellingham UGA was adopted by the Whatcom County Council in 1997, when the Comprehensive Plan was originally adopted pursuant to the GMA (Ordinance 97-023).

20. The Bellingham UGA was reduced in size in the 2009 UGA review (Ordinance 2009-071).

21. The Bellingham UGA was retained in the 2016 UGA review (Ordinance 2016-034).

22. The amended Urban Fringe Subarea Plan includes a map of the existing Bellingham UGA, which is consistent with the UGA boundaries in the Whatcom County Comprehensive Plan.

**Low Density Sprawl**

23. GMA planning goal # 2 is to “Reduce the inappropriate conversion of undeveloped land into sprawling, low-density development” (RCW 36.70A.020(2)).

24. The Whatcom County Comprehensive Plan, Urban Fringe Subarea Plan, and Whatcom County Zoning Code protect land from sprawling low-density development because:

   a. The Whatcom County Comprehensive Plan encourages net densities of 6 to 24 dwellings/acre in Bellingham (Goal 2P).

   b. In the Lake Whatcom Watershed, urban residential zoning in the Bellingham UGA allows one dwelling/five acres if public water and sewer are available. When public water and sewer are not provided, the maximum density is one dwelling/ten acres.

   c. Outside the Lake Whatcom Watershed, urban residential zoning in the Bellingham UGA may be developed at urban densities if public water and sewer are provided. When public water and sewer are not provided, the maximum density is one dwelling/ten acres.

**Transportation**

25. GMA planning goal # 3 is to “Encourage efficient multimodal transportation systems that are based on regional priorities and coordinated with county and city comprehensive plans” (RCW 36.70A.020(3)).

26. County-wide Planning Policy J-2 states that “Whatcom County jurisdictions shall encourage alternative modes of transportation to the single occupancy vehicle. . .”

27. Transportation planning is primarily addressed in the Whatcom County Comprehensive Plan. However, Urban Fringe Subarea Plan Policy 1.6 is to “Promote development that supports and enhances efficient public transportation and an intermodal transportation
system.” Additionally, other policies in the Urban Fringe Subarea Plan address transportation issues in a variety of land use designations in the Subarea.

**Housing**

28. GMA planning goal # 4 is to “Encourage the availability of affordable housing to all economic segments of the population of this state, promote a variety of residential densities and housing types, and encourage preservation of existing housing stock” (RCW 36.70A.020(4)).

29. County-wide Planning Policy G-2 states that “The county and the cities shall plan for a range of housing types and costs commensurate with their affordable housing needs.”

30. Housing is primarily addressed in the Whatcom County Comprehensive Plan. Urban residential zones in the UGA allow a variety of densities and housing types upon provision of public water and sewer. However, Urban Fringe Subarea Plan Policy 1.3 is to “Provide opportunities for a diversity of housing types in the Urban Growth Area.” The City of Bellingham generally does not extend public water and sewer outside city limits. Therefore, higher density housing in the Bellingham UGA typically occurs after annexation.

**Economic Development**

31. GMA planning goal # 5 is to “Encourage economic development throughout the state that is consistent with adopted comprehensive plans, promote economic opportunity for all citizens of this state, especially for unemployed and for disadvantaged persons, promote the retention and expansion of existing businesses and recruitment of new businesses, recognize regional differences impacting economic development opportunities, and encourage growth in areas experiencing insufficient economic growth, all within the capacities of the state’s natural resources, public services, and public facilities” (RCW 36.70A.020(5)).

32. County-wide Planning Policy I-7 states:

    Economic vitality and job development shall be encouraged in all the cities and in designated areas of the county consistent with community growth policies, particularly addressing adequacy of transportation corridors, public transportation, impacts on the environment, and the ability of the area to provide urban services.

33. Economic development issues are primarily addressed in the Whatcom County Comprehensive Plan. However, the Urban Fringe Subarea contains policies relating to commercial, industrial, and airport zones to facilitate economic opportunities in the Bellingham UGA.
Property Rights

34. GMA planning goal # 6 states that “Private property shall not be taken for public use without just compensation having been made. The property rights of landowners shall be protected from arbitrary and discriminatory actions” (RCW 36.70A.020(6)).

35. The Attorney General’s Advisory Memorandum and Recommended Process for Evaluating Proposed Regulatory or Administrative Actions to Avoid Unconstitutional Takings of Private Property (December 2015) has been reviewed by legal counsel and no warning signals that are associated with the takings analysis have been identified for the subject amendments.

Permitting

36. GMA planning goal # 7 states “Applications for both state and local government permits should be processed in a timely and fair manner to ensure predictability” (RCW 36.70A.020(7)).

37. Permitting issues are primarily addressed in the Whatcom County Comprehensive Plan on a county-wide basis.

Resource Lands and Industries

38. GMA planning goal # 8 is to “Maintain and enhance natural resource-based industries, including productive timber, agricultural, and fisheries industries. Encourage the conservation of productive forest lands and productive agricultural lands, and discourage incompatible uses” (RCW 36.70A.020(8)).

39. County-wide Planning Policy I-9 states:

   The County and the cities recognize the need for the protection and utilization of natural resources and resource lands including agricultural, mineral, forestry and fishing. As part of a broad based economy, productive timber, agriculture and fisheries industries should be supported in a sustainable manner.

40. The Urban Fringe Subarea Plan boundary is being revised to match the Bellingham UGA boundary. There are no designated agriculture, forestry, or mineral resource lands within the revised Urban Fringe Subarea boundary.

Open Space/Recreation/Fish & Wildlife

41. GMA planning goal # 9 is to “Retain open space, enhance recreational opportunities, conserve fish and wildlife habitat, increase access to natural resource lands and water, and develop parks and recreation facilities” (RCW 36.70A.020(9)).
42. County-wide Planning Policy H-1 states:

   Adequate open space is vital to the quality of life and sense of place in Whatcom County. The county, cities, Port of Bellingham, and other appropriate jurisdictions should coordinate protection of linked greenbelts, within and between Urban Growth Areas, parks, and open space to protect wildlife corridors and to enhance recreational opportunities, public access and trail development.

43. Open space, recreation, and fish & wildlife habitat are primarily addressed in the Whatcom County Comprehensive Plan. However, Urban Fringe Subarea Plan Policy 1.16 is to “Promote a coordinated effort to identify and prioritize interconnected natural areas and features for preservation to protect water quality and provide habitat, recreation, open space and wildlife corridors.”

Environment

44. GMA planning goal # 10 is to “Protect the environment and enhance the state's high quality of life, including air and water quality, and the availability of water” (RCW 36.70A.020(10)).

45. County-wide Planning Policy N-1 states:

   The cities, and the county, in cooperation with other municipal corporations, tribal governments, federal and state agencies, and public and private utilities shall cooperate in the protection of water resources and in drawing upon said water to support growth.

46. The environment is primarily addressed in the Whatcom County Comprehensive Plan. However, Urban Fringe Subarea Plan Policy 1.16 is to “Promote a coordinated effort to identify and prioritize interconnected natural areas and features for preservation to protect water quality and provide habitat, recreation, open space and wildlife corridors.”

Public Facilities

47. GMA planning goal # 12 is to “Ensure that those public facilities and services necessary to support development shall be adequate to serve the development at the time the development is available for occupancy and use without decreasing current service levels below locally established minimum standards” (RCW 36.70A.020(12)).

48. County-wide Planning Policy D-3 states:

   Cities shall develop a plan to provide urban level water and sewer services within their Urban Growth Areas...
49. The City of Bellingham, Water District 2, Water District 7, the Lake Whatcom Water and Sewer District and several other purveyors currently plan and provide water service to various parts of the UGA. The City of Bellingham plans water service for unserved parts of the UGA, but physical service is typically provided after annexation.

50. The City of Bellingham and the Lake Whatcom Water and Sewer District currently plan and provide sewer service to various parts of the UGA. The City of Bellingham plans sewer service for unserved parts of the UGA, but physical service is typically provided after annexation.

51. The City of Bellingham Fire Department provides service inside the city limits. Fire Districts 4, 8, South Whatcom Fire Authority, and North Whatcom Fire & Rescue currently serve the Bellingham UGA.

52. The Bellingham, Meridian, and Ferndale School Districts serve the UGA.

53. Capital facility planning for water, sewer, fire protection, and schools is primarily addressed in the Whatcom County Comprehensive Plan (Chapter 4 and Appendix E – Whatcom County 20-Year Capital Facilities Plan). However, Urban Fringe Subarea Plan Policy 1.5 is to “Direct urban growth and development into areas where City public water and sewer services are available or can be readily provided.”

**Historical and Archaeological**

54. GMA planning goal # 13 is to “Identify and encourage the preservation of lands, sites, and structures, that have historical or archaeological significance” (RCW 36.70A.020(13)).

55. The historical and archaeological resources are addressed in the Whatcom County Comprehensive Plan.

**Accommodation of Growth**

56. RCW 36.70A.110(2) indicates that the county and each city within the county shall include areas and densities sufficient to permit the urban growth that is projected to occur in the county or city for the succeeding twenty-year period in the UGA.

57. RCW 36.70A.115 indicates that Counties and cities shall ensure that, taken collectively, adoption of and amendments to their comprehensive plans and/or development regulations provide sufficient capacity of land suitable for development within their jurisdictions to accommodate their allocated housing and employment growth, including commercial, industrial, medical, governmental, educational and institutional uses.

58. State rules relating to the GMA indicate that the land capacity analyses required under RCW 36.70A.115 are primarily to take place at the periodic UGA reviews that counties
and cities undertake every eight years. However, land capacity estimates are recommended during review of other comprehensive plan and development regulation amendments, if they increase or decrease allowed densities (WAC 365-196-325(1)(b) and (d)).

59. A land capacity analysis for the Bellingham UGA was conducted at the time of the 2016 Comprehensive Plan update/UGA review demonstrating that it can accommodate allocated population and employment growth.

60. The Urban Fringe Subarea Plan update will not increase or decrease allowed densities. Therefore, a new land capacity analysis is not required.

61. The Comprehensive Plan update/UGA review was completed in 2016. The Urban Fringe Subarea Plan update is intended to provide consistency with the Whatcom County Comprehensive Plan. The Urban Fringe Subarea Plan update is not intended to re-open the UGA review process.

Interlocal Agreement

62. The Interlocal Agreement Between the City of Bellingham and Whatcom County Concerning Planning, Annexation and Development within the Bellingham UGA was approved by both jurisdictions in April 2012.

63. The Interlocal Agreement states:

Whatcom County will review the UGA in accordance with the schedule in RCW 36.70A.130 to ensure that the UGA can accommodate the urban growth projected to occur in the 20-year planning period established by the Whatcom County Comprehensive Plan. The County and City will collaborate throughout the UGA review process. The City will submit recommendations to the County in accordance with the schedule for joint County and City review of the UGA and the County will consider the recommendations prior to making any changes to the City’s UGA... (Section 2.C, pp. 4 and 5).

64. Whatcom County, in consultation with the City of Bellingham, concluded the UGA review process in August 2016 with the adoption of Ordinance 2016-034. Pursuant to RCW 36.70A.130, the next UGA review must occur by 2024. This Urban Fringe Subarea Plan update is not intended to re-open the UGA review process.

65. The Interlocal Agreement states “For residential zoning districts in annexation areas, the City agrees to adopt appropriate urban densities consistent with the State GMA, City Comprehensive Plan, the Urban Fringe Subarea Plan and the overall density goals of the County Comprehensive Plan (Section 3.E, p. 8).
66. Comparable city zoning is identified for residential areas in the Urban Fringe Subarea Plan.

Further Studies/Changed Conditions


68. The periodic update of the Whatcom County Comprehensive Plan was completed in August of 2016 (Ordinance 2016-034) in accordance with RCW 36.70A.130. The Whatcom County Comprehensive Plan provides direction for land use policy in Whatcom County. Subarea plans are to be consistent with the comprehensive plan (RCW 36.70A.080). The subject amendments to the Urban Fringe Subarea Plan provide consistency with the Whatcom County Comprehensive Plan.

69. Some of the information in the Subarea Plan has become outdated or unnecessary. For example, some of the Bellingham UGA has been annexed and there is no longer General Manufacturing zoning within the UGA. Additionally, it is no longer necessary to include City of recommendations from the 1997 Subarea Plan two decades later in an updated Subarea Plan.

70. A new Interlocal Agreement was approved by Whatcom County and the City of Bellingham in 2012. Additionally, Whatcom County Comprehensive Plan Policy 2U-5 addresses reviewing and updating the Interlocal Agreement. Therefore, it is not necessary to address the Interlocal Agreement in detail in the Subarea Plan.

Public Interest

71. It is in the public interest to amend the Urban Fringe Subarea Plan in order to:
   a. Eliminate inconsistency with the Whatcom County Comprehensive Plan;
   b. Eliminate inconsistency with the Whatcom County Zoning Code and maps;
   c. Eliminate inconsistency with City of Bellingham policy; and
   d. Delete outdated and unnecessary information.

Spot Zoning

72. The Whatcom County Zoning Code defines illegal spot zoning as follows:

   "Illegal spot zoning" means a zoning action by which a smaller area is singled out of a larger area or district and specially zoned for a use classification totally
different from, and inconsistent with, the classification of surrounding land and not in accordance with the Comprehensive Plan. Spot zoning is zoning for private gain designed to favor or benefit a particular individual or group and not the welfare of the community as a whole (WCC 20.97.186).

73. There are no proposed rezones associated with the Urban Fringe Subarea Plan update.

Transfer of Development Rights for Expanding UGAs

74. There are no UGA expansions associated with the Urban Fringe Subarea Plan update.

Zoning Text Amendments

75. WCC 20.90.050 indicates that proposed zoning amendments must be evaluated in relationship to the goals and policies of the Whatcom County Comprehensive Plan.

76. The subject proposal includes text amendments for the following zoning districts:
   a. Urban Residential Medium Density (URM);
   b. Urban Residential Mixed (UR-MX);
   c. Gateway Industrial (GI);
   d. Light Impact Industrial (LII); and
   c. Heavy Impact Industrial (HII).

77. Whatcom County Comprehensive Plan Goal 2D is to “Refine the regulatory system to ensure accomplishment of desired land use goals in a fair and equitable manner.”

78. The text amendments in the URM and UR-MX zones include eliminating requirements imposing City of Bellingham impact fees on development in the UGA. This amendment recognizes that the County would have to conduct the analysis, and adopt an ordinance, as required by RCW 82.02.050-.110 prior to imposing City of Bellingham impact fees in unincorporated areas. In order for any impact fees to be fair and equitable, they must meet the requirements of state law.

79. Whatcom County Comprehensive Plan Goal 1A is to “Ensure that government activities, regulations and policies are transparent, accountable and easy to understand.”

80. The text amendments to the GI, LII, and HII zones are primarily housekeeping amendments. These amendments recognize that maps will be deleted from the Subarea Plan. They also replace the term “Urban Fringe Subarea” with “Bellingham Urban Growth Area” as it is a more descriptive term that may provide the public with a better
sense of where the regulations apply. These amendments should make the zoning code a little easier to understand.

**CONCLUSIONS**

1. The subject Urban Fringe Subarea Plan and Whatcom County Comprehensive Plan amendments are consistent with the approval criteria of WCC 2.160.080.

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

**RECOMMENDATION**

Based upon the above findings and conclusions, the Whatcom County Planning Commission recommends approval of:

1. Exhibit A, Urban Fringe Subarea Plan Amendments;

2. Exhibit B, Whatcom County Comprehensive Plan Amendments; and


**WHATCOM COUNTY PLANNING COMMISSION**

Nicole Oliver, Chair

Becky Boxx, Secretary

Date: 1-12-18

Date: 1-16-18

Commissioners present at the January 11, 2018 meeting when the vote was taken: Kelvin Barton, Atul Deshmule, Gary Honcoop, Stephen Jackson, Natalie McClendon, Dominic Moceri, and Nicole Oliver.

Vote: Ayes: 6, Nays: 0, Abstain: 1, Absent: 2. Motion carried to adopt the above amendments.
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

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.

COUNCIL ACTION:
1/30/2018: Introduced 7-0
2/13/2018: Held in Committee

Related County Contract #: PLN2016-00008

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

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

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

THROUGH:   Mark Personius, AICP, Interim Director

DATE:      February 21, 2018

SUBJECT:   Code Amendment: Land Use and Development Procedures

During the February 13, 2018 Committee of the Whole meeting, Council requested Planning and Development Services (PDS) prepare a document to clearly delineate existing code and proposed Title 22 code. In response, staff has prepared a matrix detailing existing code (WCC Chapter 2.33 and Titles 9, 15, 16, 20, 21, 23 and 24) and the proposed language in the order of the new Title 22 for the Purpose and Applicability, Consolidated Permit Review, Preapplication Review and Applicant Submittal and Determination of Completeness sections (proposed WCC 22.05.010 through 22.05.050).

As discussed at the meeting, the intent of the language has not substantially been altered, but as shown within the matrix there is duplicate procedural language throughout several sections of county code that staff has proposed to consolidate. For example, preapplication procedures are found in six different sections of existing code. In addition to consolidating language, staff has also standardized timeframes with regard to state law and internal code inconsistencies, standardized processing for similar permit types and removed submittal requirements and checklists from code. As stated in the last meeting, state law requires permits to be processed within a 120 day timeframe with specific timeframes for actions by the County such as determination of completeness and notice of application.

The matrix included in the packet is in an 8½ x 11 format and is lengthy and may be difficult to read. Staff has a link available on the PDS website where a more readable 11 x 17 format is available for the entire code. Staff will provide Council with an 11 x 17 version of the matrix at the meeting and will review existing and proposed language in detail at that time.

The proposed changes are a result of an identified 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.

As stated, the proposed amendments move code from various sections to Title 22,
include grammatical improvements and do not alter the substance and intent 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.

If you have any questions please submit them by email to
akeenan@whatcomcounty.us and nsmith@whatcomcounty.us so that staff may
prepare a response. Please also feel free to contact Amy Keenan at 778-5943 or
Nick Smith at 778-5913.

Thank you.

Attachments:
Current Code and Proposed Code Matrix
Draft Ordinance
<table>
<thead>
<tr>
<th>Existing Codes (WCC Chapter 2.33, Title 9, Title 15, Title 16, Title 20, Title 21, Title 23 and Title 24)</th>
<th>Proposed Code (Title 22.05)</th>
<th>State Requirement or Significant Court Cases</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Purpose and Applicability</strong></td>
<td><strong>Purpose and applicability.</strong> [Permit Review Procedures]</td>
<td><strong>RCW 36.70B.010 and .020</strong></td>
</tr>
<tr>
<td><strong>2.33.010</strong> Purpose and applicability.</td>
<td>(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.</td>
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<td><strong>2.33.020 Exemptions.</strong></td>
<td>The following are exempt from the provisions of this chapter:</td>
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<tr>
<td><strong>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:</strong></td>
<td><strong>Section deleted and reworked into project permit tracking table (WCC 22.05.020), determination of completeness (WCC 22.05.050), final decisions (WCC 22.05.110 and .120), permit review timeframes (WCC 22.05.130) and Legislative Action Procedures (WCC 22.10).</strong></td>
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</tbody>
</table>
Current and Proposed Code Matrix
(Purpose and Applicability – Applicant Submittal and Determination of Completeness)

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. (Ord. 2000-016 § 1; Ord. 99-081; Ord. 96-031 § 1).

21.01.100 Applications required.
[Subdivisions]
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;
Current and Proposed Code Matrix
(Purpose and Applicability – Applicant Submittal and Determination of Completeness)

(7) Preliminary binding site plan;
(8) General binding site plan;
(9) Specific binding site plan;
(10) Agricultural short plat. (Ord. 2013-040 Exh. 1; Ord. 2009-007 § 1; Ord. 2000-056 § 1).

<table>
<thead>
<tr>
<th>22.05.020 Project Permit Processing Table</th>
<th>RCW 36.70B.030, .050, .060, and .120</th>
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<tbody>
<tr>
<td>(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.</td>
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<td>(2) Project Permit Processing Table Notes. As indicated in the table in subsection (1), project permits are subject to the following additional requirements:</td>
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<td>(a) Preapplication conference subject to Title 23 Shoreline Master Program.</td>
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<td>(b) Single family residential uses in critical areas or critical area buffers, except all uses in geological hazardous areas and setbacks.</td>
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<td>(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.</td>
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<td>(d) Final decision filed with the Washington State Department of Ecology.</td>
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<td>(e) All uses in geological hazardous areas and setbacks and all non-single family residential uses in critical areas or critical area buffers.</td>
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<td>(f) Building permit preapplication conference, subject to WCC 15.04.020(A)(3)(a).</td>
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<td>(g) The hearing examiner may choose to consult with the development standards technical advisory</td>
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Current and Proposed Code Matrix
(Purpose and Applicability – Applicant Submittal and Determination of Completeness)

| Committee concerning technical matters relating to land division applications. (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. |

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<tr>
<th>Consolidate Permit Review</th>
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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. (Ord. 96-031 § 1). 22.05.030 Consolidated permit review. 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. |

21.01.105 Consolidated application process. [Subdivision] The applicant may request consolidated permit

RCW 36.70B.120(1 and 2)
Current and Proposed Code Matrix
(Purpose and Applicability – Applicant Submittal and Determination of Completeness)

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<td><strong>2.33.030 Preapplication review.</strong></td>
<td>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.</td>
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<td>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.</td>
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<td>B. A preapplication conference may be requested prior to the submittal of a project permit application subject to this chapter.</td>
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<td>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.</td>
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<td>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:</td>
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<td>1. Property owner's name, address, phone number, fax number;</td>
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<td>2. Applicant/project representative name, address, phone number, fax number;</td>
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<td>3. Project site parcel number;</td>
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<td>4. Project site address (if available);</td>
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<td>5. Written description of the project;</td>
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<td>6. One copy of the current deed to the property;</td>
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<td>7. A site plan drawn at a scale of one inch equals 100 feet or larger that includes the following:</td>
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<td>a. North arrow,</td>
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<td>b. Scale,</td>
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</table>
Current and Proposed Code Matrix  
(Purpose and Applicability – Applicant Submittal and Determination of Completeness)

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,  
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. (Ord. 96-031 § 1).

| 20.85.305 Preapplication conference.  
[Planned Unit Development]  
(1) An applicant shall request a preapplication request 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.  
(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).  

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Current and Proposed Code Matrix
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| 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 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.
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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. (Ord. 2004-007 § 1, 2004; Ord. 2003-039 Exh. A, 2003; Ord. 98-083 Exh. A § 66, 1998).

21.01.090 Pre-application meeting.  
[Subdivision]

(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. (Ord. 2009-007 § 1; Ord. 2000-056 § 1).

**21.04.031 Pre-application meeting.**

*Subdivision*

(1) Pre-Application Meeting Required. Any person contemplating preparation of a preliminary short subdivision application shall submit information required for a pre-application meeting as provided in WCC 21.01.090 and Chapter 2.33 WCC. 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.

- **(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.
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| (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 watersheds 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. (Ord. 2009-007 § 1).

**21.05.031 Pre-application meeting.**

[**Subdivision**]

(1) Pre-Application Meeting Required. 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. 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:

(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.
| 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).

(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. (Ord. 2009-007 § 1).

23.60.060 Preapplication conference.
[Shorelines]
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
<table>
<thead>
<tr>
<th>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.</th>
</tr>
</thead>
<tbody>
<tr>
<td>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.</td>
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<tr>
<td>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.</td>
</tr>
<tr>
<td>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. (Ord. 2009-13 § 1 (Exh. 1); Ord. 2008-034 § 1 (Exh. 1)).</td>
</tr>
</tbody>
</table>
### Applicant Submittal and Determination of Completeness

<table>
<thead>
<tr>
<th>2.33.040 Application submittal information.</th>
<th>22.05.050 Application and determination of completeness.</th>
<th>RCW 36.70B.070</th>
</tr>
</thead>
<tbody>
<tr>
<td>A. Applications for a project permit shall be submitted using forms provided by the review authority.</td>
<td>(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.</td>
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<td>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.</td>
<td>(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.</td>
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<td>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.</td>
<td>(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 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.</td>
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<tr>
<td>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.</td>
<td>(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</td>
<td></td>
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<tr>
<td>D. All information and agreements resulting from preapplication review must be submitted with the application unless otherwise agreed to by the county.</td>
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<td>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).</td>
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</table>
### Current and Proposed Code Matrix
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<table>
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<tr>
<th>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.</th>
<th>the application is incomplete by the end of the 14\textsuperscript{th} calendar day from the date of receipt.</th>
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<tbody>
<tr>
<td>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.</td>
<td>(5) If the application is determined to be incomplete, the following shall take place:</td>
</tr>
<tr>
<td>C. A project permit application is complete when it meets the submittal information requirements of WCC 2.33.040, Application submittal information.</td>
<td>(a) The county will notify the applicant that the application is incomplete and indicate what is necessary to make the application complete.</td>
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<tr>
<td>D. When an application is determined to be complete, the county shall proceed as follows:</td>
<td>(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.</td>
</tr>
<tr>
<td>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.</td>
<td>(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.</td>
</tr>
<tr>
<td>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.</td>
<td>(6) A determination of an incomplete application is an appealable final administrative determination, subject to WCC 22.05.160(1).</td>
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<tr>
<td>3. A determination of completeness shall not preclude the county from requiring additional information or studies at any time prior to permit approval.</td>
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<tr>
<td>E. If the application is determined to be incomplete, then the following procedure shall take place:</td>
<td>Please note, all application submittal requirements will be located within a proposed administrative manual and be removed from code.</td>
</tr>
<tr>
<td>1. The county will notify the applicant that the application is incomplete and indicate what is necessary to make the application complete.</td>
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</tr>
<tr>
<td>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.</td>
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<tr>
<td>3. Upon receipt of the requested additional</td>
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</table>
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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).

15.04.020 5. Section 105.3, Application for Permit, is amended to include the following: [Building Code]
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. Provide additional data and information in the designated sequence, as required by the Building Official.

15.04.030 D. Section R105.3, Application for permit, is amended to include the following: [Building Code]
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.

**20.85.118 Concept plan. [Planned Unit Development]**

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:
   a. The approximate location of future generalized
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| 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).

20.85.201 General provisions. [Planned Unit Development]
(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

|   |   |   |
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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. [Planned Unit Development]**

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. [Planned Unit Development]
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
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| 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 |
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<table>
<thead>
<tr>
<th>Development</th>
<th>Notations of proposed ownership, public or private, shall be included where appropriate.</th>
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<tr>
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<td>(10) Location and width of existing and proposed sidewalks and trails.</td>
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<td>(11) The proposed treatment of the perimeter of the PUD, including materials and techniques used such as screens, fences and walls.</td>
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<tr>
<td></td>
<td>(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.</td>
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<tr>
<td></td>
<td>(13) Existing zoning and Comprehensive Plan boundaries for the site and adjacent property.</td>
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<td></td>
<td>(14) Information of contiguous properties within 300 feet of the proposed PUD including:</td>
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<td>(a) Existing and, if known, proposed land use and streets; and</td>
</tr>
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<td></td>
<td>(b) Existing structures excluding accessory buildings, ownership tracts and unique natural features of the landscape, if readily accessible.</td>
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<td>(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.</td>
</tr>
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<td>(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:</td>
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<td></td>
<td>(a) Solar:</td>
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<td>(i) Solar site survey including solar sun chart;</td>
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</table>
(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;
(c) 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.  
**[Planned Unit Development]**

(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
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| 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 perc 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 20.97.443. This information should be identified to the applicant at a preapplication conference. (Ord. 2004-007 § 1, 2004; Ord. 96-056 Att. A § V2, 1996).

20.85.315 Application submittal. [Planned Unit Development]
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. (Ord. 2004-007 § 1, 2004).

20.85.320 Application distribution and
**Current and Proposed Code Matrix**

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<table>
<thead>
<tr>
<th>review. <strong>[Planned Unit Development]</strong></th>
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<tr>
<td>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. (Ord. 2004-007 § 1, 2004).</td>
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<th><strong>20.85.325 Technical committee. [Planned Unit Development]</strong></th>
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<tr>
<td>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</td>
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</table>
20.84.235 Administrative approval uses.  

*Zoning*

(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.

20.88.200 Procedure.  

*Major Project Permits*

.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. A master plan is required as part of the application for a major project permit. The master plan shall include 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
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| 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. (6) 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. (7) 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.

21.03.080 Requirements for a fully completed exempt land division application. [Subdivisions]
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
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<table>
<thead>
<tr>
<th>behalf of owners.</th>
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<tbody>
<tr>
<td>(2) Map Data.</td>
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<tr>
<td>(a) Name of land owner.</td>
</tr>
<tr>
<td>(b) Name of proposed land division (if an original drawing is prepared).</td>
</tr>
<tr>
<td>(c) General layout of proposed land division.</td>
</tr>
<tr>
<td>(d) Common language description of the general location of the land division.</td>
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<tr>
<td>(e) Approximate location and names of existing roads identified as either public or private.</td>
</tr>
<tr>
<td>(f) Vicinity map.</td>
</tr>
<tr>
<td>(g) Common engineering map scale/north arrow/sheet numbers (on each sheet containing a map).</td>
</tr>
<tr>
<td>(h) Section, township, range, and municipal and county lines in the vicinity.</td>
</tr>
<tr>
<td>(i) General boundaries of the site with general dimensions shown.</td>
</tr>
<tr>
<td>(j) Legal description of the land. (Ord. 2013-040 Exh. 1; Ord. 2009-007 § 1; Ord. 2000-056 § 1).</td>
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</table>

| 21.03.085 Requirements for a fully completed boundary line adjustment application. [Subdivisions] |
| 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. |
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| 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. (Ord. 2013-040 Exh. 1; Ord. 2009-007 § 1). |  |

**21.04.032 Short subdivision application submittal. [Subdivisions]**

(1) An applicant requesting approval of a
proposed short subdivision shall submit to the planning and development services department all the items identified in WCC 21.04.150.
(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. (Ord. 2009-007 § 1).

<table>
<thead>
<tr>
<th>21.04.033 Determination of completeness and vesting. [Subdivisions]</th>
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<tbody>
<tr>
<td>(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.</td>
</tr>
<tr>
<td>(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.</td>
</tr>
<tr>
<td>(3) Applications having received a determination of completeness shall be processed as described below and as provided in Chapter 2.33 WCC.</td>
</tr>
<tr>
<td>(4) Applications having received a determination of incompleteness shall be handled as provided in Chapter 2.33 WCC.</td>
</tr>
<tr>
<td>(5) If the application is granted a determination of completeness as provided in subsection (2) of this</td>
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</table>
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| 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. (Ord. 2009-007 § 1). |

| 21.04.150 Requirements for a fully completed application for short subdivisions. [Subdivisions] |

| 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. (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.

(c) 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.
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(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. (Ord. 2016-045 § 1 Att. A; Ord. 2009-007 § 1).

21.04.160 Final review and submittal.
[Subdivisions]
(1) Review Submittal.
(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 semi-tangents 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). (Ord. 2009-007 § 1).

21.05.032 Preliminary long subdivision application submittal. [Subdivisions]
(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 21.05.120.
(2) An application will only be accepted for review if it contains all components required in WCC
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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 21.05.033.  
(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. (Ord.  
2009-007 § 1).

21.05.033 Determination of completeness and vesting. [Subdivisions]  
(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. (Ord. 2009-007 § 1).

21.05.120 Requirements for a fully completed application for preliminary long subdivisions. [Subdivisions]
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
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<th>Current and Proposed Code Matrix</th>
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| 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, native vegetation, 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) Soils 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. (Ord. 2016-045 § 1 Att. A; Ord. 2009-007 § 1).

21.06.050 Requirements for a fully completed application for final long subdivisions. [Subdivisions]
(1) Written and Other Data and Fees.
(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.
<table>
<thead>
<tr>
<th>Current and Proposed Code Matrix</th>
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<tbody>
<tr>
<td><em>(Purpose and Applicability – Applicant Submittal and Determination of Completeness)</em></td>
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<tr>
<td><em>(f)</em> Perimeter of the subdivision shall be depicted with heavier lines.</td>
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<tr>
<td><em>(g)</em> File number of the preliminary plat.</td>
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<tr>
<td><em>(h)</em> Existing and proposed street names.</td>
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<tr>
<td><em>(i)</em> Legal description of the land being subdivided.</td>
<td></td>
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<tr>
<td><em>(j)</em> All lot and tract areas.</td>
<td></td>
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<tr>
<td><em>(k)</em> Vicinity map.</td>
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<tr>
<td><em>(l)</em> Names and numbers of any adjacent subdivisions, short subdivisions, and binding site plans.</td>
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<tr>
<td><em>(m)</em> Complete bearings, lineal dimensions, radii, arcs, and central angle of all lines and curves of any lot or boundary lines within the subdivision.</td>
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<tr>
<td><em>(n)</em> Location of permanent control monuments used as ties to establish boundary of subdivision, basis of bearing, and line held.</td>
<td></td>
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<tr>
<td><em>(o)</em> Type and location of monuments and the date set.</td>
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<tr>
<td><em>(p)</em> Sequential numbers of all lots in the subdivision, including all of its phases.</td>
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<td><em>(q)</em> Location and width of all easements shown as dashed lines, and a description of the purpose of the easement (including beneficiary).</td>
<td></td>
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<tr>
<td><em>(r)</em> 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.</td>
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<tr>
<td><em>(s)</em> Location, width, geometry, centerline, and names of all roads within and adjoining the subdivision.</td>
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<tr>
<td><em>(t)</em> Roads not dedicated to the public must be clearly marked.</td>
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<tr>
<td><em>(u)</em> A reference to any covenants, conditions and restrictions.</td>
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<tr>
<td><em>(v)</em> Dedication and declaration signature block.</td>
<td></td>
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<tr>
<td><em>(w)</em> Acknowledgement blocks.</td>
<td></td>
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<tr>
<td><em>(x)</em> Land surveyor’s certificate, signature block</td>
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</table>
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. (Ord. 2009-007 § 1).

21.06.060 Final original drawing submittal.
[Subdivisions]
(1) One original drawing.
(2) Two sets of covenants, conditions and restrictions.
(3) Maintenance bond for road and drainage improvements. (Ord. 2009-007 § 1).

21.07.030 Binding site plan procedure.
[Subdivisions]
(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.
(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 2.33.060.
(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 20.92 WCC.

### 21.07.120 Requirements for a fully completed application for preliminary binding site plans. [Subdivisions]

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.
| Current and Proposed Code Matrix  
(Purpose and Applicability – Applicant Submittal and Determination of Completeness) |
<table>
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<tbody>
<tr>
<td>☐ List of variances and waivers requested.</td>
</tr>
<tr>
<td>☐ Names and addresses of all persons, firms, and corporations holding legal interests in the land, such as easements, of which the applicant has knowledge.</td>
</tr>
<tr>
<td>☐ Assessor’s parcel number (of the parent parcel).</td>
</tr>
<tr>
<td>☐ 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.</td>
</tr>
<tr>
<td>☐ Proposed covenants, conditions, and restrictions (CC&amp;Rs).</td>
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<td>☐ SEPA checklist.</td>
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<td>☐ 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.</td>
</tr>
<tr>
<td>☐ 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.</td>
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<tr>
<td>☐ Fees as specified in the Unified Fee Schedule.</td>
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<tr>
<td>(2) Map Data.</td>
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<tr>
<td>☐ Acceptable map size is 18” x 24” to 24” x 36”.</td>
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<tr>
<td>☐ Seven map copies of map proposal.</td>
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<tr>
<td>☐ Date of revisions, if any.</td>
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<tr>
<td>☐ Name of owner.</td>
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</table>
Current and Proposed Code Matrix
(Purpose and Applicability – Applicant Submittal and Determination of Completeness)

- 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.
<table>
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<tr>
<th>Current and Proposed Code Matrix</th>
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<tr>
<td>(Purpose and Applicability – Applicant Submittal and Determination of Completeness)</td>
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- 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.

(Ord. 2016-045 § 1 Att. A; Ord. 2000-056 § 1).

### 21.07.130 Additional information for preliminary binding site plans.

**[Subdivisions]**

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,
Current and Proposed Code Matrix  
(Purpose and Applicability – Applicant Submittal and Determination of Completeness)

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.
(Ord. 2000-056 § 1).
### 21.08.050 Requirements for a fully completed application for general binding site plans and specific binding site plans. 

**[Subdivision]**

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-built drawings for road and drainage improvements.
   - Any fees as specified in the Unified Fee Schedule.

   - 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.
Current and Proposed Code Matrix
(Purpose and Applicability – Applicant Submittal and Determination of Completeness)

- 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
Current and Proposed Code Matrix
(Purpose and Applicability – Applicant Submittal and Determination of Completeness)

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<tr>
<td>binding site plan.</td>
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<tr>
<td>☐ Identify and locate all stormwater facilities, areas set aside for stormwater management, utilities, permanent wells, and associated protective zones.</td>
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<td>☐ Roads not dedicated to the public must be clearly marked.</td>
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<tr>
<td>☐ A reference to any covenants, conditions and restrictions.</td>
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<td>☐ The statement required under RCW 58.17.040 (7)(e).</td>
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<td>☐ Dedication and declaration signature block.</td>
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<td>☐ Acknowledgement blocks.</td>
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<tr>
<td>☐ Surveyor’s certificate, signature block and seal.</td>
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<td>☐ County engineer’s certificate.</td>
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<td>☐ Director of planning and development services certificate.</td>
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<td>☐ County health and human services department certificate.</td>
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<td>☐ County treasurer’s certificate.</td>
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<td>☐ County auditor’s certificate.</td>
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<td>☐ Land surveyor notes.</td>
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<td>(Ord. 2016-045 § 1 Att. A; Ord. 2000-056 § 1).</td>
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**21.08.060 Final original drawing submittal.**

**[Subdivision]**

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<td>☐ Two original drawings.</td>
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<td>☐ Two sets of covenants, conditions and restrictions.</td>
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<td>☐ Maintenance bond for road and drainage improvements.</td>
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<tr>
<td>(Ord. 2000-056 § 1).</td>
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</table>
21.09.010 Plats, short plats and binding site plans. [Subdivisions]
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. (Ord. 2000-056 § 1).

21.09.020 Survey data. [Subdivisions]
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. (Ord. 2009-007 § 1; Ord. 2000-056 § 1).

21.09.030 Area data. [Subdivisions]
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. (Ord. 2000-056 § 1).

21.09.040 Control monuments.
<table>
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<th>[Subdivisions]</th>
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<tr>
<td>(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. (Ord. 2000-056 § 1).</td>
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<tr>
<td>21.09.050 Road monuments. [Subdivisions] Permanent control monuments within the streets shall be set after the roads are constructed to final grade. (Ord. 2000-056 § 1).</td>
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<tr>
<td>21.09.060 Lot corners. [Subdivisions] 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. (Ord. 2000-056 § 1).</td>
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<td>21.09.070 Waterfront. [Subdivisions] 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</td>
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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. (Ord. 2000-056 § 1).

**21.09.080 Security. [Subdivisions]**
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. (Ord. 2000-056 § 1).

**21.09.090 Dedications. [Subdivisions]**
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. (Ord. 2000-056 § 1).

### 23.60.050 Minimum application requirements. [Shorelines]

B. A complete application for a substantial development, conditional use, or variance permit shall contain, at a minimum, the following information; provided, that the administrator may vary or waive these requirements according to 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
| 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 graveled 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 graveled 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.
c. 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. (Ord. 2009-13 § 1 (Exh. 1); Ord. 2008-034 § 1 (Exh. 1)).
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.
22.05.020 Project permit processing table.
22.05.030 Consolidated permit review.
22.05.040 Preapplication conference.
22.05.050 Application and determination of completeness.
22.05.060 Vesting.
22.05.070 Notice of application.
22.05.080 Posting of application.
22.05.090 Open record hearings.
22.05.100 Consistency review and recommendations.
22.05.110 Final decisions.
22.05.120 Recommended decisions to county council.
22.05.130 Permit review timeframes.
22.05.140 Expiration of project permits.
22.05.150 Permit revocation procedure.
22.05.160 Appeals.
22.05.170 Annual Report.
22.05.180 Interpretation, conflict, and severability.

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.
<table>
<thead>
<tr>
<th>Permit Application Processing Table</th>
<th>WCC Reference for Specific Requirements</th>
<th>Preapp. Required (see 22.05.040)</th>
<th>Det. of Completeness Required (see 22.05.050)</th>
<th>Notice of Application Required (see 22.05.060)</th>
<th>Site Posting Required (see 22.05.080)</th>
<th>Notice of Open Record Hearing Required (see 22.05.090)</th>
<th>Open Record Hearing Held By: (see 22.05.090)</th>
<th>County Decision Maker (see 2.11.210, 22.05.120)</th>
<th>Appeal Body (see 2.11.210, 22.05.160, 23.60.150H)</th>
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<td><strong>Type I Applications (Administrative decision with no public notice or hearing)</strong></td>
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<td>Hearing Examiner</td>
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<td>Shoreline Hearings Board (h)</td>
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<td>Reasonable Use (c)</td>
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<td>Hearing Examiner</td>
<td>Shoreline Hearings Board (h)</td>
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<td>✓(a)</td>
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<td>Shoreline Variance</td>
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<td>Zoning or Critical Areas Ordinance Variance</td>
<td>20.84.100 or 16.16.270</td>
<td>✓</td>
<td>Hearing Examiner</td>
<td>Hearing Examiner</td>
</tr>
</tbody>
</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

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\(^2\) 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 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:]

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 days\(^4\) 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(1);

(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.

(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 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 purveyors, 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 B

Whatcom County Code Title 2
Administration and Personnel

AMENDMENTS

Title 2
ADMINISTRATION AND PERSONNEL

Chapters:

2.11 Hearing Examiner

2.33 Reserved

2.160 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 2.11 WCC.
Chapter 2.11

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:

2.11.010 Purpose.
2.11.100 Hearing examiner office.
2.11.110 Creation and purpose.
2.11.120 Pro tempore hearing examiner.
2.11.130 No interference with the hearing examiner.
2.11.140 Qualifications.
2.11.150 Appointment and removal.
2.11.200 Hearing examiner – Duties and powers.
2.11.205 Recommended decisions.
2.11.210 Final decisions.
2.11.215 Administrative Appeals – Appeal Period.
2.11.220 Rules and regulations.
2.11.225 Department reports.
2.11.230 Changes in legislation.
2.11.235 Additional powers.
2.11.240 Limited jurisdiction.

2.11.010 Purpose.
The purpose of this chapter is to establish the authority and responsibilities of the Hearing Examiner.

2.11.100 Hearing examiner office.

2.11.110 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.

2.11.120 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.

2.11.130 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.

2.11.140 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.

2.11.150 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.

2.11.200 Hearing examiner – Duties and powers.

2.11.205 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;

(4) Such other permits as may be required from the county along with subsection (1) or (2) of this section for a given project. 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.

2.11.210 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 order, 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.

[Reference to former Title 22 Guide Meridian plan to be removed]
(14) Revocation proceedings involving previously approved zoning conditional use permits, shoreline management substantial project permits and shoreline conditional use permits.
(15) Applications to continue operations of nonconforming adult businesses pursuant to WCC 20.83.015.

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

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

2.11.215 Administrative appeals – Appeal period.
Appeals to the hearing examiner on the subjects listed in WCC 22.05.020 must be filed within 14 calendar days of the date of administrative determination pursuant to WCC 22.20.160.

2.11.220 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.

2.11.225 Department reports.
The hearing examiner may request reports from appropriate staff. See WCC 22.05.100 for details.

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

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

2.11.240 Limited jurisdiction.
The hearing examiner shall 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.

[This subsection on development agreements proposed to be shortened and moved to 2.11.205(3)]
Chapter 2.33

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.]

Chapter 2.160

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.]
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 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.

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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.

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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 in writing on a form provided by the department and shall include all items as stated in the department’s administrative manual.

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.

________________________________________

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 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 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 22.05.

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 22.05, as applicable. All
decisions of the technical administrator and hearing examiner may be appealed
pursuant to 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 22.05 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 22.05 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 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 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 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 averaging, 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 Chapter22.05.

c. Reasonable use exception applications that are subject to administrative approval by the technical administrator shall be processed in accordance with WCC 22.05.

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 22.05 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.

16.16.280 Appeals.
A. Final permit decisions shall be subject to appeal in accordance with the procedures of Chapter 22.05 WCC.
23.05.020 Purpose.

23.05.030 Administrative procedures.

23.05.010 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 allow Whatcom County to revise local administrative procedures (fees, application meetings, authority of administrator, etc.) without 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 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; provided, that the administrator may vary or waive these requirements as provided in the manual 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.

23.60.060 Pre-application conference.
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.

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 fees shall be reduced i 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.

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.B. 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. The decision maker shall process project permit applications for shoreline substantial development permits, shoreline variance and shoreline conditional use permits in compliance with the provisions of WCC 22.05.

D. The decision maker shall process project permit applications for shoreline statements of exemption 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 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 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.
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 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:

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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.
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 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 fourteen calendar 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 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 B

Whatcom County Code Title 2
Administration and Personnel

AMENDMENTS

Title 2
ADMINISTRATION AND PERSONNEL

Chapters:

2.11 Hearing Examiner

2.33 Reserved

2.160 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 2.11 WCC.
Chapter 2.11

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:

2.11.010 Purpose.
2.11.100 Hearing examiner office.
2.11.110 Creation and purpose.
2.11.120 Pro tempore hearing examiner.
2.11.130 No interference with the hearing examiner.
2.11.140 Qualifications.
2.11.150 Appointment and removal.
2.11.200 Hearing examiner – Duties and powers.
2.11.205 Recommended decisions.
2.11.210 Final decisions.
2.11.215 Administrative Appeals – Appeal Period.
2.11.220 Rules and regulations.
2.11.225 Department reports.
2.11.230 Changes in legislation.
2.11.235 Additional powers.
2.11.240 Limited jurisdiction.

2.11.010 Purpose.
The purpose of this chapter is to establish the authority and responsibilities of the Hearing Examiner.

2.11.100 Hearing examiner office.

2.11.110 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.

2.11.120 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.

2.11.130 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.

2.11.140 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.

2.11.150 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.

2.11.200 Hearing examiner – Duties and powers.

2.11.205 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;

(4) Such other permits as may be required from the county along with subsection (1) or (2) of this section for a given project. 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.

2.11.210 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 order, 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.

[Reference to former Title 22 Guide Meridian plan to be removed]
(14) Revocation proceedings involving previously approved zoning conditional use permits, shoreline management substantial project permits and shoreline conditional use permits.
(15) Applications to continue operations of nonconforming adult businesses pursuant to WCC 20.83.015.

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

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

2.11.215 Administrative appeals — Appeal period.
Appeals to the hearing examiner on the subjects listed in WCC 22.05.020 must be filed within 14 calendar days of the date of administrative determination pursuant to WCC 22.20.160.

2.11.220 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.

2.11.225 Department reports.
The hearing examiner may request reports from appropriate staff. See WCC 22.05.100 for details.

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

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

2.11.240 Limited jurisdiction.
The hearing examiner shall 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.

[This subsection on development agreements proposed to be shortened and moved to 2.11.205(3)]
Chapter 2.33

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.)

Chapter 2.160

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.)
EXHIBIT D

Whatcom County Code Title 20
Zoning

AMENDMENTS

Title 20
ZONING

Chapters:


20.90    Reserved.
20.92    Reserved.


Chapter 20.04
GENERAL PROVISIONS

Sections:


20.04.031    Reserved.


20.04.090    Appeals.
20.04.091    Reserved.
20.04.092    Reserved.


20.04.031 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.]

[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 Appeals.

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 Reserved.

20.04.092 Reserved.


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 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 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 as provided in WCC 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 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 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 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.

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 Reserved.
20.84.235 Administrative approval uses.
20.84.236 Revisions to administrative approval use permits.20.84.240 Reserved.
20.84.250 Reserved
20.84.260 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

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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. 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 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.
20.84.235 Administrative approval uses.
(1) Administrative approval applications shall be processed per the provisions of WCC Chapter 22.05.

(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 (3) of this section.

(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:

[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.]

(a) The adult business will be consistent with WCC 20.66.131.

(b) 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.

(c) 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.

20.84.250 Reserved.

20.84.260 Reserved.

Chapter 20.85

PLANNED UNIT DEVELOPMENT

Sections:

20.85.118 Concept plan.
20.85.200 Information submittal.
20.85.201 Reserved. 20.85.203 Reserved.
20.85.204 Reserved.

20.85.301 Reserved.
20.85.305 Reserved.
20.85.310 Reserved.
20.85.315 Reserved.
20.85.320 Reserved.
20.85.325 Reserved.
20.85.330 Reserved.
20.85.335 Approval Criteria.
20.85.340 Reserved.
20.85.345 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 elements required in the department’s administrative manual.

(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 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).

Reserved. Reserved. Reserved. Reserved. . . . . .

20.85.300 Planned unit development procedure.

Planned unit development applications shall be processed in accordance with WCC 22.05.

20.85.301 Reserved.

20.85.305 Reserved.20.85.310 Reserved.20.85.315 Reserved.20.85.320 Reserved.20.85.325 Reserved.20.85.330 Reserved.20.85.335 Approval Criteria.

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.

20.85.345 Reserved. 20.85.350 Scope of initial planned unit development approval.
(1) Once the planned unit development receives initial approval pursuant to WCC 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.
Chapter 20.88
MAJOR PROJECT PERMITS

Sections:
20.88.010 Purpose.
20.88.100 Major project permits.
20.88.200 Procedure.

.130 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, 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.

.210 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.

.215 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 'no more than one hearing' provision is covered in the proposed 22.05.110]

.220 through .265 Reserved. [moved to 22.05.145]
.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.

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**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]

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**Chapter 20.92**
**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 2.11, and hearing procedures are to be moved to a new Chapter 22.05]

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**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 22.05.150. 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.

20.94.080 Appeals.
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.

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Chapter 20.97
DEFINITIONS

20.97.175 Hearing examiner.
"Hearing examiner" means the hearing examiner of Whatcom County (refer to WCC Chapter 2.11).

20.97.293 Party of record.
"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 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, subdivisions, binding site plans, planned unit developments, conditional uses, shoreline substantial development permits, 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:

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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 Reserved. [Moved to note in 22.05.020 table]

21.01.100 Reserved. [covered in 22.05.030]

21.01.110 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 in accordance with WCC 22.05, except as otherwise stated within this title.

21.01.120 Reserved.

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 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 Reserved. [Moved to note in 22.05.020 table]

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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.**  
**[added to 22.05.160(1)]**

(1) 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.

(2) 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 in accordance with the provisions of WCC Chapter 22.

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**Chapter 21.03**

**EXEMPT LAND DIVISIONS AND BOUNDARY LINE ADJUSTMENTS**

Sections:

- 21.03.010 Purpose.  
- 21.03.020 Repealed.  
- 21.03.030 Pre-approval.  
- 21.03.040 Certificate of exemption.  
- 21.03.045 Required disclosures.  
- 21.03.050 Access on state highways.  
- 21.03.060 Boundary line adjustments.  
- 21.03.070 Reserved.  
- 21.03.080 Reserved.  
- 21.03.085 Reserved.  
- 21.03.090 Repealed.

**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 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 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. 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 according to the procedures in WCC 22.05 and the following:

(a) Applications shall include information required by the department’s administrative manual.

(b) 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.

(c) 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. 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.

21.03.080 Reserved. [proposed to be moved to administrative manual]

21.03.085 Reserved.

21.03.090 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  Reserved.
21.04.034  Preliminary approval decision criteria.
21.04.035  Final short subdivision review process.
21.04.038  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.
21.04.090  Water supply.
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  Reserved.
21.04.160  Reserved.
21.04.170  Disclosures and notes.

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 in the department’s administrative manual. [proposed to be moved to administrative manual]

21.04.032 Short subdivision application submittal.
An applicant requesting approval of a proposed short subdivision shall submit to the planning and development services department an application with all items required pursuant to WCC 22.05.050 and the department’s administrative manual.

21.04.033 Reserved.

[Determination of completeness and vesting provisions are proposed to be located in 22.05.050 and .060.]

21.04.034 Preliminary Approval Decision Criteria.
The subdivision administrator shall 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. A short subdivision determination shall be accompanied by written findings by the county that:

(1) 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

(2) 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 the department’s administrative manual.

(2) Time Allowed for Final Short Subdivision Approval.

(a) The applicant shall submit the final review packet with items required by 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 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 Reserved. [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 issue a notice of preliminary approval, issue a notice of additional requirements to obtain preliminary approval, or deny the application provided that the alteration does not propose to eliminate or reduce the width or length of a public dedication. 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 the department’s administrative manual.

(c) 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.

(d) A new original drawing is submitted. The original drawing shall be prepared in accordance with the requirements of 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.

(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 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 Reserved. [proposed to be moved to administrative manual]

21.04.160 Reserved. [proposed to be moved to administrative manual]

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 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:

21.05.010 Purpose.
21.05.020 Requirement to obtain long subdivision approval.
21.05.030 Preliminary long subdivision procedure.
21.05.031 Pre-application meeting.
21.05.032 Preliminary long subdivision application submittal.
21.05.033 Determination of completeness and vesting.
21.05.035 Reserved.
21.05.036 Preliminary Approval Decision Criteria.
21.05.037 Hearing examiner notice, hearing and decision.
21.05.038 Reserved.
21.05.039 Phasing, expiration and time extension for preliminary long subdivision approval.
21.05.040 Development requirements.
21.05.050 Roads.
21.05.060 Public and community sites.
21.05.070 Easements.
21.05.080 Water supply.
21.05.090 Sewage disposal.
21.05.100 Fire protection.
21.05.110 Modifications to approved preliminary long plats.
21.05.120 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 Preliminary long subdivision procedure.
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.
Pre-Application Meeting Required pursuant to WCC 22.05. Any person contemplating preparation of a preliminary long subdivision application shall submit information required in the department’s administrative manual. [proposed to be moved to administrative manual]

21.05.032 Preliminary long subdivision application submittal.
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.

21.05.033 Reserved.

[Determination of completeness and vesting provisions are proposed to be located in 22.05.050 and .060.]

21.05.035 Reserved.

21.05.036. 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:

[criteria are proposed to be moved from .037 to .036]

1. Open spaces;
2. Drainage ways and stormwater management;
3. Streets or roads, pedestrian and bicycle paths, alleys, other public ways, transit stops, and other transportation facilities as required by concurrency standards;
4. Potable water supplies;
5. Sanitary wastes;
6. Parks and recreation facilities and playgrounds;
7. Schools and schoolgrounds, including sidewalks and other planning features that assure safe walking conditions for students who walk to and from school;
8. Conformity with the Whatcom County Comprehensive Plan;
9. Conformity with applicable land division, zoning and development standards;
10. Conformity with critical areas, shoreline management, other land use regulations;
11. Conformity with Chapter 58.17 RCW; and
12. 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 in accordance with the provisions of WCC 22.05.

21.05.038 Reserved.
[This subsection is proposed for deletion because it is unclear and not used]

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 Reserved. [proposed to be moved to administrative manual]
Chapter 21.06

FINAL LONG SUBDIVISIONS

Sections:
21.06.010 Purpose.
21.06.015 Director authorized.
21.06.020 Final approval of subdivisions.
21.06.030 Subdivision vacation and alteration.
21.06.040 Security.
21.06.050 Reserved.
21.06.060 Reserved.
21.06.070 Disclosures and notes.

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 authorized.
The planning and development services director (director) 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 the department’s administrative manual.

(2) The applicant shall submit a current title report issued no more than 60 days prior to the 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 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 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 director, the original drawing of the subdivision shall immediately be filed by the professional land surveyor of record with the county auditor.

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 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 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 Reserved. [proposed to be moved to administrative manual]

21.06.060 Reserved. [proposed to be moved to administrative manual]

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.
21.07.110 Modifications to approved preliminary binding site plans.
21.07.120 Reserved.
21.07.130 Reserved.

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.

21.07.032 Preliminary Approval Decision Criteria.  
Approval of a preliminary binding site plan shall be accompanied by written findings that:

(1) 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

(2) The proposal is in conformity with applicable land division, zoning, critical areas, shoreline management, and other land use regulations.

21.07.033 Phasing, expiration and time extensions for preliminary binding site plan approval.  
(1) 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.

(2) As an alternative to being subject to the expiration and time extension rules in subsection (1) 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 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 Reserved. [proposed to be moved to administrative manual]

21.07.130 Reserved. [proposed to be moved to administrative manual]

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 Reserved.
21.08.060 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 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, one 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.

21.08.030 Security.
As an alternate to complete installation of required improvements, the 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 Reserved. [proposed to be moved to administrative manual]

21.08.060 Reserved. [proposed to be moved to administrative manual]

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.
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.
CALL TO ORDER

Council Chair Barry Buchanan called the meeting to order at 1:30 p.m. in the Council Chambers, 311 Grand Avenue, Bellingham, Washington.

ROLL CALL

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

Absent: Rud Browne

COMMITTEE DISCUSSION

1. DISCUSSION REGARDING A PROPOSED ORDINANCE AMENDING WHATCOM COUNTY CODE CHAPTER 16.16 (CRITICAL AREAS) AND WHATCOM COUNTY CODE CHAPTER 23.10 (SHORELINE MANAGEMENT PROGRAM – PURPOSE AND INTENT) PERTAINING TO THE PROTECTION AND REGULATION OF ENVIRONMENTALLY CRITICAL AREAS (AB2016-276L)

The following Planning and Development Services Department staff answered questions:

- Cliff Strong
- Ryan Ericson

Councilmembers and staff discussed amending the definition of ongoing agriculture.

Buchanan stated they would hold discussion of the definition of ongoing agriculture to the next meeting on November 21, 2017.

(Clerk’s Note: Councilmember Weimer left the meeting.)

Strong stated staff agrees with proposed amendment items 20 and 24, which are proposed by Councilmember Brenner as shown in the Council packet. Councilmember Brenner agreed to withdraw proposed amendment items 25 and 30. The definition in item 34 can be deleted.

Donovan moved to approve the following proposed amendments:

- ITEM 20: 16.16.640(D), “The applicant implements all reasonable measures to reduce minimize the adverse effects of…”
- ITEM 24: 16.16.720 (J)(4), “Private trails shall not exceed 5 4 feet in width, and public trails shall not exceed 10 feet in width, and shall be made of pervious material or on an elevated structure where feasible. Trails may
include limited viewing platforms that shall not exceed 12 feet in width and shall be made of pervious materials where feasible.”

- ITEM 34: delete the definition of “overnight accommodation”

The motion was seconded.

The motion carried by the following vote:

Ayes: Brenner, Mann, Sidhu, Buchanan, and Donovan (5)
Nays: None (0)
Absent: Weimer and Browne (2)

Brenner moved to amend 16.16.235(B)(4-5) to not require notification to remove hazard trees. If there are problems, it should be complaint-driven, but not illegal.

The motion was seconded.

Councilmembers and staff discussed a property owner’s ability to fell hazardous trees in critical areas.

The motion failed by the following vote:

Ayes: Brenner and Mann (2)
Nays: Sidhu, Buchanan, and Donovan (3)
Absent: Weimer and Browne (2)

Brenner moved to amend 16.16.262(C)(1), “The plan shall be reviewed... other local, state, and/or federal, and/or tribal agencies or experts.”

The motion was seconded.

Councilmembers and staff discussed whether or not it’s appropriate for a technical administrator (TA) to consult tribal officials.

The motion failed by the following vote:

Ayes: Brenner (1)
Nays: Sidhu, Buchanan, Mann, and Donovan (4)
Absent: Weimer and Browne (2)

Strong reported on whether the County will develop an in-lieu-of-fee program.

Brenner moved to amend 16.16.264, “To aid in the implementation of offsite mitigation, the County may develop an in-lieu fee program.”

The motion was seconded.

Councilmembers and staff discussed whether the County will develop an in-lieu-of-fee program, the State setting the credit price, comparisons with mitigation banking programs, and whether the offsite mitigation would benefit some residents.

Brenner withdrew the motion.
Brenner moved to amend 16.16.264(4), “Land acquisition and initial physical and biological improvements of the mitigation site must be completed within three five years of the credit sale.”

The motion was seconded.

Councilmembers and staff discussed the County’s ability to vary from State Department of Ecology (DOE) standards.

The motion carried by the following vote:

Ayes: Brenner, Mann, Sidhu, Buchanan, and Donovan (5)
Nays: None (0)
Absent: Weimer and Browne (2)

Brenner moved to amend 16.16.265(A), “The signs shall be posted near primary access points and approximately every 200 feet along the critical area boundary unless the technical administrator determines that more or less frequent spacing is adequate considering the size and location of the site.”

The motion was seconded.

Staff agreed with the proposed amendment.

The motion carried by the following vote:

Ayes: Brenner, Mann, Sidhu, Buchanan, and Donovan (5)
Nays: None (0)
Absent: Weimer and Browne (2)

Brenner moved to amend 16.16.265(B), “This requirement may shall be waived ....”

The motion was seconded.

Councilmembers and staff discussed the decisions of the geologist and technical administrator.

The motion carried by the following vote:

Ayes: Brenner, Mann, Sidhu, and Buchanan (4)
Nays: Donovan (1)
Absent: Weimer and Browne (2)

Councilmembers and staff discussed an appropriate length of time a variance applicant should have before an application expires due to lack of activity and given codes that change over time.

Brenner moved to amend 16.16.273 (C)(d), "Any application for a variance that remains inactive for a period of 180 days shall expire and a new application and repayment of fees shall be required to reactivate the proposal; provided, that the technical administrator may grant a single 90-day extension five one-year extensions for good cause. Delays such as those caused by public notice requirements, environmental (SEPA) review,
The motion failed by the following vote:

_Ayes:_ Brenner (1)

_Nays:_ Donovan, Sidhu, and Buchanan (3)

_Absent:_ Mann (out of the room), Weimer, and Browne (3)

Councilmembers and staff discussed what an applicant needs to do to keep an application active.

_Brenner moved_ to amend 16.16.273 (C)(d), "Any application for a variance that remains inactive for a period of 180 days shall expire and a new application and repayment of fees shall be required to reactivate the proposal; provided, that the technical administrator may grant a single 90-day extension or _two one-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."

The motion failed by the following vote:

_Ayes:_ Brenner, Sidhu, and Buchanan (3)

_Nays:_ Donovan (1)

_Absent:_ Mann (out of the room), Weimer, and Browne (3)

_Sidhu moved_ to amend 16.16.273 (C)(d), "Any application for a variance that remains inactive for a period of _one 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 a single 90-day extension or _two one-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."

The motion carried by the following vote:

_Ayes:_ Mann, Brenner, Sidhu, and Buchanan (4)

_Nays:_ Donovan (1)

_Absent:_ Weimer and Browne (2)

_Brenner moved_ to amend 16.16.300, “The purpose of this Article is to _reduce_ risks to human life and safety and _reduce_ the risk of damage to structures and property from geologic hazards, to allow for natural geologic processes supportive of forming and maintaining fish and wildlife habitat, and to regulate and inform land use and planning decisions. It is recognized that the elimination of all risk from geologic hazards is not feasible to achieve but the purpose of this Article is to _reduce_ the risk to acceptable levels.”
Councilmembers and staff discussed the definitions of “reduce” and “minimize.”

The motion failed for a lack of a majority of the full Council, by the following vote:

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

**Nays:** Sidhu and Buchanan (2)

**Absent:** Weimer and Browne (2)

*Brenner moved* to amend 16.16.325(C)(3), “The setback shall include consideration of vegetation on the potential landslide area and in areas above and below the potential landslide area. The technical administrator shall have the authority to require vegetation or other measures to protect or improve slope stability and shall have the authority to require a mitigation plan developed in accordance with 16.16.260, and a conservation easement in accordance with WCC 16.16.265(C) to ensure appropriate vegetation improvements are installed, maintained, and preserved.”

The motion was seconded.

Councilmembers and staff discussed whether the motion would prohibit some people from doing any project that requires improvements on unstable slopes.

The motion failed by the following vote:

**Ayes:** Brenner (1)

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

**Absent:** Weimer and Browne (2)

*Brenner moved* to amend 16.16.420:

16.16.420 Frequently Flooded Areas – General Standards.

A. ...

B. ...

a. FEMA’s National Flood Insurance Program (NFIP), including the protection standards for critical habitats for listed species;

b-d. ....

C. The technical administrator shall have the authority to require a habitat assessment, and if necessary, a mitigation plan prepared by a qualified professional, in accordance with the FEMA Regional Guidance for the Puget Sound Basin and mitigate for adverse impacts to the ecological functions of Frequently Flooded Areas; provided, that such mitigation shall be consistent and compatible with the goal of protecting health and safety and minimizing risks to property.

The motion was seconded.

Councilmembers and staff discussed whether the motion gives the technical administrator the ability to require consistency and mitigation with other programs in addition to the Federal Emergency Management Agency (FEMA) National Flood Insurance Program (NFIP).

The motion failed by the following vote:
Ayes: Brenner (1)
Nays: Sidhu, Buchanan, Donovan, and Mann (4)
Absent: Weimer and Browne (2)

(Clerk’s Note: Councilmember Mann left the meeting.)

Brenner moved to amend 16.16.430(C) & (F):
C. In addition to the requirements of WCC 16.16.225, critical areas assessment reports for frequently flooded areas shall:
1. Identify any federally listed species and associated habitats, and demonstrate that no harm will occur to such species or habitats as a result of development (inclusive of mitigation) will minimize impacts within frequently flooded areas.
2-3. …
F. Critical areas assessment report requirements may be waived for single-family developments and structures accessory to agricultural uses when the technical administrator and the public works department determine that no adverse impacts or they will minimize risks to life, property, or ecological functions will occur.

The motion was seconded.

Councilmembers and staff discussed whether it’s possible to prove there would be no adverse impacts and whether the law requires that no harm will occur to federally-listed species.

The motion failed by the following vote:
Ayes: Brenner (1)
Nays: Sidhu, Buchanan, and Donovan (3)
Absent: Mann, Weimer and Browne (3)

Councilmembers and staff discussed how to show loss of wildlife habitat is minimized, the standard for no net loss.

Brenner moved to amend 16.16.710(C)(1)(B)(ii), “The waterway is used by anadromous or resident salmonid or other resident fish populations; or and,”

The motion was seconded.

Councilmembers discussed restrictions on manmade ditches that now mimic streams, being consistent with state law, and the original definitions.

The motion failed by the following vote:
Ayes: Brenner (1)
Nays: Sidhu, Buchanan, and Donovan (3)
Absent: Mann, Weimer and Browne (3)

Councilmembers and staff discussed identifying suitable habitat for listed species, which may be subjective.
Brenner moved to amend 16.16.820(D), so that row, berry, and orchard crops are
defined as type 1 by their impacts, not their size.

The motion was seconded.

Councilmembers and staff discussed whether small hobby farms with orchards or
berries qualify for a type 1 or 2 farm plan; whether the qualifier should be about amount of
fertilizers used, not farm size; what is the threshold between a type 1 hobby berry farm and
type 2 berry farm; and disclosure of farming practices.

Brenner amended her motion to amend 16.16.820(D)(a), “...of grazable pasture
(row and berry crops do not qualify as Type 1). These operations....”

The amended motion was seconded.

The motion carried by the following vote:
Ayes: Brenner, Sidhu, Buchanan, and Donovan (4)
Nays: None (0)
Absent: Mann, Weimer and Browne (3)

OTHER BUSINESS

There was no other business.

ADJOURN

The meeting adjourned at 3:20 p.m.

The Council approved these minutes on _____________, 2017.

ATTEST:

WHATCOM COUNTY COUNCIL
WHATCOM COUNTY, WASHINGTON

______________________________  ______________________________
Dana Brown-Davis, Council Clerk   Barry Buchanan, Council Chair

______________________________
Jill Nixon, Minutes Transcription
CALL TO ORDER

Council Chair Barry Buchanan called the meeting to order at 2:27 p.m. in the Council Chambers, 311 Grand Avenue, Bellingham, Washington.

ROLL CALL

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

Absent: None.

COMMITTEE DISCUSSION

1. DISCUSSION REGARDING PROPOSED RESOLUTION ADOPTING THE 2018 BUDGET FOR THE WHATCOM COUNTY FLOOD CONTROL ZONE DISTRICT AND SUBZONES (COUNCIL ACTING AS THE WHATCOM COUNTY FLOOD CONTROL ZONE DISTRICT BOARD OF SUPERVISORS) (PROPOSED RESOLUTION WAS INTRODUCED ON NOVEMBER 8; IF AMENDED, COUNCIL WILL INTRODUCE A NEW VERSION THIS EVENING) (AB2017-321)

- AND –

2. DISCUSSION REGARDING PROPOSED RESOLUTION AUTHORIZING THE LEVY OF TAXES FOR THE WHATCOM COUNTY FLOOD CONTROL ZONE DISTRICT FOR 2018 (COUNCIL ACTING AS THE WHATCOM COUNTY FLOOD CONTROL ZONE DISTRICT BOARD OF SUPERVISORS) (PROPOSED RESOLUTION WAS INTRODUCED ON NOVEMBER 8; IF AMENDED, COUNCIL WILL INTRODUCE A NEW VERSION THIS EVENING) (AB2017-331)

Gary Stoyka, Public Works Department, submitted a handout of level of service options (on file), gave a staff report, and answered questions.

The following staff also answered questions:

• Jon Hutchings, Public Works Department Director

Staff and Councilmembers discussed using the flood fund just for flood issues; using the flood tax for other projects as allowed, which may be misleading to the public; fees versus taxes; adjusting the level of service; and adding language to the levy resolution similar to the last whereas on Council packet page 479, which demonstrates that the County is allowed to pay for stormwater management and water resources from the flood fund, per the Revised Code of Washington (RCW).
Weimer moved to amend the flood levy resolution (AB2017-331) to raise the flood levy by a minimum of $1 million per year.

The motion was seconded.

Brenner suggested a friendly amendment to put the increase on the ballot.

Weimer did not accept the friendly amendment.

Councilmembers discussed how much revenue would be raised if the County forms a Lake Whatcom stormwater service area; whether residents in the city of Bellingham receive any benefit from the flood fund; options for funding a large flood event; and whether the flood fund is reliant on funds from the state's capital budget.

Browne suggested a friendly amendment to raise the flood levy by $1.2 million per year.

Weimer accepted the friendly amendment.

The motion to amend carried by the following vote:

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

Donovan moved to recommend Introduction of the levy resolution (AB2017-331) as amended to the Board of Supervisors.

The motion was seconded.

The motion to Introduce as amended carried by the following vote:

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

Donovan moved to further amend the levy resolution (AB2017-331) to add a Whereas statement, “Whereas RCW 86.15 and RCW 39.34.190 authorize expenditures to pay for flood control stormwater management and other water resource work consistent with the powers of the district.”

The motion to amend was seconded.

The motion to amend carried by the following vote:

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

Donovan moved again to introduce the levy resolution (AB2017-331) as amended.

The motion was seconded.

The motion to amend carried by the following vote:

Ayes: Mann, Sidhu, Browne, Buchanan, Weimer and Donovan (6)
Nays: Brenner (1)
3. DISCUSSION REGARDING A PROPOSED ORDINANCE AMENDING WHATCOM COUNTY CODE CHAPTER 16.16 (CRITICAL AREAS) AND WHATCOM COUNTY CODE CHAPTER 23.10 (SHORELINE MANAGEMENT PROGRAM – PURPOSE AND INTENT) PERTAINING TO THE PROTECTION AND REGULATION OF ENVIRONMENTALLY CRITICAL AREAS (AB2016-276L)

The following staff answered questions:

- Cliff Strong, Planning and Development Services Department
- Ryan Ericson, Planning and Development Services Department

*Brenner moved* to amend 16.16.710(2), (3), and (5):

2. Areas in which federally listed species are found, or have a primary association with, or contain suitable habitat for said listed species, as listed in the US Fish & Wildlife’s Threatened & Endangered Species List or Critical Habitat List (http://ecos.fws.gov/ecp/), as amended.

3. Areas in which state listed priority species are found, or have a primary association with, or contain suitable habitat for said listed species, as listed in the Washington Department of Fish and Wildlife’s Priority Habitats and Species list (http://wdfw.wa.gov/mapping/phs/ or http://wdfw.wa.gov/conservation/phs/list/), as amended.

5. Areas in which state-listed rare plant species are found, or contain suitable habitat for said listed species, as listed in the Department of Natural Resources’ Natural Heritage Program (http://www1.dnr.wa.gov/nhp/refdesk/plants.html), as amended.

The motion was seconded.

Councilmembers and staff discussed federal listing of habitat for listed species; whether the State requires the County to protect these areas, regardless of whether or not the clause is in the Code; the material impacts of the regulation; and what happens in habitat conservation areas (HCAs).

The motion failed by the following vote:

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

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

*Brenner moved* to amend the definitions, "‘Clearing’ means destruction removal of vegetation by manual, mechanical, or chemical methods resulting in exposed soils.”

The motion was seconded.

Councilmembers and staff discussed the problem with the word “destruction.”

The motion failed by the following vote:

**Ayes:** Brenner (1)

**Nays:** Mann, Browne, Buchanan, Weimer, Donovan, and Sidhu (6)
Councilmembers and staff discussed the definition of “ongoing agriculture,” working with the farming community, the timeline for completing and adopting the ordinance, and revising the definition.

Dannon Traxler, attorney, submitted her response to the staff’s recommendation (on file) and spoke about reclassification of agricultural land and creating a proposal for the Council in conjunction with the agricultural community within six months. Retain the revised definition of ongoing agriculture proposed by Councilmember Browne.

Browne moved to recommend approval of the ordinance as amended, with the understanding they will address the ongoing agriculture issue not later than June 30, 2018. The motion was not seconded.

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

The motion was seconded.

The motion carried by the following vote:

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

**Nays:** Brenner (1)

Browne moved to amend the ordinance to include the following language in Section 3 as proposed by Ms. Traxler, “Planning and Development Services staff shall work directly with the agriculture community to develop creative solutions that would allow farmers to maintain or attain ongoing agriculture status pursuant to applicable laws, through extensive educational outreach, town hall meetings, and the like. Proposed code amendments to the Critical Areas Ordinance shall be processed with all due haste, but the first proposal shall be brought to Council for consideration no later than July 1, 2018.”

The motion was seconded.

Councilmembers and staff discussed whether the agricultural community or the County must take the lead to develop the definition; and allowing the agricultural community to come up with solutions beyond the definition of ongoing agriculture.

Browne amended his motion and moved to include the following language in Section 3 as proposed by Ms. Traxler, “Planning and Development Services staff shall work directly with the agriculture community to develop creative solutions that would allow farmers to maintain or attain ongoing agriculture status pursuant to applicable laws, through extensive educational outreach, town hall meetings, and the like. Proposed code
amendments to the Critical Areas Ordinance related to ongoing agriculture shall be processed with all due haste, but the first proposal shall be brought to Council for consideration no later than July 1, 2018.”

The motion was seconded.

Councilmembers, staff, and Ms. Traxler continued to discuss public education and engaging the farming community.

The motion to amend carried by the following vote:
Ayes: Sidhu, Browne, Buchanan, Weimer and Donovan (5)
Nays: Brenner (1)
Absent: Mann (out of the room) (1)

Buchanan stated the amended ordinance will be Introduced at the evening Council meeting.

OTHER BUSINESS

There was no other business.

ADJOURN

The meeting adjourned at 4:05 p.m.

The Council approved these minutes on ______________, 2017.

ATTEST: WHATCOM COUNTY COUNCIL
WHATCOM COUNTY, WASHINGTON

Dana Brown-Davis, Council Clerk
Barry Buchanan, Council Chair

Jill Nixon, Minutes Transcription
CALL TO ORDER

Council Chair Barry Buchanan called the meeting to order at 7:00 p.m. in the Council Chambers, 311 Grand Avenue, Bellingham, Washington.

ROLL CALL

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

Absent: None.

FLAG SALUTE

ANNOUNCEMENTS

MINUTES CONSENT

Brenner moved to approve Minutes Consent items one through 12.

The motion was seconded.

Browne withdrew item four.

The motion to approve items one through three and five through 12 carried by the following vote:

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

Nays: None (0)

1. COMMITTEE OF THE WHOLE FOR SEPTEMBER 12, 2017

2. SPECIAL COMMITTEE OF THE WHOLE FOR SEPTEMBER 12, 2017

3. REGULAR COUNTY COUNCIL FOR SEPTEMBER 12, 2017

4. SURFACE WATER WORK SESSION FOR SEPTEMBER 19, 2017

Brenner moved to approve Minutes Consent item four.

The motion was seconded.

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

5. COMMITTEE OF THE WHOLE FOR SEPTEMBER 26, 2017

6. SPECIAL COMMITTEE OF THE WHOLE FOR SEPTEMBER 26, 2017

7. REGULAR COUNTY COUNCIL FOR SEPTEMBER 26, 2017

8. BOARD OF HEALTH FOR OCTOBER 3, 2017

9. COMMITTEE OF THE WHOLE FOR OCTOBER 10, 2017

10. SURFACE WATER WORK SESSION FOR OCTOBER 17, 2017

11. SPECIAL COMMITTEE OF THE WHOLE FOR OCTOBER 17, 2017

12. COMMITTEE OF THE WHOLE FOR OCTOBER 24, 2017

PUBLIC HEARINGS

1. ORDINANCE ADOPTING WHATCOM COUNTY ZONING CODE AMENDMENTS
RELATING TO THE RESORT COMMERCIAL DISTRICT, PLANNED UNIT
DEVELOPMENT CHAPTER, AND A NEW DENSITY CREDITS CHAPTER
(AB2017-319)

Mark Personius, Planning and Development Services Department, gave a staff
report.

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

Maureen Wilson submitted and read a handout from the Birch Bay Resort community
(on file). They support the proposed ordinance.

Hearing no one else, Buchanan closed the public hearing.

Donovan moved to adopt the ordinance.

The motion was seconded.

Councilmembers discussed the cost and the impact on affordable housing.

The motion carried by the following vote:

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

2. RESOLUTION TO SELL COUNTY TAX TITLE PROPERTY BY NEGOTIATION -
REQUEST NO. 2017-04 (AB2017-311A)
Buchanan opened the public hearing, and hearing no one, closed the public hearing.

**Brenner moved** to adopt the ordinance.

The motion was seconded.

The motion carried by the following vote:

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

3. **ORDINANCE AMENDING WHATCOM COUNTY CODE CHAPTER 10.04, ESTABLISHING THE SPEED LIMIT ON A PORTION OF LAKE WHATCOM BOULEVARD (AB2017-323)**

Joe Rutan, Public Works Department, gave a staff report and answered questions about the existing 25 miles per hour speed limit.

Buchanan opened the public hearing, and hearing no one, closed the public hearing.

**Donovan moved** to adopt the ordinance.

The motion was seconded.

The motion carried by the following vote:

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

4. **ORDINANCE AUTHORIZING THE LEVY OF TAXES FOR COUNTY AND STATE PURPOSES IN WHATCOM COUNTY, WASHINGTON, FOR THE YEAR OF 2018 (AB2017-327)**

Buchanan opened the public hearing, and hearing no one, closed the public hearing.

**Brenner moved** to adopt the ordinance.

The motion was seconded.

The motion carried by the following vote:

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

5. **ORDINANCE LIMITING THE 2018 GENERAL FUND PROPERTY TAX LEVY (AB2017-328)**

Buchanan opened the public hearing, and hearing no one, closed the public hearing.

**Browne moved** to adopt the ordinance.

The motion was seconded.
The motion carried by the following vote:

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

6. ORDINANCE AUTHORIZING THE LEVY OF TAXES FOR CONSERVATION FUTURES PURPOSES FOR 2018 (AB2017-329)

Buchanan opened the public hearing, and hearing no one, closed the public hearing.

Donovan moved to adopt the ordinance.

The motion was seconded.

The motion carried by the following vote:

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

7. ORDINANCE AUTHORIZING THE LEVY OF 2018 PROPERTY TAXES FOR COUNTY ROAD PURPOSES (AB2017-330)

Buchanan opened the public hearing, and hearing no one, closed the public hearing.

Donovan moved to adopt the ordinance.

The motion was seconded.

The motion carried by the following vote:

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

OPEN SESSION

The following people spoke about the ordinance forwarding Charter Amendment 1 to the County Auditor, for inclusion on the 2018 General Election ballot, to require a supermajority of the County Council to propose any Charter amendment pertaining to the method of nominating and electing Council members (AB2017-356) and/or the proposed ordinance forwarding Charter Amendment 2 to the County Auditor, for inclusion on the 2018 General Election ballot, to provide that each member of the Whatcom County Council be elected by majority vote of the registered voters of Whatcom County at general elections (AB2017-357):

• John Westerfield
• Josh Summers
• Kit Muehlman, Fair Vote Washington
• Stas Dorokhov
• Stony Bird
• Jacob Lamont
• Daryl Probst
• Chet Dow
The following people spoke about other issues:

- Bob Burr spoke about options to alleviate overcrowding in the jail.
- Kathleen Sabel submitted a handout (on file) and spoke about the Wildlife Advisory Committee and the request for additional staff for the Planning Department.
- Christopher Bruce Diele submitted a handout (on file) and spoke about code requirements regarding aggressive and dangerous dogs.
- Carley Storm spoke about the climate change and proposed ordinance establishing Whatcom County Code 2.126, Climate Impact Advisory Committee (AB2017-351)
- Pam Brady, BP Cherry Point Refinery, spoke about the proposed ordinance establishing Whatcom County Code 2.126, Climate Impact Advisory Committee (AB2017-351)
- Kris Halterman spoke about appointing someone to Councilmember Donovan’s position when he resigns and alternatives to a proposed Lake Whatcom stormwater service area.
- Joy Gilfillen, Restorative Community Coalition, submitted a handout (on file) and spoke about recommendations regarding jail issues.
- Carol Perry spoke about jail issues and a proposed ordinance establishing Whatcom County Code 2.126, Climate Impact Advisory Committee (AB2017-351)
- Judith Akins spoke about a proposed ordinance establishing Whatcom County Code 2.126, Climate Impact Advisory Committee (AB2017-351)

INTRODUCTION ITEMS

Councilmembers discussed the legal process for Introducing proposed ballot measures, the history of district only voting and reasons for introducing the proposed ballot measures, district-only voting at the federal level, giving the voters a chance to vote district-only in the current process, the benefits versus detriments of district-only and countywide voting, reconciling contradictory ballot amendments, the proposed Charter amendments from the 2015 Charter Review Commission, the County councilmembers positions being nonpartisan, and the timing of the proposed ordinances.
DISCLAIMER: This document is a draft and is provided as a courtesy. This document is not to be considered as the final minutes. All information contained herein is subject to change upon further review and approval by the Whatcom County Council.

Brenner moved to not Introduce items ten and 11.

The motion was seconded.

Councilmembers continued to discuss process, the merits of the proposed ordinances, the differences between items ten and 11, and getting clarification from legal counsel on the conflict in the ballot measures remedied in item ten.

The motion to withdraw Introduction Items ten and eleven from Introduction carried by the following vote:

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

10. ORDINANCE FORWARDING CHARTER AMENDMENT 1 TO THE COUNTY AUDITOR, FOR INCLUSION ON THE 2018 GENERAL ELECTION BALLOT, TO REQUIRE A SUPERMAJORITY OF THE COUNTY COUNCIL TO PROPOSE ANY CHARTER AMENDMENT PERTAINING TO THE METHOD OF NOMINATING AND ELECTING COUNCIL MEMBERS (AB2017-356)

Browne moved to Introduce the ordinance.

The motion was seconded.

Councilmembers discussed whether the motion is appropriate.

Donovan moved to call the question.

The motion to call the question carried by the following vote:

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

The motion to Introduce the ordinance failed by the following vote:

Ayes: Browne and Donovan (2)
Nays: Brenner, Mann, Sidhu, Buchanan, and Weimer (5)

11. ORDINANCE FORWARDING CHARTER AMENDMENT 2 TO THE COUNTY AUDITOR, FOR INCLUSION ON THE 2018 GENERAL ELECTION BALLOT, TO PROVIDE THAT EACH MEMBER OF THE WHATCOM COUNTY COUNCIL BE ELECTED BY MAJORITY VOTE OF THE REGISTERED VOTERS OF WHATCOM COUNTY AT GENERAL ELECTIONS (AB2017-357)

INTRODUCTION ITEMS

Browne stated there are substitute documents for Introduction Items five, six, eight, nine, 12, 13, and 14.

Buchanan moved to accept Introduction Items one through nine and 11 through 14, with the substitute versions.
The motion was seconded.

The motion to Introduce Items one through nine and 12 through 14 carried by the following vote:

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

Nays: None (0)

1. RECEIPT OF APPLICATION(S) FOR THE LUMMI ISLAND FERRY ADVISORY COMMITTEE, APPLICANT: SCOTT ASPMAN (COMMITTEE PROVIDES REVIEW AND RECOMMENDATIONS TO THE COUNTY COUNCIL AND EXECUTIVE ON ISSUES THAT AFFECT THE ONGOING OPERATIONS AND INFRASTRUCTURE OF THE FERRY SERVICE) (APPLICATION DEADLINE FOR ANY OTHER APPLICANTS TO THIS VACANCY IS 10 A.M. NOVEMBER 28, 2017) (AB2017-334)

2. ORDINANCE AMENDING THE 2017 WHATCOM COUNTY BUDGET, FOURTEENTH REQUEST, IN THE AMOUNT OF $165,948 (AB2017-345)

3. ORDINANCE AMENDING THE 2018 WHATCOM COUNTY BUDGET, SECOND REQUEST, IN THE AMOUNT OF $290,000 (AB2017-346)

4. ORDINANCE AMENDING (SECOND AMENDMENT) ORDINANCE 2016-049, WHATCOM COUNTY’S 2017 UNIFIED FEE SCHEDULE (AB2017-347)

5. ORDINANCE ADOPTING A SECURE MEDICINE RETURN REGULATION (AB2017-348)

6. ORDINANCE ESTABLISHING THE LAKE WHATCOM STORMWATER UTILITY DISTRICT (AB2017-251C)

7. ORDINANCE REPEALING WHATCOM COUNTY CODE 3.26, SOLID WASTE DISPOSAL DISTRICT TAX, IN ITS ENTIRETY (AB2017-349)

8. ORDINANCE ESTABLISHING WHATCOM COUNTY CODE 2.126, CLIMATE IMPACT ADVISORY COMMITTEE (AB2017-351)

9. ORDINANCE AMENDING WHATCOM COUNTY CODE 2.02, COUNTY COUNCIL (AB2017-352)

12. RESOLUTION AUTHORIZING THE LEVY OF TAXES FOR THE WHATCOM COUNTY FLOOD CONTROL ZONE DISTRICT FOR 2018 (COUNCIL ACTING AS THE WHATCOM COUNTY FLOOD CONTROL ZONE DISTRICT BOARD OF SUPERVISORS) (AB2017-331)

13. ORDINANCE AMENDING WHATCOM COUNTY CODE CHAPTER 16.16 (CRITICAL AREAS) AND WHATCOM COUNTY CODE CHAPTER 23.10 (SHORELINE MANAGEMENT PROGRAM – PURPOSE AND INTENT) PERTAINING TO THE PROTECTION AND REGULATION OF ENVIRONMENTALLY CRITICAL AREAS (AB2016-276L)
14. ORDINANCE AUTHORIZING THE LEVY OF TAXES FOR COUNTYWIDE EMERGENCY MEDICAL PURPOSES FOR 2018 (AB2017-358)

CONSENT AGENDA

Browne reported for the Finance and Administrative Services Committee and moved to approve Consent Agenda items one through five.

The motion carried by the following vote:

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

1. RESOLUTION APPROVING THE 2018 RECOMMENDED CONVENTION CENTER ALLOCATIONS FOR TOURISM-RELATED FACILITIES AND ACTIVITIES AS DEFINED THROUGH RCW 67.28.18.16 (AB2017-340)

2. REQUEST AUTHORIZATION FOR THE COUNTY EXECUTIVE TO ENTER INTO A CONTRACT BETWEEN WHATCOM COUNTY AND THYSSENKRUPP ELEVATOR CORPORATION FOR ELEVATOR MAINTENANCE, IN THE AMOUNT OF $60,576.20 (AB2017-341)

3. REQUEST AUTHORIZATION FOR THE COUNTY EXECUTIVE TO ENTER INTO A CONTRACT AMENDMENT BETWEEN WHATCOM COUNTY AND SHEARER DESIGN, LLC TO PROVIDE FOR ON-CALL STRUCTURAL ENGINEERING SUPPORT TO THE WHATCOM COUNTY BRIDGE PROGRAM DURING 2018, IN THE AMOUNT OF $45,000 FOR A TOTAL AMENDED CONTRACT AMOUNT OF $85,000 (AB2017-342)

4. REQUEST AUTHORIZATION FOR THE COUNTY EXECUTIVE TO ENTER INTO A CONTRACT AMENDMENT BETWEEN WHATCOM COUNTY AND SARGENT ENGINEERS, INC. TO PROVIDE FOR ON-CALL STRUCTURAL ENGINEERING SUPPORT TO THE WHATCOM COUNTY BRIDGE PROGRAM DURING 2018, IN THE AMOUNT OF $45,000 FOR A TOTAL AMENDED CONTRACT AMOUNT OF $85,000 (AB2017-343)

5. REQUEST AUTHORIZATION FOR THE COUNTY EXECUTIVE TO ENTER INTO A LEASE AGREEMENT BETWEEN WHATCOM COUNTY AND PIONEER HUMAN SERVICES FOR THE BEHAVIORAL HEALTH TRIAGE CENTER AT 2030 DIVISION STREET, IN THE AMOUNT OF $838 PER MONTH, FOR A TWO YEAR TOTAL CONTRACT AMOUNT OF $20,112 (AB2017-344)

OTHER ITEMS

1. RESOLUTION APPROVING RECOMMENDATIONS FOR OPEN SPACE CURRENT USE ASSESSMENT APPLICATIONS (AB2017-336)
DISCLAIMER: This document is a draft and is provided as a courtesy. This document is not to be considered as the final minutes. All information contained herein is subject to change upon further review and approval by the Whatcom County Council.

Donovan reported for the Natural Resources Committee and moved to approve the resolution.

The motion carried by the following vote:
Ayes: Brenner, Mann, Sidhu, Browne, Buchanan, Weimer and Donovan (7)
Nays: None (0)

2. ORDINANCE AMENDING WHATCOM COUNTY CODE 2.118, REACTIVATING THE WHATCOM COUNTY WILDLIFE ADVISORY COMMITTEE (AB2017-318)

Donovan reported for the Natural Resources Committee and moved to adopt the substitute ordinance.

Councilmembers discussed whether the advisory committee is meant to bolster the County against the Hirst decision.

Sidhu moved to amend to include members from agriculture, business, and farmers, 2.118.050(B), “…and tribal representatives. Two of the remaining representatives shall represent the agriculture community or agriculture business. Agriculture or land development representatives are encouraged to apply for at least two of the remaining four positions.”

The motion was seconded.

The motion to amend carried by the following vote:
Ayes: Brenner, Mann, Sidhu, Browne, Buchanan, Weimer and Donovan (7)
Nays: None (0)

The motion to approve the substitute as amended carried by the following vote:
Ayes: Mann, Sidhu, Browne, Buchanan, Weimer and Donovan (6)
Nays: Brenner (1)

3. ORDINANCE AMENDING ORDINANCE 2012-050 (ESTABLISHMENT OF THE BIRCH BAY DRIVE AND PEDESTRIAN FACILITY PROJECT FUND AND ESTABLISHING A PROJECT BASED BUDGET FOR CRP NO. 907001) FOR THE FOURTH TIME TO INCREASE THE PROJECT BASED BUDGET FOR THE BIRCH BAY DRIVE AND PEDESTRIAN FACILITY PROJECT BY $7,850,000, FOR A TOTAL PROJECT BUDGET AMOUNT OF $11,450,000 (AB2017-320)

Browne reported for the Finance and Administrative Services Committee and moved to adopt the ordinance.

The motion carried by the following vote:
Ayes: Brenner, Mann, Sidhu, Browne, Buchanan, Weimer and Donovan (7)
Nays: None (0)

4. RESOLUTION AMENDING THE 2017 FLOOD CONTROL ZONE DISTRICT AND SUBZONES BUDGETS, FOURTH REQUEST, IN THE AMOUNT OF $83,765 (COUNCIL ACTING AS THE WHATCOM COUNTY FLOOD CONTROL ZONE DISTRICT BOARD OF SUPERVISORS) (AB2017-324)
Browne reported for the Finance and Administrative Services Committee and moved to approve the resolution.

The motion carried by the following vote:
Ayes: Brenner, Mann, Sidhu, Browne, Buchanan, Weimer and Donovan (7)
Nays: None (0)

5. ORDINANCE AMENDING THE 2017 WHATCOM COUNTY BUDGET, THIRTEENTH REQUEST, IN THE AMOUNT OF $4,330,977 (AB2017-325)

Browne reported for the Finance and Administrative Services Committee and moved to adopt the substitute ordinance.

The motion carried by the following vote:
Ayes: Brenner, Mann, Sidhu, Browne, Buchanan, Weimer and Donovan (7)
Nays: None (0)

6. ORDINANCE AMENDING THE 2018 WHATCOM COUNTY BUDGET, FIRST REQUEST, IN THE AMOUNT OF $20,456,067 (AB2017-326)

Browne reported for the Finance and Administrative Services Committee and moved to adopt the substitute ordinance.

Buchanan moved to amend to include $100,000 to the general fund for a Council criminal justice and safety committee for public outreach and any planning efforts.

The motion was seconded.

Jack Louws, County Executive, stated the money will be a line item in the County Council budget.

Buchanan restated his motion to amend to include $100,000 to the general fund for a Council criminal justice and safety committee for public outreach and any planning efforts, with the money being a line item in the County Council budget.

Councilmembers and staff discussed how much the committee would need over time, how the committee would interact with other jail-related advisory committees, how the Council would take a leadership role on decisions related to jail issues, the cost of public outreach, and using funds from the jail fund for those efforts.

The motion to amend carried by the following vote:
Ayes: Brenner, Mann, Sidhu, Browne, Buchanan, Weimer and Donovan (7)
Nays: None (0)

Tyler Schroeder, Administrative Services Department, answered questions.

Councilmembers and staff discussed the hiring of a hydrogeologist, budgeting enough to address life safety issues in the jail, and whether there is capacity in the old Skagit County jail.
The motion to adopt the substitute as amended carried by the following vote:

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

Nays: None (0)

7. REQUEST AUTHORIZATION FOR THE COUNTY EXECUTIVE TO ENTER INTO A CONTRACT BETWEEN WHATCOM COUNTY FLOOD CONTROL ZONE DISTRICT AND WATERSHED SCIENCE & ENGINEERING TO PROVIDE FULL EQUATIONS (FEQ) HYDRAULIC MODELING SERVICES AND ASSISTANCE TO RIVER AND FLOOD STAFF IN REVISING AND RUNNING THE HYDRAULIC MODEL DEVELOPED FOR THE LOWER NOOKSACK RIVER TO EVALUATE INTEGRATED FLOOD HAZARD MANAGEMENT ALTERNATIVES, IN THE AMOUNT OF $75,000 (COUNCIL ACTING AS THE WHATCOM COUNTY FLOOD CONTROL ZONE DISTRICT BOARD OF SUPERVISORS) (AB2017-337)

Browne reported for the Finance and Administrative Services Committee and moved to approve the request.

The motion carried by the following vote:

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

Nays: None (0)

Absent: Donovan (out of the room) (1)

8. REQUEST AUTHORIZATION FOR THE COUNTY EXECUTIVE TO ENTER INTO A CONTRACT BETWEEN WHATCOM COUNTY FLOOD CONTROL ZONE DISTRICT AND LANDCE, ETC., LLC TO PROVIDE FULL EQUATIONS (FEQ) HYDRAULIC MODELING SERVICES AND ASSISTANCE TO RIVER AND FLOOD STAFF IN REVISING AND RUNNING THE HYDRAULIC MODEL DEVELOPED FOR THE LOWER NOOKSACK RIVER TO EVALUATE INTEGRATED FLOOD HAZARD MANAGEMENT ALTERNATIVES, IN THE AMOUNT OF $75,000 (COUNCIL ACTING AS THE WHATCOM COUNTY FLOOD CONTROL ZONE DISTRICT BOARD OF SUPERVISORS) (AB2017-338)

Browne reported for the Finance and Administrative Services Committee and moved to approve the request.

The motion carried by the following vote:

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

Nays: None (0)

Absent: Donovan (out of the room) (1)

Browne reported for the Finance and Administrative Services Committee and moved to approve the request.

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

10. RESOLUTION UPDATING THE CAPITAL PROJECT SECTION OF THE LAKE WHATCOM COMPREHENSIVE STORMWATER PLAN (AB2017-322)

Kirk Christensen, Public Works Department, gave a staff report.

Browne moved to approve the resolution.

The motion was seconded.

The motion carried by the following vote:
Ayes: Brenner, Mann, Sidhu, Browne, Buchanan, Weimer and Donovan (7)
Nays: None (0)

COUNCIL APPOINTMENTS TO BOARDS, COMMISSIONS, AND COMMITTEES

1. APPOINTMENT TO THE WHATCOM COUNTY PLANNING COMMISSION, PARTIAL TERM ENDING JANUARY 31, 2021, REPRESENTING DISTRICT 2, APPLICANT: STEPHEN JACKSON (THE PLANNING COMMISSION ASSISTS THE PLANNING AND DEVELOPMENT SERVICES DEPARTMENT IN CARRYING OUT ITS DUTIES, WHICH INCLUDE HELPING TO PREPARE AND EXECUTE THE COMPREHENSIVE PLAN AND MAKING RECOMMENDATIONS FOR ADOPTION OF OFFICIAL CONTROLS AND/OR AMENDMENTS) (AB2017-309)

Browne moved to nominate and appoint Stephen Jackson.

Councilmembers discussed recruiting applicants.

The motion was seconded.

The motion carried by the following vote:
Ayes: Brenner, Mann, Sidhu, Browne, Buchanan, Weimer and Donovan (7)
Nays: None (0)

COMMITTEE REPORTS, OTHER ITEMS, AND COUNCILMEMBER UPDATES

Browne reported for the Finance and Administrative Services Committee.

Donovan reported for the Natural Resources Committee.

Councilmembers gave updates on recent activities and upcoming events.

**ADJOURN**

The meeting adjourned at 10:16 p.m.

The County Council approved these minutes on _______, 2017.

**ATTEST:**

WHATCOM COUNTY COUNCIL
WHATCOM COUNTY, WASHINGTON

______________________________  ___________________________
Dana Brown-Davis, Council Clerk   Barry Buchanan, Council Chair

______________________________
Jill Nixon, Minutes Transcription
Council Chair Barry Buchanan called the meeting to order at 2:20 p.m. in the Council Chambers, 311 Grand Avenue, Bellingham, Washington.

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

Absent: None.

SPECIAL PRESENTATION

1. PRESENTATION OF FINAL PHASE III REPORT OF THE INCARCERATION PREVENTION AND REDUCTION TASK FORCE (AB2017-202A)

Jill Bernstein, Incarceration Prevention and Reduction Task Force (IPRTF) Co-Chair, gave a presentation on the mission of the Task Force; the direct and indirect changes resulting from the work of the Task Force; examples of leadership from Task Force members and officials from the County and cities; new programs at the City, County, and State levels that include book-and-release, drug court housing, and electric home monitoring; and the projects and work of the three Task Force subcommittees as described in the report.

Councilmembers and Bernstein discussed participation from the District Court and Superior Court Judges, focusing on changes that the Council can effect, the level of detail and funding in the Task Force recommendations, funding sources for programs, next steps in prioritizing recommendations, the possibility of creating a sobering center within the triage facility, the dedication of Ms. Bernstein working on the Task Force, and bringing forward recommendations to the County Council.

COMMITTEE DISCUSSION AND RECOMMENDATION TO COUNCIL

1. DISCUSSION REGARDING RESIGNATION OF COUNCILMEMBER TODD DONOVAN FROM HIS CURRENT POSITION ON THE WHATCOM COUNTY COUNCIL (EFFECTIVE JANUARY 8, 2018) AND THE PROCESS/TIMELINE FOR FILLING THE VACANT POSITION (AB2017-389)

Councilmembers discussed the process for filling the Council position that will be vacated by Councilmember Donovan. The applicants can reside anywhere in the county because the position will be at-large. The proposed timeline includes:
A December 20 noon application deadline
Appointment dates would be at a brief evening meeting either January 8 or January 9.

Dana Brown-Davis, Clerk of the Council, explained the proposed timeline and stated the applications will be publicly available the afternoon of the deadline.

Sidhu moved to put out a call for the appointment today, set an application deadline by noon on December 20, and hold a Council meeting on January 9 at 6:00 p.m.

The motion was seconded.

The motion carried by the following vote:
Ayes: Weimer, Buchanan, Brenner, Donovan, Browne, Mann, and Sidhu (7)
Nays: None (0)

3. ORDINANCE ESTABLISHING WHATCOM COUNTY CODE 2.126, CLIMATE IMPACT ADVISORY COMMITTEE (AB2017-351)

Councilmembers discussed whether convening the advisory committee will subject the County to lawsuits and how political are this and other advisory committees.

Brenner moved to withdraw the ordinance from consideration. The motion was not seconded.

Mann moved to recommend approval to the full Council.

The motion was seconded.

The motion carried by the following vote:
Ayes: Weimer, Buchanan, Donovan, Browne, Mann, and Sidhu (6)
Nays: Brenner (1)

Linda Twitchell, Building Industry Association, stated include language in the purpose statement of all advisory committees that indicates the committee is advisory only, and the Council is not legally bound to follow its recommendations.

Ed Ury, ReSources for Sustainable Communities, stated he supports the proposed advisory committee. Reconsider the goal for 100 percent clean energy. Make the goal more specific.

4. ORDINANCE AMENDING WHATCOM COUNTY CODE 2.02, COUNTY COUNCIL (AB2017-352)

Donovan moved to recommend approval to the full Council.

The motion was seconded.

Dana Brown-Davis, Clerk of the Council, answered questions.
Staff and Councilmembers discussed the sources of the suggested changes and clarifications, whether or not some ordinances require public hearing, incorporating Charter amendments into the Code, limiting the number of times someone can attend a meeting by speakerphone or video, listing which ordinances don’t require public hearings, having a public hearing on this ordinance, and whether or not there should be a term limit on the position of Council Chair.

Browne moved to hold the ordinance to early next year.

The motion to hold was seconded.

The motion to hold failed by the following vote:

Ayes: Buchanan and Browne (2)
Nays: Brenner, Weimer, Donovan, Mann, and Sidhu (5)

Sidhu moved to withdraw the changes to 2.02.110(B) regarding a list of required public hearing topics. Have a discussion about those changes later.

The motion was seconded.

Brenner suggested a friendly amendment to also withdraw and consider later changes to 2.02.040(G).

Sidhu accepted the friendly amendment.

Brenner suggested a friendly amendment to change the term limit of the Council Chair position to a maximum of four years.

Sidhu accepted the friendly amendment.

Buchanan stated the second friendly amendment is a different type of motion and must be voted on separately. He restated the motion: withdraw the changes to 2.02.110(B) regarding a list of required public hearing topics and withdraw and consider later changes to 2.02.040(G).

The motion carried by the following vote:

Ayes: Brenner, Mann, Sidhu, Buchanan, and Donovan (5)
Nays: Weimer and Browne (2)

Sidhu moved to amend the term limit of the Council Chair position to a maximum of four consecutive years.

The motion was seconded.

The motion carried by the following vote:

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

Sidhu moved to recommend approval as amended.
COMMITTEE DISCUSSION

1. DISCUSSION WITH CHIEF CIVIL DEPUTY PROSECUTOR DANIEL GIBSON REGARDING SPECIFIC AMENDMENTS THAT WERE INCORPORATED INTO THE WHATCOM COUNTY CHARTER IN 2015 (AB2017-390)

Dan Gibson, Prosecutor’s Office, submitted a handout (on file) and answered questions. He stated he, in consultation with other lawyers, determined there was no conflict between the three proposals that were adopted by the voters. After consultation with other legal staff in the Prosecutor’s Office, he is satisfied that when one looked at all of these together, there is not a conflict.

Councilmembers and Gibson discussed the Washington State standard for resolving conflicting ballot measures; how the Council could propose a ballot measure with a supermajority; determining a conflict through what the language says, not what someone intends to happen; the current options for changing the language that creates a perceived conflict; and how to write a ballot measure that resolves the conflict between the two Charter sections.

2. REVIEW OF PREVIOUSLY APPROVED CONTRACT AMENDMENT BETWEEN WHATCOM COUNTY AND CASCADIA LAW GROUP PLLC (AB2017-301)

Buchanan gave a staff report and read the original scope of work from the contract and of the amendment. He described the reason for the amendment and expanded scope in the amendment due to additional research required and extending the timeline. He suggested they rescind the motion from two weeks ago, and amend the amendment to terminate the agreement on March 31, 2018.

Dana Brown-Davis, Clerk of the Council, submitted a handout (on file) of the contract with the proposed amendment to extend the deadline to March 31, 2018.

Karen Frakes, Prosecutor’s Office, stated that the correct motion is to add to the agreement to extend the deadline.

Donovan moved to recommend that the Council to rescind the previous motion approving the contract.

The motion was seconded.

The motion carried by the following vote:

Ayes: Brenner, Sidhu, Browne, Buchanan, Weimer and Donovan (6)
Nays: None (0)
Absent: Mann (out of the room) (1)
Donovan moved to recommend to the full Council that the contract term be extended to March 2018.

The motion was seconded.

Jack Louws, County Executive, stated adding to the contract for $25,000 for more research is acceptable at this time out of respect for the Council, but not necessarily in general without a change in scope.

Councilmembers discussed how this contract is to help the Council learn what it can and can’t do in terms of maintaining the health and safety of the public.

The motion carried by the following vote:

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

**Nays:** None (0)

**Absent:** Mann and Brenner (out of the room) (2)

Louws asked that the Council include the letter requesting the additional funds to the scope of work.

**OTHER BUSINESS**

There was no other business.

**ADJOURN**

The meeting adjourned at 4:48 p.m.

The Council approved these minutes on ______________, 2018.

**ATTEST:**

WHATCOM COUNTY COUNCIL
WHATCOM COUNTY, WASHINGTON

______________________________  ______________________________
Dana Brown-Davis, Council Clerk   Barry Buchanan, Council Chair

______________________________
Jill Nixon, Minutes Transcription
CALL TO ORDER

Council Chair Barry Buchanan called the meeting to order at 7:00 p.m. in the Council Chambers, 311 Grand Avenue, Bellingham, Washington.

ROLL CALL

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

Absent: None.

FLAG SALUTE

ANNOUNCEMENTS

The Councilmembers and County Executive Jack Louws thanked Councilmembers Weimer and Mann for their service to Whatcom County on the County Council.

PUBLIC HEARINGS

1. ORDINANCE AMENDING (SECOND AMENDMENT) ORDINANCE 2016-049, WHATCOM COUNTY’S 2017 UNIFIED FEE SCHEDULE (AB2017-347)

Buchanan opened the public hearing, and hearing no one, closed the public hearing.

Sidhu moved to adopt the ordinance.

The motion was seconded.

The motion carried by the following vote:
Ayes: Mann, Sidhu, Browne, Buchanan, Weimer and Donovan (6)
Nays: Brenner (1)

2. ORDINANCE ADOPTING A SECURE MEDICINE RETURN REGULATION (AB2017-348)

Buchanan opened the public hearing, and hearing no one, closed the public hearing.

Donovan moved to adopt the ordinance.

The motion was seconded.
Councilmembers thanked the Health Department staff for creating the ordinance.

Erika Neurenberg, Health Department, answered questions about the possibility of a medicine recycling program.

The motion carried by the following vote:
Ayes: Brenner, Mann, Sidhu, Browne, Buchanan, Weimer and Donovan (7)
Nays: None (0)

3. ORDINANCE REPEALING WHATCOM COUNTY CODE 3.26, SOLID WASTE DISPOSAL DISTRICT TAX, IN ITS ENTIRETY (AB2017-349)

Jeff Hegedus, Health Department, gave a staff report.

Buchanan opened the public hearing, and hearing no one, closed the public hearing.

Mann moved to adopt the ordinance.

The motion was seconded.

The motion carried by the following vote:
Ayes: Brenner, Mann, Sidhu, Browne, Buchanan, Weimer and Donovan (7)
Nays: None (0)

4. ORDINANCE AUTHORIZING THE LEVY OF TAXES FOR COUNTYWIDE EMERGENCY MEDICAL PURPOSES FOR 2018 (AB2017-358)

Buchanan opened the public hearing, and hearing no one, closed the public hearing.

Browne moved to adopt the ordinance.

The motion was seconded.

The motion carried by the following vote:
Ayes: Brenner, Mann, Sidhu, Browne, Buchanan, Weimer and Donovan (7)
Nays: None (0)

5. RESOLUTION AUTHORIZING THE LEVY OF TAXES FOR THE WHATCOM COUNTY FLOOD CONTROL ZONE DISTRICT FOR 2018 (COUNCIL ACTING AS THE WHATCOM COUNTY FLOOD CONTROL ZONE DISTRICT BOARD OF SUPERVISORS) (AB2017-331)

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

Patrick Alesse asked if this was a tax or fee.

Hearing no one else, Buchanan closed the public hearing.

Donovan moved to approve the resolution.
The motion was seconded.

The motion carried by the following vote:

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

**Nays:** None (0)


Buchanan opened the public hearing, and hearing no one, closed the public hearing.

**Mann moved** to approve the resolution.

The motion was seconded.

The motion carried by the following vote:

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

**Nays:** None (0)

7. **ORDINANCE ESTABLISHING THE LAKE WHATCOM STORMWATER UTILITY DISTRICT (AB2017-251C)**

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

Dena Jensen stated she supports the proposed district to fund water quality. Continue to improve systems and practices to protect the watershed.

Rick Kiene, Coronado Heights Association, submitted and read from a handout (*on file*) and stated the Association’s Board of Directors believes credit should be given for building and maintaining its existing infrastructure.

Ronald Colson, Sierra Club, stated his organization supports the proposed district. People who live in the watershed should pay for their impacts.

Todd Citron submitted and read from a handout (*on file*) and stated he supports the proposed district. Protect the public source of drinking water from harm.

Bob Aegerter submitted and read from a handout (*on file*) and stated he supports the proposed district. People in the watershed who have an impact are responsible for correcting it or paying for it.

Kris Halterman stated the amount collected will be far more than the cost of improving water quality in Lake Whatcom. Instead, re-aerate the lake using technology used around the world. She is opposed to the proposed district.

Gwen Hunter stated she supports the proposed district to protect clean drinking water, however don’t allow it to encourage more development in the watershed.
Jerry Whitten stated he supports the comments from Rick Kiene. The Council should identify the details of the district, including costs, when creating the district.

Krista Rome, ReSources, stated she supports the proposed district.

Bob Hollingsworth submitted a handout (on file) and stated work more closely with the City and water districts. The County is approving development in the watershed.

E.J. Ledit submitted a handout (on file) and stated there are other solutions, including lake aeration. He does not support the proposed district.

Karlee Deatherage stated she supports the proposed district. Community outreach should be thorough. Create a fair and equitable funding mechanism.

Mike Sennett stated he supports the proposed district to protect drinking water and Lake Whatcom water quality.

John Campbell stated emphasize source control and the homeowner improvement program (HIP). Determine a budget for the service area before creating the district.

David McLain stated set fees based on the impact the property has on the lake.

Judith Akins stated she supports the proposed district. The public needs more education about safe practices in the watershed.

Larry Brown, Sudden Valley Community Association Board Member, stated increased public education, cleanup, and prevention of further deterioration needs more money. He supports the proposed district with fair and equitable assessment. Develop a budget for the funds.

Dave Onkels spoke about oxygen levels in the lake and the proposal to aerate the lake.

Wendy Harris stated she doesn’t support the proposed district, because people not in the district will become complacent about water quality and it will justify more development in the watershed. Holistic solutions are the most cost-effective, such as preventing future development and protecting tree retention.

Jim Henson stated he supports the proposed district. Prevent additional development and recreational use on the lake.

Lisa McShane stated she supports the proposed district to protect Lake Whatcom and clean drinking water.

Dan McShane stated he supports the proposed district because people in the district will become more engaged in protecting the lake.

Natasha (last name not provided) stated don’t impose the tax if they don’t know how to spend it, and review how various practices impact drinking water in the county.
Hearing no one else, Buchanan closed the public hearing.

Gary Stoyka, Public Works Department, gave a staff report and answered questions on what the money would be spent on, the City of Bellingham’s existing stormwater fees, calculating the fee structure based on amount of impervious surface, the estimated amount collected annually, the possibility of a funding structure that credits people with infrastructure and other efforts to protect water quality, whether aeration technology would work for Lake Whatcom, whether the service area would encourage more development in the watershed, defining the service area so they can study how to develop the area, and whether they should pay people to make improvements on their property.

**Weimer moved** to adopt the ordinance.

The motion was seconded.

The motion carried by the following vote:

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

**Nays:** Brenner (1)

8. **ORDINANCE AMENDING WHATCOM COUNTY CODE CHAPTER 16.16 (CRITICAL AREAS) AND WHATCOM COUNTY CODE CHAPTER 23.10 (SHORELINE MANAGEMENT PROGRAM – PURPOSE AND INTENT) PERTAINING TO THE PROTECTION AND REGULATION OF ENVIRONMENTALLY CRITICAL AREAS (AB2016-276L)**

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

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

Dena Jensen stated uphold no net loss to critical areas value and function, consult with Coast Salish nations, and rely on best available science.

Sandy Robson stated don’t approve the ordinance, because the County planner working on the ordinance used to work for Gateway Pacific and SSA Marine, which appear to be a conflict of interest.

Suzanne Snydar stated she is opposed to the requirement that youth farming groups complete a farm plan, the definition of “ongoing agriculture,” and the five-year limit on fallow land.

Leslie Honcoop, Whatcom County Farm Bureau, stated she is opposed to the five-year limit on fallow land and to the critical areas ordinance (CAO).

Melody Kirk stated don’t back off of making amendments based on threats from potential lawsuits.

Troy Lenssen stated he is opposed to farm plans written by non-agricultural people and making them available online to be read by people who aren’t involved in agriculture.
Kris Halterman stated she is opposed to the requirement that youth farming groups complete a farm plan, the definition of “ongoing agriculture” and the five-year limit on fallow land,

Dymond Nicon stated increase the square footage limit from 2,500 square feet to 4,000 square feet.

Seth Woolson, Mt. Baker Bibleway Camp, stated he supports the changes the councilmembers made on the lahar hazard area and in creating reasonable safety measures without unduly restricting his client’s property.

Dannon Traxler, agriculture community representative, stated the critical areas ordinance doesn’t balance environmental protection with agricultural use. She is opposed to the definition of “ongoing agriculture” and the five-year limit on fallow land. Include farm plan exemptions for farms that have no impacts. Don’t publish who has farm plans and where those farms are located.

Karlee Deatherage stated generate baseline information on critical areas and monitor whether regulations are working to meet standards.

Charlie Storrs stated take more time with the science. The critical areas ordinance is the minimum protection for nature, not a balance between nature and other uses.

Donna Kelleher stated continue to work on the CAO and develop specific protection measures that create no net loss of critical functions.

Roger Almskaar, Citizens Alliance for Property Rights, stated there are goals in the Growth Management Act about efficient permit processes and protecting property rights. Regulations are costly and time-consuming. He referenced his letter to the Council (on file) and suggested changes.

Wendy Harris stated she does not support the ordinance because it doesn’t provide a thorough scientific foundation using best available science. Protect against a net loss of function and value using best available science.

Lars Holeen, Ferndale Future Farmers of America (FFA) member, stated a farm plan shouldn’t be necessary for youth groups on very small farms with only one or two animals. Protect agriculture in the community.

Jim Hansen stated best available science wasn’t used, however enact the ordinance as it is rather than start over.

Carol Perry stated there isn’t any solution to being fair to both farmers and environmentalists in this process.

Natalie McClendon stated the ordinance must be based on best available science. No one is happy with this document. However, adopt the ordinance to pass important updates that are included. The best available science should be the same for all the counties in the state.
Patrick Alesse stated the Council should do what it needs to do.

Stan Hudson described the difficulty of building his home because of the farm plan and critical areas requirements. People have to give their private property to the environmentalists for nothing.

Natasha (no last name given) stated delay in adopting the ordinance to make sure the best available science is used to make the updates and to collect baseline data. Make farm plans available to the public.

Kathy McDevitt stated she is confused about what is considered a critical area and what isn’t.

Hearing no one else, Buchanan closed the public hearing.

Browne moved to adopt the ordinance.

The motion was seconded.

The following staff answered questions:
- Cliff Strong, Planning and Development Services Department
- Karen Frakes, Prosecuting Attorney’s Office
- Ryan Ericson, Planning and Development Services Department

Councilmembers and staff discussed the allegation of State law violations when disclosing certain information about individual farm plans, Public Records Act exemptions regarding farm plans, the farm plan requirements for small farms in critical areas, the possibility of gathering baseline data, assigning the Wildlife Advisory Committee, and hiring a consultant in 2018 to create a methodology for establishing baseline data.

Donovan submitted a proposed motion (on file) and moved to amend Page 607, “Section 4: PDS will continue to implement Whatcom County Comp Plan policies 10K-15, 10K-16, 10L-17 and 10L-18 in order to monitor the functions and values of critical areas, and to develop baseline data to use for such monitoring. An update of the implementation of these policies will be presented to Council not later than January 2019.”

Weimer suggested a friendly amendment to add language to the motion to amend, “...10L-18 and goal 10G as well as bring forward a plan to enhance groundwater quality sampling as called for in best available science, in order to monitor....”

Donovan accepted the friendly amendment.

The motion to amend carried by the following vote:

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

Nays: Brenner (1)

Councilmembers continued to discuss findings of fact statements regarding best available science, the potential impact of removing finding 13 of the ordinance, and Department of Ecology commitment to do well sampling.
The motion carried by the following vote:

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

(Clerk’s Note: The Council took a break from 10:29 to 10:43 p.m.)

OPEN SESSION

The following people spoke:

- Max Perry spoke about the Climate Impact Advisory Committee (AB2017-351).
- Wendy Harris spoke about the Wildlife Advisory Committee’s report not being included in the critical areas ordinance.
- Dave Onkels submitted and read from a handout (on file) and spoke about an old task force on energy resources and the proposed Climate Impact Advisory Committee (AB2017-351).
- Kathy McDevitt spoke about regulations regarding commercial signs installed along county roads.
- Evan Schuster, Environment Washington, spoke about the Climate Impact Advisory Committee (AB2017-351).
- Pam Brady, BP Cherry Point Refinery, spoke about the Climate Impact Advisory Committee (AB2017-351).
- Cliff Langley spoke about the Climate Impact Advisory Committee (AB2017-351).
- Patrick Alesse thanked the councilmembers for their work.

CONSENT AGENDA

Browne reported for the Finance and Administrative Services Committee and moved to approve Consent Agenda items one through 17 and 20 through 25.

The motion carried by the following vote:

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

1. REQUEST AUTHORIZATION FOR THE COUNTY EXECUTIVE TO ENTER INTO A CONTRACT BETWEEN WHATCOM COUNTY AND BIRCH BAY CHAMBER OF COMMERCE IN SUPPORT OF OPERATIONS AS RECOMMENDED BY THE LODGING TAX ADVISORY COMMITTEE, IN THE AMOUNT OF $100,000 (AB2017-361)

2. REQUEST AUTHORIZATION FOR THE COUNTY EXECUTIVE TO ENTER INTO A CONTRACT BETWEEN WHATCOM COUNTY AND MOUNT BAKER FOOTHILLS CHAMBER OF COMMERCE IN SUPPORT OF OPERATIONS AS RECOMMENDED BY THE LODGING TAX ADVISORY COMMITTEE, IN THE AMOUNT OF $100,000 (AB2017-362)
3. REQUEST AUTHORIZATION FOR THE COUNTY EXECUTIVE TO ENTER INTO A CONTRACT BETWEEN WHATCOM COUNTY AND BELLINGHAM WHATCOM COUNTY TOURISM IN SUPPORT OF OPERATIONS AS RECOMMENDED BY THE LODGING TAX ADVISORY COMMITTEE, IN THE AMOUNT OF $290,000 (AB2017-363)

4. REQUEST AUTHORIZATION FOR THE COUNTY EXECUTIVE TO ENTER INTO AN INTERLOCAL AGREEMENT BETWEEN WHATCOM COUNTY AND NORTHWEST EDUCATIONAL SERVICE DISTRICT 189 TO SUPPORT THEIR PARTICIPATION IN PLANNING AND IMPLEMENTING REGIONAL YOUTH MARIJUANA PREVENTION STRATEGIES AND ACTIVITIES, IN THE AMOUNT OF $15,000 (AB2017-364)

5. REQUEST AUTHORIZATION FOR THE COUNTY EXECUTIVE TO ENTER INTO AN INTERLOCAL AGREEMENT BETWEEN WHATCOM COUNTY AND SAN JUAN COUNTY TO SUPPORT THEIR PARTICIPATION IN PLANNING AND IMPLEMENTING REGIONAL YOUTH MARIJUANA PREVENTION STRATEGIES AND ACTIVITIES, IN THE AMOUNT OF $15,555 (AB2017-365)

6. REQUEST AUTHORIZATION FOR THE COUNTY EXECUTIVE TO ENTER INTO A CONTRACT BETWEEN WHATCOM COUNTY AND MARVIN WAYNE, M.D., P.S., FOR MEDICAL PROGRAM DIRECTOR SERVICES FOR THE COUNTYWIDE EMS SYSTEM AS DEFINED IN THE WASHINGTON STATE MEDICAL PROGRAM DIRECTOR HANDBOOK, IN THE AMOUNT OF $105,000 (AB2017-366)

7. REQUEST AUTHORIZATION FOR THE COUNTY EXECUTIVE TO ENTER INTO A GRANT AGREEMENT BETWEEN WHATCOM COUNTY AND WASHINGTON STATE OFFICE OF PUBLIC DEFENSE TO RECEIVE FUNDING TO COVER TWO ATTORNEY POSITIONS IN THE WHATCOM COUNTY PUBLIC DEFENDER'S OFFICE, IN THE AMOUNT OF $194,550, AND AUTHORIZE COST SHARING IN THE AMOUNT OF $33,000 (AB2017-367)

8. REQUEST AUTHORIZATION FOR THE COUNTY EXECUTIVE TO ENTER INTO A CONTRACT AMENDMENT BETWEEN WHATCOM COUNTY AND WASHINGTON STATE DEPARTMENT OF TRANSPORTATION TO OBLIGATE FEDERAL FUNDS FOR CONTRACT CONSTRUCTION, CONSULTANT AND AGENCY CONSTRUCTION ENGINEERING SUPPORT, MATERIAL TESTING, AND CONSTRUCTION INSPECTION FOR THE HANNEGAN ROAD/TEN MILE CREEK BRIDGE NO. 236 REPLACEMENT PROJECT, IN THE AMOUNT OF $1,435,045, FOR A TOTAL AMENDED CONTRACT AMOUNT OF $1,565,045 (AB2017-368)

9. REQUEST AUTHORIZATION FOR THE COUNTY EXECUTIVE TO ENTER INTO A CONTRACT AMENDMENT BETWEEN WHATCOM COUNTY AND WASHINGTON STATE DEPARTMENT OF TRANSPORTATION TO OBLIGATE FEDERAL FUNDS FOR CONSTRUCTION OF THE ROBERTS ROAD/ANDERSON CREEK BRIDGE NO. 249 REPLACEMENT PROJECT, IN THE AMOUNT OF $1,777,495, FOR A TOTAL AMENDED CONTRACT AMOUNT OF $1,947,945 (AB2017-369)

10. REQUEST AUTHORIZATION FOR THE COUNTY EXECUTIVE TO ENTER INTO AN INTERLOCAL AGREEMENT BETWEEN WHATCOM COUNTY AND SKAGIT
COUNTY TO PROVIDE FUNDING FOR THE SKAGIT COUNTY HEALTH DEPARTMENT TO SUPPORT THEIR PARTICIPATION IN PLANNING AND IMPLEMENTING REGIONAL YOUTH MARIJUANA PREVENTION STRATEGIES AND ACTIVITIES, IN THE AMOUNT OF $20,550 (AB2017-370)

11. REQUEST AUTHORIZATION FOR THE COUNTY EXECUTIVE TO ENTER INTO AN INTERLOCAL AGREEMENT BETWEEN WHATCOM COUNTY AND SNOHOMISH COUNTY TO PROVIDE FUNDING FOR SNOHOMISH HEALTH DISTRICT TO SUPPORT THEIR PARTICIPATION IN PLANNING AND IMPLEMENTING REGIONAL YOUTH MARIJUANA PREVENTION STRATEGIES AND ACTIVITIES, IN THE AMOUNT OF $52,185 (AB2017-371)

12. REQUEST AUTHORIZATION FOR THE COUNTY EXECUTIVE TO ENTER INTO A CONTRACT AMENDMENT BETWEEN WHATCOM COUNTY AND OPPORTUNITY COUNCIL TO PROVIDE REFERRAL AND CONNECTION TO SERVICES FOR FAMILIES AND PROFESSIONALS SEEKING RESOURCES FOR CHILDREN AND YOUTH AGES 3-21 WITH SUSPECTED DEVELOPMENTAL DISABILITIES AND DELAYS, IN THE AMOUNT OF $77,939, FOR A TOTAL AMENDED CONTRACT AMOUNT OF $144,939 (AB2017-372)

13. REQUEST AUTHORIZATION FOR THE COUNTY EXECUTIVE TO ENTER INTO A CONTRACT BETWEEN WHATCOM COUNTY AND THE CITY OF BELLINGHAM TO PROVIDE FUNDING FOR ONGOING MAINTENANCE AND OPERATIONS OF THE CRISIS TRIAGE FACILITY LOCATED AT 2030 DIVISION STREET, IN THE AMOUNT OF $59,000 (AB2017-373)

14. REQUEST AUTHORIZATION FOR THE COUNTY EXECUTIVE TO ENTER INTO A CONTRACT BETWEEN WHATCOM COUNTY AND CDW GOVERNMENT LLC PURSUANT TO THE STATE OF WASHINGTON MASTER CONTRACT NO. 06016 FOR THE RENEWAL OF THE 3-YEAR MICROSOFT ENTERPRISE AGREEMENT, IN THE AMOUNT OF $168,879.35 PER YEAR (AB2017-374)

15. REQUEST AUTHORIZATION FOR THE COUNTY EXECUTIVE TO ENTER INTO A CONTRACT AMENDMENT BETWEEN WHATCOM COUNTY AND THE WHATCOM FAMILY & COMMUNITY NETWORK TO PROVIDE FUNDING TO DELIVER PREVENTION STRATEGIES THAT WILL REDUCE RISK FACTORS FOR SUBSTANCE ABUSE AND OTHER PROBLEM BEHAVIORS IN THE MT. BAKER SCHOOL DISTRICT GEOGRAPHIC AREA, IN THE AMOUNT OF $129,250, FOR A TOTAL AMENDED CONTRACT AMOUNT OF $163,000 (AB2017-375)

16. REQUEST APPROVAL FOR THE COUNTY EXECUTIVE TO AWARD BID #17-69 AND ENTER INTO A CONTRACT WITH BIDDER DIMENSIONAL COMMUNICATIONS TO COMPLETE THE COUNCIL CHAMBERS AUDIO VIDEO SYSTEM UPGRADES, IN THE AMOUNT OF $54,996.77 (AB2017-376)

17. REQUEST AUTHORIZATION FOR THE COUNTY EXECUTIVE TO ENTER INTO AN INTERLOCAL COOPERATIVE PURCHASING AGREEMENT BETWEEN WHATCOM COUNTY AND KING COUNTY TO UTILIZE KING COUNTY’S COMPETITIVELY BID SUPPLIES, GOODS, SERVICES AND EQUIPMENT PER RCW CHAPTER 39.34, INTERLOCAL COOPERATION ACT (AB2017-377)
18. REQUEST APPROVAL FOR THE COUNTY EXECUTIVE TO AWARD BID #17-71 FOR THE SUPPLY OF TWO MINI EXCAVATORS TO THE LOWEST BIDDER, PAPE’ MACHINERY, IN THE AMOUNT OF $167,307 (AB2017-378)

This item was withdrawn from the agenda.

19. REQUEST APPROVAL FOR THE COUNTY EXECUTIVE TO AUTHORIZE THE PURCHASE OF TWO TILT BED TRAILERS FROM VENDOR PAPE’ MACHINERY, USING WASHINGTON STATE CONTRACT #00816, IN THE AMOUNT OF $71,966.64 (AB2017-379)

This item was withdrawn from the agenda.

20. REQUEST APPROVAL FOR THE COUNTY EXECUTIVE TO AUTHORIZE THE PURCHASE OF 25 REPLACEMENT TASERS AND RELATED ACCESSORIES FROM VENDOR AXON ENTERPRISE, USING WASHINGTON STATE CONTRACT #02315, IN THE AMOUNT OF $40,590.67 (AB2017-380)

21. REQUEST APPROVAL FOR THE COUNTY EXECUTIVE TO AUTHORIZE THE PURCHASE OF FOUR TRUCK-MOUNTED SNOW PLOWS FROM VENDOR NORTHEND TRUCK EQUIPMENT, USING WASHINGTON STATE CONTRACT #12304, IN THE AMOUNT OF $27,928.03 (AB2017-381)

22. REQUEST APPROVAL FOR THE COUNTY EXECUTIVE TO AUTHORIZE THE PURCHASE OF A 2WD CREW CAB PICKUP TRUCK FROM VENDOR COLUMBIA FORD, USING WASHINGTON STATE CONTRACT #05916, IN THE AMOUNT OF $36,457.09 (AB2017-382)

23. REQUEST AUTHORIZATION FOR THE COUNTY EXECUTIVE TO ENTER INTO A CONTRACT BETWEEN WHATCOM COUNTY AND KEPRO FOR EMPLOYEE ASSISTANCE PROGRAM SERVICES FOR WHATCOM COUNTY’S EMPLOYEES AND FAMILIES, IN THE AMOUNT OF $2.45 PER EMPLOYEE PER MONTH FOR YEARS 2018 THROUGH 2020 (AB2017-383)

24. REQUEST AUTHORIZATION FOR THE COUNTY EXECUTIVE TO ACCEPT SUN LIFE STOP LOSS POLICY FOR INSURANCE PROTECTION FOR THE SELF-INSURED MEDICAL PROGRAM FOR 2018 (AB2017-384)

25. REQUEST APPROVAL FOR THE COUNTY EXECUTIVE TO ENTER INTO AN AGREEMENT BETWEEN WHATCOM COUNTY AND THE WHATCOM COUNTY DEPUTY SHERIFF’S GUILD FOR THE PERIOD OF DECEMBER 5, 2017, THROUGH DECEMBER 31, 2019 (AB2017-385)

OTHER ITEMS

1. ORDINANCE AMENDING THE 2017 WHATCOM COUNTY BUDGET, FOURTEENTH REQUEST, IN THE AMOUNT OF $165,948 (AB2017-345)
Browne reported for the Finance and Administrative Services Committee and moved to adopt the ordinance.

The motion carried by the following vote:
Ayes: Brenner, Mann, Sidhu, Browne, Buchanan, Weimer and Donovan (7)
Nays: None (0)

2. ORDINANCE AMENDING THE 2018 WHATCOM COUNTY BUDGET, SECOND REQUEST, IN THE AMOUNT OF $290,000 (AB2017-346)

Browne reported for the Finance and Administrative Services Committee and moved to adopt the ordinance.

The motion carried by the following vote:
Ayes: Brenner, Mann, Sidhu, Browne, Buchanan, Weimer and Donovan (7)
Nays: None (0)

5. REQUEST AUTHORIZATION FOR THE COUNTY EXECUTIVE TO ENTER INTO A CONTRACT AMENDMENT BETWEEN WHATCOM COUNTY FLOOD CONTROL ZONE DISTRICT AND WATERSHED SCIENCE & ENGINEERING TO DEVELOP FINAL DESIGNS, BID-READY PLANS AND SPECIFICATIONS, ASSIST IN BID PREPARATION AND PROVIDE CONSTRUCTION SUPPORT FOR THE PREFERRED OPTION IDENTIFIED IN THE HIGH CREEK MANAGEMENT PLAN, IN THE AMOUNT OF $38,416, FOR A TOTAL AMENDED CONTRACT AMOUNT OF $192,720 (COUNCIL ACTING AS THE WHATCOM COUNTY FLOOD CONTROL ZONE DISTRICT BOARD OF SUPERVISORS) (AB2017-359)

Browne reported for the Finance and Administrative Services Committee and moved to approve the request.

The motion carried by the following vote:
Ayes: Brenner, Mann, Sidhu, Browne, Buchanan, Weimer and Donovan (7)
Nays: None (0)

6. REQUEST AUTHORIZATION FOR THE COUNTY EXECUTIVE TO ENTER INTO AN INTERLOCAL AGREEMENT BETWEEN WHATCOM COUNTY FLOOD CONTROL ZONE DISTRICT AND PUBLIC UTILITY DISTRICT NO. 1 OF WHATCOM COUNTY TO RECEIVE FUNDING FOR SURFACE AND GROUNDWATER MONITORING ACTIVITIES, IN THE AMOUNT OF $100,000 (COUNCIL ACTING AS THE WHATCOM COUNTY FLOOD CONTROL ZONE DISTRICT BOARD OF SUPERVISORS) (AB2017-360)

Browne reported for the Finance and Administrative Services Committee and moved to approve the request.

The motion carried by the following vote:
Ayes: Brenner, Mann, Sidhu, Browne, Buchanan, Weimer and Donovan (7)
Nays: None (0)
7. REQUEST AUTHORIZATION FOR THE COUNTY EXECUTIVE TO ENTER INTO A SEVEN YEAR INTERLOCAL AGREEMENT BETWEEN WHATCOM COUNTY, THE CITY OF BELLINGHAM, AND FIRE PROTECTION DISTRICT #7 FOR ADVANCED LIFE SUPPORT (ALS) SERVICES, IN THE AMOUNT OF $8,010,789 FOR 2017, $8,251,116 FOR 2018, WITH A CONSUMER PRICE INFLATION ADJUSTER INCREASE NOT TO BE LESS THAN 2.5% FOR SUBSEQUENT YEARS (AB2017-386)

Browne reported for the Finance and Administrative Services Committee and moved to approve the request with the substitute page.

The motion carried by the following vote:
Ayes: Brenner, Mann, Sidhu, Browne, Buchanan, Weimer and Donovan (7)
Nays: None (0)

8. DISCUSSION REGARDING RESIGNATION OF COUNCILMEMBER TODD DONOVAN FROM HIS CURRENT POSITION ON THE WHATCOM COUNTY COUNCIL (EFFECTIVE JANUARY 8, 2018) AND POSSIBLE DECISION ON PROCESS AND TIMELINE FOR FILLING THE VACANT POSITION (AB2017-389)

Buchanan reported for the Special Committee of the Whole and moved to put out a call for applications today, set an application deadline of noon on December 20, and hold a Council meeting on January 9 at 6:00 p.m.

The motion carried by the following vote:
Ayes: Brenner, Mann, Sidhu, Browne, Buchanan, Weimer and Donovan (7)
Nays: None (0)

3. ORDINANCE ESTABLISHING WHATCOM COUNTY CODE 2.126, CLIMATE IMPACT ADVISORY COMMITTEE (AB2017-351)

Buchanan reported for the Special Committee of the Whole and moved to adopt the ordinance.

Browne moved to amend 2.126.040, “…energy conservation, energy sector, waste reduction….”

The motion to amend carried by the following vote:
Ayes: Brenner, Mann, Sidhu, Browne, Buchanan, Weimer and Donovan (7)
Nays: None (0)

Sidhu moved to amend 2.126.040, “…experience in one or more subjects including….”

The motion was seconded.

Councilmembers discussed how many skills and qualifications the applicants must have.
Sidhu withdrew the motion to amend.

Councilmembers discussed the public perception of climate change.

The motion carried by the following vote:
Ayes: Mann, Sidhu, Browne, Buchanan, Weimer and Donovan (6)
Nays: Brenner (1)

4. ORDINANCE AMENDING WHATCOM COUNTY CODE 2.02, COUNTY COUNCIL (AB2017-352)

Buchanan reported for the Special Committee of the Whole and moved to adopt the substitute ordinance.

Councilmembers discussed whether changes to Council procedures having a public hearing, the impact on new councilmembers, the flexibility of allowing a good Council chair to continue, and the benefits of councilmembers rotating the position of Council chair.

Sidhu moved to amend the term limit for the Chair to be the current maximum of two years.

The motion was seconded.

The motion to amend carried by the following vote:
Ayes: Mann, Sidhu, Browne, Buchanan, Weimer and Donovan (6)
Nays: Brenner (1)

Browne moved to table ordinance until a public hearing on this ordinance can be scheduled.

The motion was seconded.

Councilmembers discussed compliance with the County Charter and whether the public would have concerns with the changes.

Browne withdrew his motion to table and moved to adopt the ordinance with the substitute Exhibit A as amended.

The motion carried by the following vote:
Ayes: Browne, Mann, Sidhu, Buchanan, and Weimer (5)
Nays: Brenner and Donovan (2)

COMMITTEE REPORTS, OTHER ITEMS, AND COUNCILMEMBER UPDATES

REVIEW OF PREVIOUSLY APPROVED CONTRACT AMENDMENT BETWEEN WHATCOM COUNTY AND CASCADIA LAW GROUP PLLC (AB2017-301)

Buchanan reported for the Special Committee of the Whole and moved to rescind the previous motion approving the contract.
The motion to rescind carried by the following vote:

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

Buchanan moved to approve the substitute amendment.

The motion was seconded.

The motion carried by the following vote:

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

COUNCIL APPOINTMENTS TO BOARDS, COMMISSIONS, AND COMMITTEES

1. APPOINTMENT TO THE LUMMI ISLAND FERRY ADVISORY COMMITTEE, COUNTY RESIDENT NOT LIVING OR OWNING PROPERTY ON LUMMI ISLAND, PARTIAL TERM ENDING JANUARY 31, 2019, APPLICANT: SCOTT ASPMAN (COMMITTEE PROVIDES REVIEW AND RECOMMENDATIONS TO THE COUNTY COUNCIL AND EXECUTIVE ON ISSUES THAT AFFECT THE ONGOING OPERATIONS AND INFRASTRUCTURE OF THE FERRY SERVICE) (AB2017-334)

Brenner moved to appoint Scott Aspman.

The motion was seconded.

The motion carried by the following vote:

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

COMMITTEE REPORTS, OTHER ITEMS, AND COUNCILMEMBER UPDATES

Donovan reported for the Natural Resources Committee.


Buchanan reported for the Special Committee of the Whole.

Councilmembers gave updates on recent activities and upcoming events and on the passing of County building inspector Carl Bertapelle.

Weimer stated his appreciation for his opportunity to serve and spoke about his accomplishments while on the County Council.

Mann stated his appreciation to Councilmembers, Clerk of the Council Dana Brown-Davis, Legislative Coordinator Jill Nixon, and Deputy Executive Tyler Schroeder for their work and expertise.
ADJOURN

The meeting adjourned at 12:05 a.m. on Wednesday, December 6, 2017.
The County Council approved these minutes on ______, 2018.

ATTEST: WHATCOM COUNTY COUNCIL
WHATCOM COUNTY, WASHINGTON

______________________________  ___________________________
Dana Brown-Davis, Council Clerk       Barry Buchanan, Council Chair

______________________________
Jill Nixon, Minutes Transcription
CALL TO ORDER

Council Chair Barry Buchanan called the meeting to order at 1:00 p.m. in the Council Chambers, 311 Grand Avenue, Bellingham, Washington.

ROLL CALL

Present: Barbara Brenner, Ken Mann, Satpal Sidhu, Carl Weimer, Todd Donovan, Rud Browne and Barry Buchanan. Also present was Councilmember-elect Tyler Byrd.

Absent: None.

DISCUSSION AND ACTION

1. DISCUSSION AND FINALIZATION OF PROCESS TO BE FOLLOWED WHEN COUNCIL APPOINTS TO FILL AT-LARGE (B) POSITION VACANCY ON THE COUNTY COUNCIL (AB2017-389) (APPOINTMENT SCHEDULED TO TAKE PLACE AT A SPECIAL MEETING ON JANUARY 9, 2018, AT 6 P.M. IN THE COUNTY COUNCIL CHAMBERS)

Dan Gibson, Prosecutor’s Office, answered questions. There must be nominations from all the applicants. Appointment is required by an affirmative roll call vote of a majority of the Council, at least four votes.

Dana Brown-Davis, Clerk of the Council, answered questions on Council reorganization requirements and the timeline for appointing a new councilmember.

Councilmembers and staff discussed the proposed process for appointment submitted by Councilmember Sidhu in an email (on file), the term of the vacant position, parameters they must follow for an appointment process, defining the final roll call vote and nomination process, whether people who did not submit an application can also be nominated, ranking the nominations, and nominating and voting in separate meetings to allow interviews with the nominees.

Brenner moved for each councilmember to submit the names of three applicants to be nominated on January 9. The appointment would be made at the January 16 regular Council meeting.

The motion was seconded.
Councilmembers and staff discussed how to narrow down the field of applicants and nominees.

(Clerk’s Note: Mann left the meeting at 2:05 p.m.)

**Brenner withdrew her motion.**

**Buchanan moved** to allow each councilmember to submit three choices from the list of applicants to the Clerk of the Council at the meeting on January 9. At that time, the Clerk would read those names into the record, and the top five vote-getters will be in the final pool. After that, any councilmember may nominate any other applicants to the final pool.

The motion was seconded.

The motion carried by the following vote:

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

**Nays:** None (0)

**Absent:** Mann (1)

**Buchanan moved** that the final pool of applicants be allowed to give a 3-minute oral presentation to the Council on January 16.

The motion was seconded.

Councilmembers discussed giving all the applicants an opportunity to speak on January 9 before narrowing the final pool of nominees.

The motion carried by the following vote:

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

**Nays:** Browne (1)

**Absent:** Mann (1)

**OTHER BUSINESS**

There was no other business.

**ADJOURN**

The meeting adjourned at 2:26 p.m.

The County Council approved these minutes on _______, 2018.
CALL TO ORDER

Council Chair Barry Buchanan called the meeting to order at 1:00 p.m. in the Council Chambers, 311 Grand Avenue, Bellingham, Washington.

ROLL CALL

Present: Barbara Brenner, Tyler Byrd, Satpal Sidhu, Todd Donovan, Rud Browne and Barry Buchanan.

Absent: None.

SPECIAL ORDER OF BUSINESS

1. NOMINATION TO FILL AT-LARGE (B) VACANCY ON THE COUNTY COUNCIL (AB2017-389A)

Buchanan described the voting process the Council will use to make nominations.

Councilmembers selected three applicants each to be nominees.

First Nomination Tally Sheet

<table>
<thead>
<tr>
<th>NAME</th>
<th>TOTAL</th>
</tr>
</thead>
<tbody>
<tr>
<td>Carolyn Anderson</td>
<td>-</td>
</tr>
<tr>
<td>Michael Ashby</td>
<td>-</td>
</tr>
<tr>
<td>Timothy Ballew II</td>
<td>Buchanan 5</td>
</tr>
<tr>
<td>Ellen Barnes</td>
<td>-</td>
</tr>
<tr>
<td>Richard Berglund</td>
<td>-</td>
</tr>
<tr>
<td>Rhayma Blake</td>
<td>-</td>
</tr>
<tr>
<td>Eric Bostrom</td>
<td>-</td>
</tr>
<tr>
<td>&quot;Bobby&quot; Burr</td>
<td>-</td>
</tr>
<tr>
<td>Eileen Coughlin</td>
<td>-</td>
</tr>
<tr>
<td>Patricia Dunn</td>
<td>Byrd 2</td>
</tr>
<tr>
<td>George Porter</td>
<td>Edwards III</td>
</tr>
<tr>
<td>Jasmine Fast</td>
<td>-</td>
</tr>
<tr>
<td>Seth Fleetwood</td>
<td>Buchanan 3</td>
</tr>
<tr>
<td>Carol Frazey</td>
<td>-</td>
</tr>
<tr>
<td>Victor Gotelaere</td>
<td>-</td>
</tr>
</tbody>
</table>
Councilmembers voted to break the three-way tie for fifth place:

<table>
<thead>
<tr>
<th>Tie Breaker Vote</th>
</tr>
</thead>
<tbody>
<tr>
<td>NAME</td>
</tr>
<tr>
<td>Kathleen Kershner</td>
</tr>
<tr>
<td>Cliff Langley Brenner Byrd</td>
</tr>
<tr>
<td>Alicia Rule Browne Buchanan Donovan Sidhu</td>
</tr>
</tbody>
</table>

Councilmembers selected additional nominees:
- Brenner nominated Cliff Langley
- Byrd nominated former County Executive and County Councilmember Pete Kremen
- Donovan nominated Carol Frazey

Buchanan moved to nominate the selected eight candidates for a vote next week on the vacant position of the At-Large(B) County Council position.
- Timothy Ballew II
- Natalie McClendon
- Seth Fleetwood
- Patricia Dunn
- Alicia Rule
- Cliff Langley
- Pete Kremen
- Carol Frazey

The motion was seconded.
The motion carried by the following vote:

**Ayes:** Brenner, Byrd, Sidhu, Browne, Buchanan, and Donovan (6)

**Nays:** None (0)

Councilmembers thanked all the applicants who applied for the vacant position and suggested they apply for other vacancies on various boards and commissions.

**OTHER BUSINESS**

There was no other business.

**ADJOURN**

The meeting adjourned at 6:16 p.m.

The County Council approved these minutes on ______, 2018.

**ATTEST:**

WHATCOM COUNTY COUNCIL
WHATCOM COUNTY, WASHINGTON

______________________________  ___________________________
Dana Brown-Davis, Council Clerk   Barry Buchanan, Council Chair

______________________________
Jill Nixon, Minutes Transcription
CALL TO ORDER

Council Member Barry Buchanan called the meeting to order at 6:00 p.m. in the Council Chambers, 311 Grand Avenue, Bellingham, Washington.

ROLL CALL

Present: Barbara Brenner, Tyler Byrd, Satpal Sidhu, Todd Donovan, Rud Browne and Barry Buchanan.
Absent: None.

SPECIAL ORDER OF BUSINESS

1. ANNUAL REORGANIZATION OF THE WHATCOM COUNTY COUNCIL (AB2018-021)

Council Chair

Brenner nominated Brenner.
Sidhu nominated Browne.
Browne was appointed by the following vote:
Browne: Sidhu, Browne, Buchanan, and Donovan (4)
Brenner: Brenner and Byrd (2)

Council Vice-Chair

Brenner moved to nominate and appoint Donovan.
The motion to appoint carried by the following vote:
Ayes: Brenner, Byrd, Sidhu, Browne, Buchanan, and Donovan (6)
Nays: None (0)

Executive Pro-Tempore

Browne moved to nominate and appoint Buchanan.
The motion to appoint carried by the following vote:
Ayes: Brenner, Byrd, Sidhu, Browne, Buchanan, and Donovan (6)
DISCLAIMER: This document is a draft and is provided as a courtesy. This document is not to be considered as the final minutes. All information contained herein is subject to change upon further review and approval by the Whatcom County Council.

1. **Nays:** None (0)

2. **Council Criminal Justice and Public Safety Committee**


4. The motion to appoint carried by the following vote:
   - **Ayes:** Brenner, Byrd, Sidhu, Browne, Buchanan, and Donovan (6)
   - **Nays:** None (0)

5. **Council Finance and Administrative Services Committee**


7. The motion to appoint carried by the following vote:
   - **Ayes:** Brenner, Byrd, Sidhu, Browne, Buchanan, and Donovan (6)
   - **Nays:** None (0)

8. **Council Planning and Development Committee**


10. The motion to appoint carried by the following vote:
    - **Ayes:** Brenner, Byrd, Sidhu, Browne, Buchanan, and Donovan (6)
    - **Nays:** None (0)

11. **Council Public Works and Health Committee**

12. Browne moved to nominate and appoint Brenner and Buchanan.

13. Councilmembers discussed leaving open positions on the committees and advisory committees for the not-yet-appointed new councilmember.

14. The motion to appoint carried by the following vote:
    - **Ayes:** Brenner, Byrd, Sidhu, Browne, Buchanan, and Donovan (6)
    - **Nays:** None (0)

15. **Council Natural Resources Committee**

16. Browne moved to nominate and appoint Donovan and Sidhu.

17. The motion to appoint carried by the following vote:
    - **Ayes:** Brenner, Byrd, Sidhu, Browne, Buchanan, and Donovan (6)
    - **Nays:** None (0)

18. Natural Resources Committee member to serve on the Lake Whatcom Policy Group.


20. The motion to appoint carried by the following vote:
Behavioral Health Advisory Committee

Browne moved to nominate and appoint Brenner.

The motion to appoint carried by the following vote:

Ayes: Brenner, Byrd, Sidhu, Browne, Buchanan, and Donovan (6)
Nays: None (0)

Bellingham International Airport Advisory Committee

Browne moved to nominate and appoint Byrd.

The motion to appoint carried by the following vote:

Ayes: Brenner, Byrd, Sidhu, Browne, Buchanan, and Donovan (6)
Nays: None (0)

Bellingham/Whatcom Chamber of Commerce and Industry

Browne moved to nominate and appoint Sidhu.

The motion to appoint carried by the following vote:

Ayes: Brenner, Byrd, Sidhu, Browne, Buchanan, and Donovan (6)
Nays: None (0)

Birch Bay Shellfish Protection District Advisory Committee

Browne moved to nominate and appoint Donovan.

The motion to appoint carried by the following vote:

Ayes: Brenner, Byrd, Sidhu, Browne, Buchanan, and Donovan (6)
Nays: None (0)

Council of Governments (COG)

Browne moved to nominate and appoint Donovan and Sidhu.

The motion to appoint carried by the following vote:

Ayes: Brenner, Byrd, Sidhu, Browne, Buchanan, and Donovan (6)
Nays: None (0)

Council of Governments (COG) Executive Board and Transportation Policy Board

Browne moved to nominate and appoint Sidhu.

The motion to appoint carried by the following vote:
Ayes: Brenner, Byrd, Sidhu, Browne, Buchanan, and Donovan (6)
Nays: None (0)

Developmental Disabilities Board

There were no nominations to this Board.

Drayton Harbor Shellfish Protection District

Browne moved to nominate and appoint Donovan.

The motion to appoint carried by the following vote:
Ayes: Brenner, Byrd, Sidhu, Browne, Buchanan, and Donovan (6)
Nays: None (0)

EMS Oversight Board Representative

Browne moved to nominate and appoint Buchanan.

The motion to appoint carried by the following vote:
Ayes: Brenner, Byrd, Sidhu, Browne, Buchanan, and Donovan (6)
Nays: None (0)

EMS Oversight Board Alternate Representative

Browne moved to nominate and appoint Byrd.

The motion to appoint carried by the following vote:
Ayes: Brenner, Byrd, Sidhu, Browne, Buchanan, and Donovan (6)
Nays: None (0)

Flood Control Zone Committee (Ex Officio)

Browne moved to nominate and appoint Browne.

The motion to appoint carried by the following vote:
Ayes: Brenner, Byrd, Sidhu, Browne, Buchanan, and Donovan (6)
Nays: None (0)

Incarceration Prevention and Reduction Task Force

Browne moved to nominate and appoint Donovan.

The motion to appoint carried by the following vote:
Ayes: Brenner, Byrd, Sidhu, Browne, Buchanan, and Donovan (6)
Nays: None (0)

Intergovernmental Tribal Relations Committee

Browne moved to nominate and appoint Buchanan.
The motion to appoint carried by the following vote:

Ayes: Brenner, Byrd, Sidhu, Browne, Buchanan, and Donovan (6)
Nays: None (0)

LEOFF Board

Browne moved to nominate and appoint Buchanan.

The motion to appoint carried by the following vote:

Ayes: Brenner, Byrd, Sidhu, Browne, Buchanan, and Donovan (6)
Nays: None (0)

Reserve Officers Board of Trustees

Browne moved to nominate and appoint Brenner and Sidhu.

The motion to appoint carried by the following vote:

Ayes: Brenner, Byrd, Sidhu, Browne, Buchanan, and Donovan (6)
Nays: None (0)

Local Emergency Planning Committee (LEPC)

Browne moved to nominate and appoint Byrd.

The motion to appoint carried by the following vote:

Ayes: Brenner, Byrd, Sidhu, Browne, Buchanan, and Donovan (6)
Nays: None (0)

Lummi Island Ferry Advisory Committee

Browne moved to nominate and appoint Donovan.

The motion to appoint carried by the following vote:

Ayes: Brenner, Byrd, Sidhu, Browne, Buchanan, and Donovan (6)
Nays: None (0)

Lummi Island Ferry Advisory Committee Alternates

There were no nominations to this Board.

Marine Resources Committee

Browne moved to nominate and appoint Donovan.

The motion to appoint carried by the following vote:

Ayes: Brenner, Byrd, Sidhu, Browne, Buchanan, and Donovan (6)
Nays: None (0)

North Sound Behavioral Health Exec. Committee
Browne moved to nominate and appoint Browne.

The motion to appoint carried by the following vote:

Ayes:  Brenner, Byrd, Sidhu, Browne, Buchanan, and Donovan (6)
Nays:   None (0)

Northwest Clean Air Agency

Browne moved to nominate and appoint Sidhu.

The motion to appoint carried by the following vote:

Ayes:  Brenner, Byrd, Sidhu, Browne, Buchanan, and Donovan (6)
Nays:   None (0)

Northwest Regional Council (NWRC)

Browne moved to nominate and appoint Byrd.

The motion to appoint carried by the following vote:

Ayes:  Brenner, Byrd, Sidhu, Browne, Buchanan, and Donovan (6)
Nays:   None (0)

Opportunity Council

Browne moved to nominate and appoint Buchanan.

The motion to appoint carried by the following vote:

Ayes:  Brenner, Byrd, Sidhu, Browne, Buchanan, and Donovan (6)
Nays:   None (0)

Portage Bay Shellfish Protection District

Browne moved to nominate and appoint Donovan.

The motion to appoint carried by the following vote:

Ayes:  Brenner, Byrd, Sidhu, Browne, Buchanan, and Donovan (6)
Nays:   None (0)

Public Defense Advisory

Browne moved to nominate and appoint Brenner.

The motion to appoint carried by the following vote:

Ayes:  Brenner, Byrd, Sidhu, Browne, Buchanan, and Donovan (6)
Nays:   None (0)

Public Health Advisory Board

Browne moved to nominate and appoint Buchanan.
The motion to appoint carried by the following vote:

**Ayes:** Brenner, Byrd, Sidhu, Browne, Buchanan, and Donovan (6)

**Nays:** None (0)

**Solid Waste Advisory**

Browne *moved* to nominate and appoint Brenner.

The motion to appoint carried by the following vote:

**Ayes:** Brenner, Byrd, Sidhu, Browne, Buchanan, and Donovan (6)

**Nays:** None (0)

**WSAC Alternate Board Member**

Browne *moved* to nominate and appoint Browne.

Byrd stated he is also very interested in the position, but would like the opportunity to serve next year.

The motion to appoint carried by the following vote:

**Ayes:** Byrd, Sidhu, Browne, Buchanan, and Donovan (5)

**Nays:** Brenner (1)

**WSAC Legislative Steering Committee**

Browne *moved* to nominate and appoint Browne.

The motion to appoint carried by the following vote:

**Ayes:** Brenner, Byrd, Sidhu, Browne, Buchanan, and Donovan (6)

**Nays:** None (0)

**Whatcom Transportation Authority**

Browne *moved* to nominate and appoint Sidhu.

The motion to appoint carried by the following vote:

**Ayes:** Brenner, Byrd, Sidhu, Browne, Buchanan, and Donovan (6)

**Nays:** None (0)

**OTHER BUSINESS**

Council members discussed the purpose, need for, and potential meeting time for the new Council Committee and whether they need to change the Surface Water Work Sessions to the same week as Council.

The following staff answered questions:

- Jack Louws, County Executive
- Tyler Schroeder, Executive’s Office
Brenner moved that in general, the Public Works and Health Committee would meet the first meeting of the month and the Criminal Justice and Public Safety Committee would meet the second meeting of the month, although there would be flexibility if it’s necessary to change.

The motion was seconded.

The motion carried by the following vote:

Ayes: Brenner, Byrd, Sidhu, Browne, Buchanan, and Donovan (6)
Nays: None (0)

ADJOURN

The meeting adjourned at 6:36 p.m.

The Council approved these minutes on ______________, 2018.

ATTEST: WHATCOM COUNTY COUNCIL
WHATCOM COUNTY, WASHINGTON

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

______________________________
Jill Nixon, Minutes Transcription
CALL TO ORDER

Councilmember Barry Buchanan called the meeting to order at 7:00 p.m. in the Council Chambers, 311 Grand Avenue, Bellingham, Washington.

ROLL CALL

Present: Barbara Brenner, Tyler Byrd, Satpal Sidhu, Todd Donovan, Rud Browne and Barry Buchanan.

Absent: None.

The motion carried by the following vote:

Ayes: Brenner, Byrd, Sidhu, Browne, Buchanan, and Donovan (6)

Nays: None (0)

FLAG SALUTE

ANNOUNCEMENTS

Buchanan announced that the Council elected Councilmember Browne as Council Chair for 2018.

(Clerk’s Note: Browne assumed his role as Chair for the remainder of the meeting.)

SPECIAL ORDER OF BUSINESS

1. STATEMENTS BY APPLICANTS NOMINATED TO FILL VACANT AT-LARGE (B) POSITION ON THE COUNTY COUNCIL (AB2017-389A)

Timothy Ballew II spoke and answered questions on whether he intends to become a candidate for the position at the end of the year, his priority in the event of potential conflicts of interest between the County Council and the Lummi Nation, and the time demands of councilmembers who are also business owners.

Patricia Dunn spoke and answered questions on handling potential conflicts of interest that may arise, her familiarity with the County budget, whether she intends to become a candidate for the position at the end of the year, and why she would be more qualified than past councilmembers.
Seth Fleetwood spoke.

Carol Frazey spoke.

Cliff Langley spoke and answered questions about potential conflicts of interest that may arise.

Natalie McClendon spoke and answered questions on whether she intends to become a candidate for councilmember in the future and about her experience on the Planning Commission.

Alicia Rule spoke and answered questions on whether she will need to resign her position on the Blaine City Council.

2. APPOINTMENT TO FILL VACANT AT-LARGE (B) POSITION ON THE COUNTY COUNCIL (AB2017-389A)

Sidhu moved that each councilmember would nominate one or two people. The two people receiving the most nominations would advance to the roll call vote.

The motion was seconded.

The motion carried by the following vote:

Ayes:  Byrd, Sidhu, Browne, Buchanan, and Donovan (5)
Nays:  None (0)
Abstains:  Brenner (1)

Councilmembers discussed the qualifications of the applicants and potential conflicts of interest, and voted to nominate two people:

<table>
<thead>
<tr>
<th>Nomination Tally Sheet</th>
</tr>
</thead>
<tbody>
<tr>
<td>NAME</td>
</tr>
<tr>
<td>Timothy Ballew II</td>
</tr>
<tr>
<td>Patricia Dunn</td>
</tr>
<tr>
<td>Seth Fleetwood</td>
</tr>
<tr>
<td>Carol Frazey</td>
</tr>
<tr>
<td>Cliff Langley</td>
</tr>
<tr>
<td>Natalie McClendon</td>
</tr>
<tr>
<td>Alicia Rule</td>
</tr>
</tbody>
</table>

Sidhu moved to appoint Tim Ballew II to the vacant County Council position as At-Large(B) representative.
The motion was seconded.

The motion carried by the following vote:

Ayes: Brenner, Sidhu, Browne, Buchanan, and Donovan (5)

Nays: Byrd (1)

Browne thanked everyone who applied.

OPEN SESSION

The following people spoke:

- Jim Peterson, Homes Now Not Later President, spoke about housing the homeless in Whatcom County.
- Doug (no last name given), Homes Now Not Later Co-Founder, spoke about housing the homeless in Whatcom County.
- Paula Smith spoke about housing the homeless in Whatcom County.
- John Jollie spoke about housing the homeless in Whatcom County.
- Simon Grant spoke about the need for homeless services in Whatcom County.
- Hillary Cole spoke about the need for homeless services in Whatcom County.
- Joseph Dow spoke about Christianity.
- David Morris spoke about the need for homeless services in Whatcom County.
- Josh Bowman spoke about the need for homeless services in Whatcom County.
- Amy Glasser spoke about the need for homeless services in Bellingham and Whatcom County and answered councilmember questions about moveable service buildings, building codes for homeless units, and finding property for a homeless camp.
- Irene Morgan spoke about the different criteria used in the homeless point-in-time count.
- Joy Gilfilen, Restorative Community Coalition President, submitted a handout (on file) and spoke about incarceration issues and causes of homelessness from abuse and trauma.
- Candace Wilson spoke about the selection of Tim Ballew II to the vacant councilmember position.
- Mark Pearson spoke about including the homeless in developing solutions to homeless issues.

Byrd thanked the speakers for their advocacy on the homelessness topic. He moved to invite Mr. Ballew to participate in discussion of the issues with the councilmembers for the remainder of the meeting.

The motion was seconded.

The motion carried by the following vote:

Ayes: Brenner, Byrd, Sidhu, Browne, Buchanan, and Donovan (6)

Nays: None (0)
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OTHER ITEMS

1. REQUEST AUTHORIZATION FOR THE COUNTY EXECUTIVE TO ENTER INTO A CONTRACT AMENDMENT BETWEEN WHATCOM COUNTY AND PACIFIC NORTHWEST GUARDIAN AD LITEM, LLC FOR THE PROVISION OF GUARDIAN AD LITEM SERVICES FOR YOUTH SUBJECT TO DEPENDENCIES IN WHATCOM COUNTY SUPERIOR COURT, IN THE AMOUNT OF $95.23 PER CASE, NOT TO EXCEED $80,000 (AB2018-031)

Buchanan moved to approve the request.

The motion was seconded.

Dave Reynolds, Superior Court Administrator, answered questions about transitioning to the Court-Appointed Special Advocate (CASA) program.

The motion carried by the following vote:
Ayes: Brenner, Byrd, Sidhu, Browne, Buchanan, and Donovan (6)
Nays: None (0)

2. REQUEST AUTHORIZATION FOR THE COUNTY EXECUTIVE TO ENTER INTO A CONTRACT AMENDMENT BETWEEN WHATCOM COUNTY AND WASHINGTON STATE UNIVERSITY TO CONTINUE THE SHARED AGENT COSTS FOR THE WSU WHATCOM COUNTY EXTENSION FOR 2018, IN THE AMOUNT OF $196,540, FOR A TOTAL AMENDED AMOUNT OF $1,783,325.90 (AB2018-032)

Brenner moved to approve the request.

The motion was seconded.

Brenner asked for a future presentation from the Whatcom County Extension Office.

The motion carried by the following vote:
Ayes: Brenner, Byrd, Sidhu, Browne, Buchanan, and Donovan (6)
Nays: None (0)

3. REQUEST AUTHORIZATION FOR THE COUNTY EXECUTIVE TO ENTER INTO A CONTRACT AMENDMENT BETWEEN WHATCOM COUNTY AND THE OPPORTUNITY COUNCIL TO FUND ONE FULL-TIME PROFESSIONAL ON THE OPPORTUNITY COUNCIL’S HOMELESS OUTREACH TEAM, ADDING OPIATE/SUBSTANCE USE DISORDER (O/SUD) SERVICES TO CONTACT AND ACT AS CARE COORDINATOR FOR INDIVIDUALS WHO ARE READY TO ENGAGE IN TREATMENT AND PROVIDE SUPPORT SERVICES TO PEOPLE WITH OPIATE AND SUBSTANCE USE DISORDERS WHO REQUIRE A LENGTHIER ENGAGEMENT PROCESS, IN THE AMOUNT OF $112,227, FOR A TOTAL AMENDED CONTRACT AMOUNT OF $163,227 (AB2018-033)

Brenner moved to approve the request.

The motion was seconded.
Perry Mowery, Health Department, answered questions on the newly-hired individual.

The motion carried by the following vote:

**Ayes:** Brenner, Byrd, Sidhu, Browne, Buchanan, and Donovan (6)

**Nays:** None (0)

4. **REQUEST AUTHORIZATION FOR THE COUNTY EXECUTIVE TO ENTER INTO A CONTRACT BETWEEN WHATCOM COUNTY AND COMPASS HEALTH TO FUND A COMMUNITY OUTREACH AND RECOVERY SUPPORT (CORS) TEAM TO PROVIDE SUPPORT TO INDIVIDUALS WHO EXPERIENCE MENTAL ILLNESS THAT DRAMATICALLY LIMITS THEIR ABILITY TO ACQUIRE AND/OR RETAIN STABLE HOUSING AND ACCESS BASIC RESOURCES FOR DAILY LIVING, IN THE AMOUNT OF $41,585 (AB2018-034)**

*Brenner moved* to approve the request.

The motion was seconded.

The motion carried by the following vote:

**Ayes:** Brenner, Byrd, Sidhu, Browne, Buchanan, and Donovan (6)

**Nays:** None (0)

5. **REQUEST AUTHORIZATION FOR THE COUNTY EXECUTIVE TO ENTER INTO AN INTERLOCAL AGREEMENT BETWEEN WHATCOM COUNTY AND ISLAND COUNTY TO PROVIDE FUNDING FOR THE ISLAND COUNTY HEALTH DEPARTMENT TO SUPPORT THEIR PARTICIPATION IN PLANNING AND IMPLEMENTING REGIONAL YOUTH MARIJUANA PREVENTION STRATEGIES AND ACTIVITIES, IN THE AMOUNT OF $18,330 (AB2018-035)**

*Sidhu moved* to approve the request.

The motion was seconded.

Perry Mowery, Health Department, answered questions about funding sources and Whatcom County acting as lead county in the region.

The motion carried by the following vote:

**Ayes:** Brenner, Byrd, Sidhu, Browne, Buchanan, and Donovan (6)

**Nays:** None (0)

6. **APPROVAL OF SPECIAL STANDING COUNCIL MEETING DATES FOR 2018 (AB2018-027)**

*Buchanan moved* to approve the schedule.

The motion was seconded.

The motion carried by the following vote:
Ayes: Brenner, Byrd, Sidhu, Browne, Buchanan, and Donovan (6)
Nays: None (0)

COUNCIL APPOINTMENTS TO BOARDS, COMMISSIONS, AND COMMITTEES

1. ANNUAL APPOINTMENTS TO COUNCIL-APPOINTED POSITIONS ON CITIZEN BOARDS, COMMISSIONS, AND COMMITTEES (AB2018-029)

Councilmembers discussed the possibility of holding the appointments to the next meeting on January 30, 2018.

Sidhu moved to hold all appointments in Council to the next meeting on January 30 and allow more people to apply.

The motion was seconded.

Browne suggested a friendly amendment to extend the application deadline to 10:00 a.m. on January 23, 2018.

Sidhu accepted the friendly amendment.

The motion carried by the following vote:
Ayes: Brenner, Byrd, Sidhu, Browne, Buchanan, and Donovan (6)
Nays: None (0)

EXECUTIVE APPOINTMENTS

1. COUNTY EXECUTIVE JACK LOUWS REAPPOINTS SUSAN GRIBBIN FOR A SECOND TERM TO THE WHATCOM COUNTY HOUSING AUTHORITY BOARD OF COMMISSIONERS, CONCURRENT WITH THE CITY OF BELLINGHAM MAYOR’S REAPPOINTMENT OF MS. GRIBBIN TO THE BELLINGHAM HOUSING AUTHORITY BOARD OF COMMISSIONERS (AB2018-036)

Tyler Schroeder, Executive’s Office, stated this is for information only. Council confirmation is not necessary.

Brenner moved to confirm the reappointment.

The motion was seconded.

The motion carried by the following vote:
Ayes: Brenner, Byrd, Sidhu, Browne, Buchanan, and Donovan (6)
Nays: None (0)

COUNCIL APPOINTMENTS TO BOARDS, COMMISSIONS, AND COMMITTEES

2. ANNUAL APPOINTMENTS TO FLOOD CONTROL ZONE DISTRICT ADVISORY COMMITTEE, AND FLOOD CONTROL SUB-ZONES ADVISORY COMMITTEE
Sidhu moved to hold all appointments in Council to the next meeting on January 30 and to extend the application deadline to 10:00 a.m. on January 23, 2018.

The motion was seconded.

The motion carried by the following vote:
Ayes: Brenner, Byrd, Sidhu, Browne, Buchanan, and Donovan (6)
Nays: None (0)

INTRODUCTION ITEMS

Brenner moved to accept Introduction Items one through six, including the substitute for item six.

The motion was seconded.

The motion carried by the following vote:
Ayes: Brenner, Byrd, Sidhu, Browne, Buchanan, and Donovan (6)
Nays: None (0)

1. RECEIPT OF AN APPEAL OF THE HEARING EXAMINER’S DECISION ON FILE NO. CUP2015-0003, FILED BY JERRY PATE, REGARDING A PROPOSED NEW WIRELESS COMMUNICATIONS FACILITY WHICH INCLUDES A 150 FOOT TALL STEEL MONOPOLE, WITH AN INITIAL ANTENNA ARRAY CONSISTING OF TWELVE PANEL ANTENNAS AND ONE SIX FOOT WIDE MICROWAVE DISH ANTENNA (AB2017-355)

2. RECEIPT OF COMPLETED APPLICATIONS FOR NEWLY ESTABLISHED CLIMATE IMPACT ADVISORY COMMITTEE (COUNCIL SCHEDULED TO APPOINT COMMITTEE MEMBERS ON JANUARY 30, 2018) (AB2018-028)

3. ORDINANCE AMENDING THE 2018 WHATCOM COUNTY BUDGET, THIRD REQUEST, IN THE AMOUNT OF $1,888,113 (AB2018-037)

4. ORDINANCE APPROVING THE FIRST AMENDMENT TO PROJECT BUDGET NO. 2 (JAIL IMPROVEMENT FUND) OF THE 2011 BUDGET (AS ESTABLISHED THROUGH ORDINANCE 2011-031) TO ADD $350,000 OF EXPENDITURE AUTHORITY, FOR A TOTAL AMENDED PROJECT BUDGET AMOUNT OF $3,467,700 (AB2018-038)

5. ORDINANCE INCREASING TREASURER PETTY CASH FUND (AB2018-039)

6. RESOLUTION CLARIFYING 2018 PROPERTY TAX LEVY ORDINANCES (AB2018-040)
COMMITTEE REPORTS, OTHER ITEMS, AND COUNCILMEMBER UPDATES

Buchanan and Browne reported for the Special Committee of the Whole on the annual Council reorganization, committee assignments, and the new alternating schedule for the Public Works and Health Committee and the new Criminal Justice and Public Safety Committee.

Buchanan gave an update on the Homeless Strategies Workgroup.

Councilmembers discussed homeless housing site selection, development, and use and scheduling a discussion with the Planning staff on barriers in the County code regarding homeless housing.

Councilmembers gave updates on recent activities and upcoming events.

Tyler Schroeder, Administrative Services Department, answered questions about a citizen who is having flooding problems.

ADJOURN

The meeting adjourned at 9:20 p.m.

The County Council approved these minutes on ______, 2018.

ATTEST: WHATCOM COUNTY COUNCIL
WHATCOM COUNTY, WASHINGTON

______________________________  ___________________________
Dana Brown-Davis, Council Clerk   Rud Browne, Council Chair

______________________________
Jill Nixon, Minutes Transcription
CALL TO ORDER

Council Chair Rud Browne called the meeting to order at 10:30 a.m. in the Civic Center Garden Level Conference Room, 322 Commercial Avenue, Bellingham, Washington.

ROLL CALL


Absent: Barry Buchanan

SURFACE WATER WORK SESSION (AB2018-024)

2. BIRCH BAY SHELLFISH BED UPGRADE

Erika Douglas, Public Works Department, reported on the pollution identification and correction (PIC) program and the State Department of Health review of shellfish beds in Birch Bay. The State upgraded 129 acres of shellfish beds. At the north end of Lummi Bay, the area will soon be identified as threatened near the mouth of Jordan Creek. They are beginning pollution identification and correction work in the Jordan Creek watershed.

1. WATER PLANNING UPDATE

Gary Stoyka, Public Works Department, submitted and read through a handout of the 2016 Interlocal Agreement flow chart (on file, item 1). He answered questions on the role of the Ag Water Board and the watershed improvement districts (WIDs) and the State law regarding the Planning Unit.

Linda Twitchell, Building Industry Association, spoke about the new State legislation Engrossed Senate Substitute Bill (ESSB) 6091.

Stoyka submitted a handout on the flow chart of water-related efforts in Whatcom County (on file, item 2) and stated ESSB 6091 changes the flowchart only slightly. He submitted a handout of the County Executive’s summary of the Passage of Hirst Legislation - Whatcom County Highlights (on file, item 3) and stated the administration is implementing the new legislation.

Jack Louws, County Executive, reported on the State legislature’s adoption of ESSB 6091 and described the emergency interim ordinance that will be presented for Council consideration at its meeting on January 30 to replace past ordinances and will allow the County to begin accepting exempt well applications the following day. It will also allow the Planning Commission to begin working on Code amendments to comply with the legislation. He answered councilmembers’ questions.
The following staff also answered questions:

- Tyler Schroeder, Executive’s Office
- Karen Frakes, Prosecutor’s Office

Staff and councilmembers discussed getting into compliance with the Growth Management Hearings Board, restarting the application process, whether people whose applications were put on hold will receive priority attention from staff, the two options for restarting the application process, and what happens if the County doesn’t have a watershed plan done by February 2019.

Louws described the requirements to update the local watershed plan by February 2019 and described the administration’s commitment to put together the mitigation strategy.

Staff and councilmembers continued to discuss whether the County can set more restrictive regulations than the State legislation requires, being in compliance with State law, getting Council consensus sooner rather than later, using this opportunity to solve other problems in addition to the exempt well requirements, whether the County could require water metering, and whether or not the Council should have an executive session with legal counsel to discuss items of potential litigation.

The Council concurred that Ms. Frakes would prepare a confidential memo summarizing the issues to Council in lieu of an executive session at this time.

Stoyka submitted a handout on ESSB 6091 - Update Watershed Plan through RCW 90.82 (on file, item 4) and answered questions on whether State funding can be used to acquire water rights. The goal is consensus of the Planning Unit on the watershed plan. If the Planning Unit does not achieve consensus, the legislation requires unanimous approval from the governmental units and a majority approval of the non-governmental caucuses. Once approved, it will go to the initiating governments for approval, then to County Council for approval, then to the State Department of Ecology for approval. They will include a representative from the Department of Ecology and both tribes early in the process.

Staff and councilmembers discussed conflicts of interest among the initiating governments and convening technical work groups.

Stoyka submitted a handout of a memorandum to the County Council from Public Works Director Jon Hutchings dated August 23, 2017 regarding the recommendations to the County to Improve Water Resources Management (on file, item 5) and stated there is much work that has already been done.

Larry Helm, Planning Unit Water Association Caucus, spoke about the history of the water resources inventory area (WRIA) structure and making sure the stakeholders remain included in the process.

Staff and councilmembers discussed the Planning Unit membership, meeting schedule, and resources and hiring a hydrogeologist to support the process.

3. PLANNING UNIT PRESENTATION
Linda Twitchell, Planning Unit Member, spoke about the requirements of the Open Public Meetings Act and avoiding executive session discussions whenever possible.

Karen Frakes, Prosecutor’s Office, answered questions on the purpose of executive session so she can advise her client as to the risk they’re facing if someone files a lawsuit.

Ellen Barton stated she would like the Council to announce the purpose of the executive session.

Karen Brown, Planning Unit member, submitted a handout identifying her proxy for the Planning Unit, Paul Isaacson (on file, item 6).

Paul Isaacson introduced himself and described his background.

Tyler Schroeder, Executive’s Office, stated the staff will update the Planning Unit on the next steps at its meeting tomorrow.

4. **PRE-PROPOSAL FOR FLOODPLAINS BY DESIGN**

Paula Harris, Public Works Department, described the State’s Floodways by Design program history and background. She submitted and read from a presentation on the program (on file, item 7), answered questions on why State legislators didn’t support the Nooksack project, and described the ideas for each 2019-2021 proposal projects. She answered questions on protecting the integrity of the Puget Sound battery backup project, reducing the water pressure on the levees, and the possibility of diverting and storing water as an alternative to building levees.

Gary Stoyka, Public Works Department, described the need to use State funds for funding levee projects.

Dick Whitmore, Planning Unit Member, spoke about coordinating the flood projects with the watershed plan.

Staff and councilmembers discussed natural sedimentation drop and river dredging.

**ADJOURN**

The meeting adjourned at 12:33 p.m.

The Council approved these minutes on __________________, 2018.

**ATTEST:**

WHATCOM COUNTY COUNCIL
WHATCOM COUNTY, WASHINGTON

Dana Brown-Davis, Council Clerk
Rud Browne, Council Chair
**TITLE OF DOCUMENT:**
Report from Rod Brown, Cascadia Law, Reducing Impacts from Fossil Fuel Project

**ATTACHMENTS:**

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

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

In 2017 the County Council retained Cascadia Law Group to "...assist with reviewing options for ordinances to protect the local community from the impacts of proposed fossil fuel transshipment facilities in Whatcom County." Rod Brown, Cascadia Law, will present report findings to Council.

**COMMITTEE ACTION:**

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<th>COUNCIL ACTION:</th>
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<tr>
<th>Related County Contract #:</th>
<th>Related File Numbers:</th>
<th>Ordinance or Resolution Number:</th>
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</table>

**Please Note:** Once adopted and signed, ordinances and resolutions are available for viewing and printing on the County’s website at: [www.co.whatcom.wa.us/council](http://www.co.whatcom.wa.us/council).
Reducing Impacts from Fossil Fuel Projects
Report to the Whatcom County Council
February 12, 2018
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1 Introduction

The Whatcom County Council, with the concurrence of the Prosecuting Attorney, retained Cascadia Law Group to assist with reviewing options for ordinances to protect the local community from the impacts of proposed fossil fuel transshipment facilities in Whatcom County.

This project is intended to implement the following provision in the Whatcom County Comprehensive Plan:

The County shall undertake a study to be completed if possible by December of 2017 to examine existing County laws, including those related to public health, safety, development, building, zoning, permitting, electrical, nuisance, and fire codes, and develop recommendations for legal ways the County may choose to limit the negative impacts on public safety, transportation, the economy, and environment from crude oil, coal, liquefied petroleum gases, and natural gas exports from the Cherry Point UGA above levels in existence as of March 1, 2017.

To provide clear guidance to current and future county councils on the County’s legal rights, responsibilities and limitations regarding interpretation and application of project evaluation under Section 20.88.130 (Major Projects Permits) of the Whatcom County Code.

The County should consider any legal advice freely submitted to the County by legal experts on behalf of a variety of stakeholder interests and make that advice publicly available.

1. Based on the above study, develop proposed Comprehensive Plan amendments and associated code and rule amendments for Council consideration as soon as possible.

2. Until the above-mentioned amendments are implemented, the Prosecuting Attorney and/or the County Administration should provide the County Council written notice of all known pre-application correspondence or permit application submittals and notices, federal, state, or local, that involve activity with the potential to expand the export of fossil fuels from Cherry Point.
On September 26 and October 17, 2017, we gave preliminary oral reports to the Council focused on two topics:

- A summary of legal issues, constitutional and otherwise, the Council must bear in mind in considering such an ordinance, in light of efforts by, and litigation in, other jurisdictions around the country.

- A review of the legal issues surrounding the already-enacted moratorium ordinance 2017-011 and previous versions of that moratorium.¹

In this written report, we provide the following research and analysis:

- We describe in more detail legal issues Whatcom County may face in undertaking any regulation to reduce impacts of fossil fuel facilities. We have conducted a review of similar efforts by other jurisdictions, some of which have resulted in litigation. We outline two of the most significant of those in the section below entitled "Lessons from Review of Activity and Litigation in Other Jurisdictions," and Appendix 1 of this report includes a more complete listing of our survey results.

- We include as Appendix 2 selected articles reporting on some of the recent activities in several jurisdictions involved in similar fossil fuel export reviews.

- We summarize options for the Council giving the pros and cons of each.

- We make recommendations regarding some of those options.

2 Legal Issues

The legal issues generally fall into two categories: constitutional (mainly federal constitutional issues) and state land use.

¹ In preparing the presentations to the Council, we noted, in part from experience in other jurisdictions, that litigation over any such ordinance is reasonably probable, and public discussion of potential litigation and legal risks is likely to result in adverse legal consequences to the County. Accordingly, it was appropriate that the presentations were conducted in executive session.
2.1 Federal & State Constitutional Issues

2.1.1 Commerce Clause

Article I, section 8, clause 3 of the United States Constitution lists one of the enumerated powers of Congress as the power “to regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes.” This is probably the constitutional issue of greatest concern to local governments attempting to protect their local interests in the face of proposed fossil fuel-related developments.

The Supreme Court has determined that this is more than just an enumeration of federal powers. It has found that there are “negative implications” to this assignment of power that serve as limits on state and local power. It has articulated a three-prong test for use in reviewing state or local laws under the Commerce Clause. If a state or local enactment violates any of these, it would be invalid:

*Discrimination.* First, the ordinance may not *discriminate* against interstate commerce. Essentially, this means that the ordinance may not treat out-of-state business interests less favorably than in-state interests. Typical of suspect legislation challenged under this prong are tax preferences for businesses located within a state. The discrimination may either be “facial,” meaning that the text of the ordinance favors in-state interests, or the ordinance can have a “discriminatory purpose or effect.”

*Regulation of Extra-Territorial Conduct.* Second, the ordinance may not regulate extra-territorial (out-of-state) conduct. State and local enactments are rarely invalidated on this basis, but every circuit court of appeals, except for the 5th Circuit, has included this prong in its dormant Commerce Clause analysis. Arguments of extraterritorial effect are often made by challengers to state and local laws.

*Balancing of Local Benefits and Impact on Commerce.* Third, if the ordinance regulates interstate commerce, such regulation may not be “clearly excessive in relation to the putative local benefits.” This is called the “Pike balancing test” after a Supreme Court case with that name. This last prong is where facts become important. It is

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2 This latter issue was significant in the City of Portland litigation discussed below.
important to focus on traditional land use and environmental considerations (e.g., public health and safety, compatibility of uses) to minimize exposure to claims that an ordinance is about restricting commerce. A clear record needs to be built around these traditional land use and public safety considerations and the Council must avoid findings, statements, or justifications that would lead to Commerce Clause concerns.

An example of how federal courts deal with land use context in Commerce Clause challenges is *Wal-Mart Stores, Inc. v. City of Turlock*, 483 F. Supp. 2d 1023 (E.D. Cal. 2007). The *Wal-Mart* court granted summary judgment in favor of the City in a facial challenge to zoning regulations that prohibited “discount superstores,” defined as stores of over 100,000 square feet containing both a warehouse store and a grocery store. The rationale for prohibiting superstores was based on traffic flows, air quality and prevention of “blight.” The City cited independent studies that found discount superstores were detrimental to the viability of existing small shops and could lead to their failure and resulting urban blight. The court found that the ordinance did not violate Commerce Clause restrictions or run afoul of substantive due process concerns, because the City created a detailed record of a well-stated “rational basis” for the regulations. The Commerce Clause analysis held that the City’s regulation applied equally to both in- and out-of-state businesses and did not discriminate. *Wal-Mart* is attached to this report as Appendix 3.

2.1.2 Supremacy Clause (Preemption)

Article VI, clause 2, of the United States Constitution establishes that federal laws and treaties are “the supreme law of the land.” Federal law “preemption” may be either “express” in that the federal statute prohibits certain state or local regulation, or it can be implied in one of two ways. It can “conflict” with local regulation, meaning that both the federal and the state regulatory provisions cannot co-exist, or it can be “field preemption,” meaning that the federal regulatory program is so pervasive that there is no room for state regulation to operate.

A number of federal statutes that regulate aspects of transportation or safety could preempt state or local regulation relating to fossil fuel projects. These include:
Federal Railway Safety Act (49 U.S.C. §20106(a)). The relevant language includes:

(1) Laws, regulations, and orders related to railroad safety and laws, regulations, and orders related to railroad security shall be nationally uniform to the extent practicable.

(2) A State may adopt or continue in force a law, regulation, or order related to railroad safety or security until the Secretary of Transportation (with respect to railroad safety matters), or the Secretary of Homeland Security (with respect to railroad security matters), prescribes a regulation or issues an order covering the subject matter of the State requirement. A State may adopt or continue in force an additional or more stringent law, regulation, or order related to railroad safety or security when the law, regulation, or order—

(A) is necessary to eliminate or reduce an essentially local safety or security hazard;

(B) is not incompatible with a law, regulation, or order of the United States Government; and

(C) does not unreasonably burden interstate commerce.

Interstate Commerce Commission Termination Act (49 U.S.C. §10101 et seq.). The ICCTA preempts laws that prevent or unreasonably interfere with railroad transportation, including matters regulated by the Surface Transportation Board (STB), such as the construction, operation, and abandonment of rail lines.

Natural Gas Act (15 U.S.C. §717). The NGA preempts state and local regulation of pipelines approved by FERC. However, this does not preempt states from applying federal laws that are delegated to the states, such as the Clean Water Act’s Section 401 water quality certification or the Coastal Zone Management Act (CZMA). Note that the CZMA incorporates local Shoreline Master Programs.

Pipeline Safety Act (49 U.S.C. §60104(c)). The Pipeline Safety Act preempts states from regulating interstate pipelines. It states: “A State authority may not adopt or continue in force safety standards for interstate pipeline facilities or interstate pipeline transportation.” However, a state may adopt more stringent safety standards for intrastate pipelines if the standards are compatible with the federal standards.
Hazardous Materials Transportation Act (49 U.S.C. §5125(a)-(b)). The HMTA preempts acts of states or localities that are inconsistent with federal regulations, would be an obstacle to carrying out the federal act, or, for a defined set of requirements, are not "substantively the same" as federal requirements.


In addition, one recent court challenge to various state actions surrounding the proposed Millennium Bulk Terminal for coal export argues that the General Agreement on Tariffs and Trade (GATT) has a preemptive effect, since GATT Article XI states that "[n]o prohibition or restrictions other than duties, taxes or other charges, whether made effective through quotas, import or export licenses or other measures, shall be instituted or maintained by any contracting party . . . on the exportation or sale for export of any product destined for the territory of any other contracting party." See Lighthouse Resources, Inc. v. Inslee, No. 3:18-cv-05005-RJB (W.D. Wash. Filed Jan. 3, 2018), the Complaint in which is attached to this report at Appendix 4. However, GATT's own Article XX does provide for exceptions where such restrictions may be necessary to protect human, animal or plant life, or health.

2.1.3 Equal Protection Clause

The Equal Protection Clause of the 14th Amendment to the United States Constitution requires that no person be denied equal protection of the laws. Its counterpart in Article I, Section 12 of the Washington Constitution requires that no law grant to any citizens or corporation any privilege or immunity not also granted equally to other citizens or corporations. This is similar to the limitation in the Commerce Clause against discrimination against out-of-state interests.

2.1.4 Due Process Clause and the Takings Clause

The Due Process Clause of the 14th Amendment to the United States Constitution and its counterpart in Article I, Section 3 of the Washington Constitution have both a procedural and a substantive component.
Any state or local law regulating land use must provide procedural protections for those regulated. These procedural due process protections are typically met through notice, hearing, and public participation requirements of the Growth Management Act, the Shoreline Management Act, and the procedural provisions of local zoning and shoreline ordinances.

"Substantive Due Process" is more amorphous, but it has been applied to limit the reach of government regulation. State or local land use regulations must further some legitimate public purpose. In the context of land use and zoning cases the substantive due process requirement is met by establishing a police power or public health and safety purpose.

An ordinance must be a "reasonable" exercise of the county's police power in order to pass muster under Article 11, § 11 of the Washington Constitution. A law is a reasonable regulation if it promotes public safety, health or welfare and bears a reasonable and substantial relation to accomplishing the purpose pursued. The wisdom, necessity, and expediency of the law are not for judicial determination, and an enactment may not be struck down as beyond the police power unless it is shown to be clearly unreasonable, arbitrary, or capricious. *Weden v. San Juan County*, 135 Wn 2d 678, 692, 958 P.2d 273, (1998) (upholding a San Juan County ordinance banning jet skis on certain waters); see also *Edmonds Shopping Center Associates v. City of Edmonds*, 117 Wn.App. 344, 71 P.3d 233 (2003) (upholding an Edmonds ordinance banning new cardrooms and phasing out existing cardrooms over a five-year period).

The Fifth Amendment of the United States Constitution also prohibits "taking" of property without just compensation. The Supreme Courts of both Washington and the United States have established a multi-part test for determining whether a taking has occurred. See *Guimont v. Clarke*, 121 Wn 2d 585, 854 P.2d 1 (1993), *Edmonds Shopping Center Associates v. City of Edmonds*, 117 Wn. App. at 362; *Lucas v. South Carolina Coastal Council*, 505 US 1003, 112 S.Ct. 2886 (1992). There are two threshold questions. First, a court will determine whether the regulation destroys or derogates any fundamental attribute of property ownership, including the right to possess, to exclude others, to dispose of property, or to make some economically viable
use of the property. If the landowner claims less than a physical invasion or total taking and if a fundamental attribute of ownership is not otherwise implicated, the court proceeds to the second question. That question is whether the challenged regulation safeguards the public interest in health, safety, the environment, or the fiscal integrity of an area, or whether the regulation seeks less to prevent a harm than to impose on those regulated the requirement of providing an affirmative public benefit.

If the answer to both questions is no, there is no taking. If the answer to one or both questions is yes, then additional analysis is required. The additional analysis includes consideration of two additional points. First, the court must determine whether the regulation advances a legitimate state interest. Second, the court would apply a balancing test to determine if the state interest in the regulation is outweighed by its adverse economic impact to the landowner, with particular attention to the regulation’s economic impact on the property, the extent the regulation interferes with investment-backed expectations, and the character of the government action.

Though a takings issue can likely be avoided in local regulation of fossil fuel facilities, it remains a frequently used argument in Washington land use litigation. To overcome a takings challenge, it will be important to ensure that there are other reasonable uses of the properties subject to new zoning. Accordingly, it is important to pay particular attention to allowing existing uses to continue, or to making sure the properties have reasonable alternative future uses under the zoning and shoreline codes.

These takings issues are discussed further in the section below on state land use issues.

2.2 Other Federal Issues
The County should consider other federal issues as possible limitations to its authority, but also perhaps to defend against Commerce Clause or preemption claims.

2.2.1 Treaty Fishing Rights
The treaties with Pacific Northwest Indian Nations protect a right to fish at usual and accustomed fishing grounds. See United States v. Washington, 443 U.S. 658
(1979). In "Phase II" of that litigation, the right to take fish has been interpreted by the
Ninth Circuit Court of Appeals to limit actions by the State of Washington and its local
governments that may adversely impact fisheries habitat. While the parameters of such
limitations on state and local action are still unclear, the Ninth Circuit's decision may be
applied to impose an affirmative duty on state and local governments to protect habitat.

The State of Washington has asked the United States Supreme Court to review a
recent Ninth Circuit decision regarding treaty fishing rights violations caused by culverts
the State built. See United States v. Washington, 853 F.3d 946 (9th Cir. 2017),
rehearing denied and rehearing, en banc, denied 864 F.3d 1017, cert. granted Jan. 12,
2018 (Sup. Ct. No. 17-269). The case has now been accepted by the Supreme Court
for review and may further refine the extent of the treaty fishing rights as applied to the
facts presented by the culverts case. The State has argued, unsuccessfully so far, that
the treaties do not create an affirmative duty in Washington to remedy defective
culverts. The Western Washington Treaty Tribes can only bring such an action through
a lawsuit initiated by the U.S. Department of Justice on their behalf as federal trustees.
The U.S. and the Tribes have successfully asserted, up through appeals to the Ninth
Circuit, that Washington does have an obligation under the treaties to remedy culverts
that block fish passage. If their arguments prevail, then it may be possible that the
treaty-rights rationale could be extended to other State actions impacting fisheries
habitat.

To the extent that state or local action is taken to protect fisheries habitat, the
treaty rights decisions may be used as a defense to preemption. Certainly, in the
context of any application of the Pike balancing test, the benefits of protection of
fisheries habitat can be useful. For example, should the County decide to prohibit
additional piers in its new shoreline or land use regulations, it might make a strong and
justifiable rationale for that land use decision by citing treaty fishing rights as interpreted
by the federal government in past decisions. As another option, the County could also
deer to Federal interpretations of treaty rights in the context of necessary federal
permits such as those of the Corps of Engineers. The treaty rights of the Lummi Nation
were the basis for a Corps permit denial of the Northern Gateway project's proposed
pier. The County could decide not to change its land use and shoreline permitted uses
and make a reference to having federal decisions made prior to a final county decision on new projects, or could make County decisions contingent on receiving federal approvals wherever treaty rights are considered as a matter of federal law.

2.2.2 The Magnuson Amendment

Enacted to protect Puget Sound from adverse impacts of oil imports, the late Sen. Warren Magnuson’s 1977 amendment to the Marine Mammal Protection Act likely would apply to exports of oil as well. It reads:

Notwithstanding any other provision of law, on and after October 18, 1977, no officer, employee, or other official of the Federal Government shall, or shall have authority to, issue, renew, grant, or otherwise approve any permit, license, or other authority for constructing, renovating, modifying, or otherwise altering a terminal, dock, or other facility in, on, or immediately adjacent to, or affecting the navigable waters of Puget Sound, or any other navigable waters in the State of Washington east of Port Angeles, which will or may result in any increase in the volume of crude oil capable of being handled at any such facility (measured as of October 18, 1977), other than oil to be refined for consumption in the State of Washington.

It limits federal authority to grant or issue permits that would result in an increase of the volume of crude oil handled at any given facility. If a local ordinance imposed a similar limit, the Magnuson Amendment could be used to defend it from any Commerce Clause or preemption claim, in that the local ordinance would not conflict with the federal law. The Amendment is attached to this report at Appendix 9.

This issue has been raised regarding proposed developments at Cherry Point in the past, and is still before the Corps of Engineers and the courts with respect to a BP pier addition that was previously constructed. See Ocean Advocates, et al. v. U.S. Army Corps of Engineers, 402 F.3d 846 (9th Cir. 2005). We understand from discussions with the County Prosecutor’s Office that a prior settlement agreement may have some bearing on the County’s ability to impose limitations on additional docks within the Cherry Point Industrial District and adjacent shorelines. The Council should analyze this issue and seek advice from the County Prosecutor’s Office regarding the intent, effect, and current applicability of the settlement agreement.
2.3 State Land Use Law Issues

Washington land use law provides multiple grounds for challenges. These include substantive and procedural due process claims, takings challenges, failure to maintain consistency with the Growth Management Act or the Shoreline Management Act, and failure to comply with the State Environmental Policy Act. We discuss each of these below.

2.3.1 Procedural Issues

Under Constitutional due process requirements and state land use laws, state and local actions regulating land use must provide procedural protections for those regulated and the public being impacted. These reflect the need to provide notice and an opportunity to be heard where there is a property interest at stake. These procedural due process protections are typically met through notice, hearing and public participation requirements of the Growth Management Act, the Shoreline Management Act and the procedural provisions of local zoning and shoreline ordinances. Failure to comply strictly with these procedural requirements can lead to a successful challenge. Here, adoption and extensions of the existing moratorium present this issue and any final ordinance provisions must also comply. These process issues are a melding of constitutional and statutory law. The procedural protections of the GMA and SMA, though generally intended to satisfy constitutional due process concerns, may go beyond what the constitution actually requires.

2.3.2 Takings Issues

Takings law remains one of the more confusing and difficult areas of land use law. The Fifth and Fourteenth Amendments of the United States Constitution prohibit “taking” of property without just compensation. The Growth Management Act incorporates these constitutional restrictions into state statute; among its development “goals” is RCW 36.70A.020(6): “Property rights. Private property shall not be taken for public use without just compensation having been made. The property rights of landowners shall be protected from arbitrary and discriminatory actions.”
2.3.3 SEPA Compliance

The State Environmental Policy Act (SEPA), Chapter 43.21C RCW, requires state and local governments to review environmental impacts of proposed actions, including those under the Growth Management Act. Governments must make a threshold determination of whether the impacts of the proposed action are "significant adverse effects" that require preparation of an Environmental Impact Statement. The RCW was modified after adoption of the Growth Management Act to allow integration of SEPA analysis with GMA planning processes and documents. As it takes any final action, the County will need to carefully consider compliance with SEPA. See, e.g., Spokane County v. E. Wash. Growth Mgmt. Hearings Bd., 179 Wn. 2d 1015, 318 P.3d 279 (2014). This could involve either the adoption of a Declaration of Nonsignificance or the preparation of an Environmental Impact Statement. Following the proper procedures under SEPA and filing a timely "Notice of Action Taken" can limit County exposure to a SEPA challenge.

2.3.4 GMA & Shoreline Consistency Requirements

Washington case law and statutes require consistency of comprehensive plans, development regulations, and shoreline regulations with the enabling statutes and regulations. See, e.g., Olympic Stewardship Foundation v. Environmental and Land Use Hearings Office, 199 Wn. App. 668, 399 P.3d 562 (2017) (interpreting the provisions of the Growth Management Act, RCW 36.70A). The County will have to make a careful effort to ensure there are adequate findings to establish that a new development regulation is consistent with the goals of the Growth Management Act, the county's adopted comprehensive plan, and the Shoreline Management Act and guidelines.

2.3.5 Protection of Fish Habitat Under State Law

Extending beyond treaty rights, the County could certainly identify protection of fisheries and habitat as a legitimate state and local interest. Policies of both the Shoreline Management Act and the Growth Management Act identify protection of valuable shoreline and aquatic resources and habitat as legitimate state and local...
interests. See, e.g., RCW 90.58.020, Legislative findings – State policy enunciated – Use preference; RCW 36.70A.172(1):

In designating and protecting critical areas under this chapter, counties and cities shall include the best available science in developing policies and development regulations to protect the functions and values of critical areas. In addition, counties and cities shall give special consideration to conservation or protection measures necessary to preserve or enhance anadromous fisheries.

3 Lessons From Review of Activity and Litigation in Other Jurisdictions

In recent years many local governments have attempted to impose some type of limitation on facilities relating to fossil fuels. Here, we discuss how actions in two jurisdictions highlight the most important legal principles: in the City of Portland, Oregon, and in the City of Benicia, California. (In Appendix 1 we also discuss actions in a number of other communities.) Finally, we offer some “lessons learned” from these experiences in other jurisdictions.

3.1 Portland, Oregon

In December 2016, the Portland City Council adopted an ordinance that identified “Bulk Fossil Fuel Terminals” as a regulated land use, characterized (1) by marine, railroad, or pipeline access and (2) either (a) storage capacity in excess of 2 million gallons or (b) trans-allocate facilities. It prohibited new Bulk Fossil Fuel Terminals in base zones and the expansion of existing terminals. The record before the Council contains substantial articulations of local environmental and safety concerns, particularly regarding seismic risks.

The Columbia Pacific Building Trades Council, the Portland Business Alliance, and other business groups challenged the ordinance before the Oregon Land Use Board of Appeals (LUBA) on a number of constitutional and statutory grounds. As part of a Commerce Clause argument, the challengers cited oral statements made by council members as evidence that the ordinance was intended to discriminate against interstate commerce. The LUBA invalidated the ordinance on Commerce Clause grounds and for inconsistency with Oregon’s Growth Management Act. Note that only

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one member of the LUBA decided the case; the other two members recused themselves. See LUBA Decision 2017-001, Columbia Pacific Building Trades Council v. City of Portland, attached as Appendix 5.

Regarding the Commerce Clause claim, the LUBA held that the ordinance was not discriminatory on its face. However, because the LUBA determined that the fossil fuel terminals also served as a regional hub for such fuels, it stated: "Under these circumstances, we do not believe the city can adopt zoning amendments that restrict FFTs to their existing number and capacity, without at least considering the impact of the amendments on the flow of fossil fuel to the region and the state." The LUBA also held that the ordinance did not satisfy the Pike balancing test, stating "[r]educed to essentials, the FFT amendments represent the city's attempt to isolate itself to some extent from the national and international economy in fossil fuels."

The LUBA also addressed issues regarding consistency with the Oregon Growth Management Act. Normally, the LUBA would decide state law issues first, and if there were violations, remand the matter without reaching constitutional issues. However, here, the LUBA decided it was more efficient to reach the Commerce Clause issue. However, it also gave what it termed "somewhat advisory" decisions on the state land use issues.

Accordingly, it held that the City did not demonstrate, through appropriate findings, that the Ordinance was consistent with the Portland Comprehensive Plan and various state planning requirements and goals, and was not "coordinated with the plans of affected governmental units" as required by a statewide planning goal.

The City appealed the LUBA decision to the Oregon Court of Appeals, which recently reversed the LUBA rulings on dormant Commerce Clause grounds and consistency with the transportation goals of the Oregon Growth Management Act. However, the Court upheld the LUBA finding that the City of Portland had not presented substantial evidence to support a finding that fossil fuel use is likely to plateau and decline in future years. See Columbia Pacific Building Trades Council v. City of Portland, 289 Or. App.739 (2018), included in Appendix 6. The dormant Commerce
Clause analysis in this case is helpful to understand how a similar challenge can be anticipated if Whatcom County adopts limits on fossil fuel terminals.

The Oregon Court indicated that the first step in the analysis is to determine whether the law regulates evenhandedly with only incidental effects on interstate commerce, or instead discriminates against interstate commerce. The Court states that discrimination simply means differential treatment of in-state and out-of-state economic interests that benefits the former and burdens the latter. The Building Trades Council and the Western States Petroleum Association (WSPA) contended that the zoning amendments disfavored out-of-state sellers and advantaged in-state interests by creating exceptions for local terminal operators. However, the Court held that the in-state and out-of-state entities here were not similar entities, and that in the absence of actual or prospective competition between them there could be no local preference. The local entities were providers of petroleum products to in-state end users, but the possible newly prohibited facilities would cater to export and out-of-state markets. The Court further found that there could not be discrimination against large out-of-state refiners and exporters because Oregon has none of those in the state to favor.

The Court also rejected the argument that the zoning amendments illegally sought to prevent "unwanted commerce." The Building Trades Council and WSPA contended the Portland zoning regulations were similar to what had been found unlawful by the U.S. Supreme Court in a New Jersey landfill case where the state had excluded importation of out-of-state waste. See Philadelphia v. New Jersey, 437 US 617, 98 S. Ct.2531 (1978). The Court distinguished the New Jersey case by holding that the Portland zoning amendments do not bar importation of fossil fuels into the state but merely place restrictions on the size of terminals that may be used for exports. The Court further held that the burden was on the challengers to demonstrate that any burden on interstate commerce is clearly excessive in relation to the putative local benefits. The City of Portland had made numerous findings regarding the local benefits of the restrictions, and the Court held that local zoning ordinances have a presumption of validity.
The challengers to the Portland ordinance have filed a motion with the Oregon Court of Appeals asking it to reconsider its decision. Assuming that motion will be denied, an appeal to the Oregon Supreme Court is possible. However, even while that case continues, its rulings to date demonstrate several important legal principles. One is that setting forth the context for local regulations and making clear findings regarding the local police power rationale behind an ordinance can be important in overcoming a Commerce Clause challenge. Second, while it is crucial that local zoning regulations not be designed to protect substantially similar local interests over out-of-state competitors, courts will likely consider carefully whether entities that claim discriminatory effect actually are in fact competitors. And, finally, a presumption of validity is given to local zoning regulations, so it is the challenger to the regulations who bears the burden of proving discriminatory effect.

3.2 Benicia, California

The Benicia Planning Commission denied a conditional use permit for a crude oil off-loading facility proposed to serve an existing Valero refinery that historically received crude oil from Alaska and foreign sources. The environmental study found that the transport of crude oil by train on the 70 miles of track leading to the refinery was hazardous, although an accident was predicted only once every 110 years. The study also found that the crude intended to be shipped from North Dakota and the Canadian tar sands area was more flammable than most other crude oils.

Valero challenged the local land use decision before the federal Surface Transportation Board (STB) arguing that the local action was preempted by the Interstate Commerce Termination Act. The STB upheld the Planning Commission’s land use decision. Though the STB recognized the broad preemptive effect of 49 U.S.C. §10501, it held that the local decision did not attempt to regulate transportation by a rail carrier. The STB noted that federal preemption could extend to off-loading facilities if the activities are performed or controlled by the rail carrier, but Valero “made no allegation that it is a rail carrier or that it would be performing off-loading under the auspices of a rail carrier.”

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The STB also provided guidance for future cases, finding that state and local regulation is permissible where it does not unreasonably interfere with rail transportation (such as generally applicable electrical or fire codes), and that if the off-loading facility were to be built, any mitigation conditions unreasonably interfering with the railroad’s operations would be preempted.

After the STB ruled, the City Council adopted the decision of the Planning Commission. Valero informed the City that it would not be taking further action to challenge the City’s decision.

3.3 Some Preliminary Lessons Learned
After reviewing these actions and ensuing litigation, those described in Appendix 1, and our earlier analysis of legal issues here, the following lessons emerge:

➢ Where there is a project opponent to a given ordinance, litigation challenging it is likely.

➢ Whatcom County would need to build a strong factual record to support any ordinance. It should focus on local environmental and health impacts. Such findings are important in defenses against Commerce Clause challenges and to support compliance with state land use laws.

➢ The County should emphasize truly unique impacts. Portland tried this by focusing on the seismic sensitivity of its industrial area where the fuel terminals would be located. (Though this apparently was not enough for the LUBA decision, Portland officials believe that this was important to justify its ordinance.) Here, the County could consider fisheries and other unique characteristics that the County is trying to protect. (And under Ninth Circuit treaty rights cases, it is possible that the County may have an affirmative obligation to protect fish habitat.)

➢ The County should consider making a “fair share” argument in order to justify restrictions on future projects without imperiling existing operations in the County. In other words, the County is happy to accept its fair share of impacts from fossil fuel facilities, but the new projects create impacts that are more than what is fair.

➢ The County may not “intend” to discriminate or otherwise regulate interstate commerce. Accordingly, county officials should avoid making public comments on any “purpose” that goes beyond protection of local impacts,
such as need to limit use of fossil fuels in other countries. Those comments can find their way into a court record and could support a Commerce Clause claim. An example is the City of South Portland, Maine litigation (described in Appendix 1) where the trial court was unable to grant a summary judgment in favor of the City on dormant Commerce Clause grounds because there were statements on the record that made it unclear whether the purpose of local zoning regulations was based on a police power rationale or another impermissible purpose.

➢ The County should avoid any regulation of rail traffic, or at least should evaluate rail regulations very carefully. So many federal statutes govern rail that a limited legal area is left in which states and localities can properly regulate.

➢ Because the State has powers that are not preempted by federal law, the County should work with the Governor’s Office and the Department of Ecology to reach agreement on the applicability of the State’s authority under the Clean Water Act Section 401 and Coastal Zone Management Act. Note that these State powers have led to the recent denials of major coal and oil projects.

➢ Future decisions in pending litigation, such as decisions in any further appeal regarding the City of Portland’s ordinance and the South Portland, Maine zoning provisions (outlined in Appendix 1), will likely give more guidance to Whatcom County.

4 Recommendations

In the paragraphs below, we outline the key options we recommend the County Council take under consideration. Each has differing policy implications, and the County must decide which best meet its overall objectives. The options range from bolstering the discretionary authority of the County Council with respect to approving and mitigating the impacts of proposed uses, to possibly prohibiting certain uses.

4.1 Bolster County Authorities Under the Major Projects Permit Review Process

The current Cherry Point Heavy Industrial District requires new projects to undergo a County Council review under the provisions of Chapter 20.88 for Major Project Permits. We suggest that the current code provisions be substantially bolstered by making it clearer that this is a discretionary review that must meet key decision-
making criteria. We also recommend providing clearer authority in the process for requiring mitigation of project impacts on the community and the environment. One new element would be adding a requirement that a “Development Agreement” be negotiated with project proponents to agree on the required mitigation. The code could also provide authority for bonding and insurance to ensure that any agreed-upon community improvements are installed on a timely basis, and that a liability insurance requirement for potentially hazardous activities guards against risks to the community. While there would still be a legal requirement that a rational nexus exist between any project impacts and required mitigation, establishing clearer authorizing language in the Major Project Permit process would create clearer expectations from the County for project applicants.

Codes of other jurisdictions offer many examples for the kinds of discretionary decision-making criteria that could be added to the Major Project Permit process. The list below is provided as a generic set of example discretionary provisions for consideration, paraphrased from other Western Washington local zoning codes:

- Any use established shall be consistent with the Comprehensive Plan, the Shoreline Master Program, and all standards established under zoning and shoreline regulations.
- Any use shall be located, planned and designed in such a manner that it is consistent with the health, safety, convenience, and general welfare of citizens residing or working in the community.
- A use shall not be approved if it would generate excess noise, noxious or offensive emissions or other nuisances that may be injurious or to the detriment of a significant portion of the community.
- A use shall only be approved after a clear demonstration that public services necessary or desirable for support of the use are available or will be provided by the project developer. These may include, but shall not be limited to, the availability of utilities to serve the site, transportation systems including vehicular, pedestrian and public transportation systems, educational, police and fire facilities and necessary social and health services.
- There shall be a demonstrated need for the use within the community at large which shall not be contrary to the public interest.
➤ Any use will be designed, constructed, operated, and maintained to be harmonious and appropriate in appearance with the existing or intended character of the general vicinity.

➤ Any use must demonstrate that it will not be hazardous or disturbing to existing or future uses of the neighborhood.

➤ Any use must demonstrate that it will be serviced adequately by essential public facilities such as highways, streets, police and fire protection, drainage facilities, 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 adequately provide for any such services.

➤ Any use must demonstrate that it 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; alternately, the applicant must provide mitigation for such added public costs.

➤ Any use must demonstrate that it will not result in the destruction, loss, or damage of any natural, scenic, or historic feature of major importance.

The list above provides only generic examples of what some other local codes have included. The Major Project Permits criteria here could also include provisions tailored to Whatcom County and to the issues the Cherry Point Heavy Industrial District presents. A decision-making criterion could be added that requires any necessary state leases to have been already acquired for any piers or aquatic lands improvements, and to have already met any federal permitting needs, including properly addressing tribal treaty rights or the provisions of the Magnuson Amendment. This would not have the County enforcing the provisions of state or federal law; it would merely have the County requiring a demonstration in advance of County approvals that all federal and state approvals have been completed. Alternatively, the County could make acquisition of such state or federal approvals a condition of perfecting any local approval. The County could add other specific decision-making criteria too, for such issues as requiring it to be established that a new use would create no adverse effects on the endangered Cherry Point herring stocks or salmon fisheries, or other such specific concerns the County may wish a discretionary review to address.
4.2 Require a Conditional Use Permit for Certain Identified Uses

This option would require amending the County's Cherry Point Heavy Industrial District and the Shoreline Master Program regulations to require that a conditional use permit be acquired for uses such as new petroleum tank farms, fossil fuel distribution facilities, additional piers, and other uses that can be further defined. As set forth previously, the Council will need to consult with the County Prosecutor's Office regarding the potential effect of prior settlement agreements on further regulation of additional piers. For the land use code amendments, the decision-making criteria for a conditional use discretionary process could be the same, or nearly the same, as the type identified above for a discretionary Major Project Permit process. The conditional use criteria would need to focus on traditional police power concerns such as public health and safety, environmental impacts, and compatibility of the proposed use with the community. However, under the Shoreline Management Act requiring a conditional use permit for shoreline uses has special status. Shoreline Conditional Use Permits must be reviewed and approved by the Department of Ecology's shoreline permit review staff, and must meet the state rule criteria found at WAC 173-27-160:

**Review criteria for conditional use permits.** The purpose of a conditional use permit is to provide a system within the master program which allows flexibility in the application of use regulations in a manner consistent with the policies of RCW 90.58.020. In authorizing a conditional use, special conditions may be attached to the permit by local government or the department to prevent undesirable effects of the proposed use and/or to assure consistency of the project with the act and the local master program.

1. Uses which are classified or set forth in the applicable master program as conditional uses may be authorized provided the applicant demonstrates all of the following:

   a. That the proposed use is consistent with the policies of RCW 90.58.020 and the master program;
   b. That the proposed use will not interfere with the normal public use of public shorelines;
   c. That the proposed use of the site and design of the project is compatible with other authorized uses within the area and with uses planned for the area under the comprehensive plan and shoreline master program;
   d. That the proposed use will cause no significant adverse effects to the shoreline environment in which it is to be located; and
(e) That the public interest suffers no substantial detrimental effect.

(2) In the granting of all conditional use permits, consideration shall be given to the cumulative impact of additional requests for like actions in the area. For example, if conditional use permits were granted for other developments in the area where similar circumstances exist, the total of the conditional uses shall also remain consistent with the policies of RCW 90.58.020 and shall not produce substantial adverse effects to the shoreline environment.

(3) Other uses which are not classified or set forth in the applicable master program may be authorized as conditional uses provided the applicant can demonstrate consistency with the requirements of this section and the requirements for conditional uses contained in the master program.

(4) Uses which are specifically prohibited by the master program may not be authorized pursuant to either subsection (1) or (2) of this section.

Requiring certain defined uses to obtain a land use code conditional use permit and a shoreline conditional use permit can be an effective means for the County to exercise its discretion when hard and fast "one size fits all" criteria may be difficult to apply. Affirmative findings of consistency with the decision-making criteria must be made, and the potential for denial of a use inconsistent with the criteria is implicit. Of course, the record must demonstrate a rational basis for such a decision. This would also create solid arguments that a legal challenge to the provisions would be premature prior to a specific application of the regulations to a specific project.

Requiring a shoreline conditional use creates the opportunity to make a decision on the basis of impacts to the important aquatic uses of the shoreline areas adjacent to Cherry Point. These include the herring fishery and other treaty fisheries that have been the subject of recent Corps of Engineers decision making. (The 2016 Corps denial of the Gateway Pacific permit in favor of Lummi Nation treaty fishing rights is attached at Appendix 7; at Appendix 8 is the seminal court decision underlying the Corps' de minimis analysis, NW). This also would allow consideration of the analysis contained in documents completed by the State Department of Natural Resources for the Cherry Point Aquatic Reserve, which has been extensive. (The 2017 Commissioner's order enlarging the Reserve is attached at Appendix 9, and a PDF of the Reserve's amended 190-page Management Plan for the Reserve may be downloaded from DNR at
https://www.dnr.wa.gov/publications/aqr_resv_cp_mgmtplan_amend_201702.pdf?id70
ms.) And finally, since the Department of Ecology must review shoreline conditional use permits, this would allow another state agency to consider the impact of the leasing restrictions DNR recently adopted for the Reserve.

This option will require amendments to the land use code and to the shoreline master program. Amendments to the shoreline master program are needed in any event, as it currently establishes a priority for marine terminals with oil and gas transfer within the Cherry Point shoreline area.

4.3 Prohibit Certain Uses

Another powerful option that would create immediate certainty would be to prohibit a defined set of uses in the zoning code and the shoreline regulations for the Cherry Point Heavy Industrial Zone and the adjoining shoreline areas. Such an option is similar to what has been done in Portland, Oregon, and in South Portland, Maine. This option would require a thoughtful discussion of the specific uses that could be prohibited. A clear record about why any uses are prohibited would be necessary to demonstrate that the regulations do not burden interstate commerce, and are consistent with substantive due process and other grounds such as consistency with Growth Management Act policies and the comprehensive plan, the State Shoreline Management Act, and the local Shoreline Master Program. The basis for such provisions should rely on concerns about local health and safety, land use compatibility, and environmental impacts of the prohibited uses, including considerations under the Growth Management Act and the Shoreline Management Act. Should the County decide to pursue this option, it should bolster the record by citing the desire for consistency with the DNR’s adjoining Cherry Point Aquatic Reserve, recent decisions by the Corps of Engineers regarding treaty fishing rights, and the provisions of the Magnuson Amendment. See Appendices 7 through 10. The record could also make clear that the County wishes to allow the continued use of the Cherry Point area by the existing two refineries and the aluminum smelter and could even make clear that expansions of the existing facilities is viewed positively. There could even be findings made that the County has accepted its fair share of such facilities in the state and
region and wishes to limit the impacts on the community of a further concentration of such facilities.

While prohibiting a defined set of uses would create certainty, it might also provide an opportunity for an immediate facial challenge to the validity of the regulation from a property owner or litigant who could meet standing requirements. This is why it would be important to have a strong record showing why zoning certain uses out is rational and is based on legitimate land use and environmental considerations. Because the state and federal governments have made past decisions that limit the uses that they will allow, a good argument can be made about the need or desirability for consistency between County regulations and those past land use decisions at the state and federal level. It might also be possible to prohibit uses beyond those denied by the State and Federal governments, though this should be evaluated very carefully before proceeding.

4.4 A Hybrid Approach

The County could also choose to combine elements from each of the above options into a new ordinance. The paragraphs above create a menu of options that can be mixed and matched. For instance, the Major Project Permit provisions could be modified to provide additional discretionary criteria and the Shoreline regulations could be amended to require a shoreline conditional use for certain types of facilities. Either of these could be combined with making some uses prohibited as well. The County could also be explicit about how its policies protect existing uses and limit (or not) the expansion of existing uses under any of these options as well. Any final option will require findings that are clear about the basis for the County’s actions and must take into account the legal tests for consistency with the Commerce Clause and adoption of land use regulations as set forth more completely in the Legal Issues section of this report.

4.5 Adopt Franchise Ordinances

Finally, the County Council could also adopt a franchise ordinance relating to interstate pipelines. Other jurisdictions have adopted franchise ordinances aimed at interstate pipelines, but the courts have usually limited the local government’s ability to
impose conditions beyond those relating to construction and maintenance. In other words, any attempt to impose safety conditions beyond those required by the federal government for interstate pipelines likely would be preempted. We have included further discussion of franchise authority in Appendix 11.

5 Overarching Recommendations

In this section, we make several overarching recommendations to the County regardless of which zoning and shoreline code amendments are selected.

5.1 Conformity and Internal Consistency

The Washington State Growth Management Act (GMA) requires consistency with the policies of the GMA and local comprehensive plans and land use regulations. An effort needs to be made to ensure that whatever option is chosen is consistent with GMA policies and that the various provisions are internally consistent. That is, the Shoreline Master Program, the zoning ordinance provisions, and any procedural requirements must be consistent with each other and with the applicable provisions of Whatcom County's land use ordinances. An amendment process must ensure that the final option chosen is consistent throughout Whatcom County's various Comprehensive Plan, Shoreline Master Program policies, and shoreline regulations and zoning regulations.

5.2 Major Project Permit Review Provisions

We recommend that the County develop new Master Site Planning provisions that would be applicable to the Cherry Point Heavy Industrial District. These would include a number of elements that would be applicable under several of the options discussed above. These include:

- Require an application fee covering the County's review costs including costs for EIS preparation be paid up front or in increments as the process proceeds.

- Provide for a Development Agreement that obligates the developer to pay costs of all traffic and other environmental impact mitigation identified in the SEPA review and discretionary project review by the Planning Department, Hearing Examiner, or County Council, should a Master Site Plan or
conditional use be approved. When such decisions are made, however, any mitigating conditions would need to be proportional with the impacts identified for the development in an Environmental Impact Statement or discretionary decision documents prepared by the County as the record would need to show appropriate justification for such mitigation.

➢ Amend the Code to give the Planning Department, the County’s Hearing Examiner, or the County Council the discretion to require a bond or insurance policy (or combination of these) to ensure that all development commitments for transportation or other improvements and mitigation are followed through to completion and that any special safety hazards to the community are insured against.

5.3 SEPA Policy Revisions

We recommend the County review its current SEPA policies to be sure they provide a clear basis for mitigating environmental impacts of a major facility the County may approve, and just as importantly a clear basis for denial if the County determines key environmental impacts cannot be mitigated. The State Environmental Policy Act does provide that a project may be denied after an EIS is completed where it is decided that unacceptable adverse impacts cannot be mitigated. However, clear SEPA policies must be adopted by local ordinance to provide a basis for such a denial or even appropriate conditioning of a project. See WAC 197-11-660, attached to this report as Appendix 12.

5.4 Provisions for Change of Use or Change of Occupancy

Many jurisdictions’ ordinances provide a process so that any proposed change of use or occupancy at existing facilities is reviewed for consistency with current codes and ordinances, for flagging needed discretionary land use permits, and for ensuring SEPA review where needed to address adverse environmental impacts. We recommend the County consider adopting a provision to allow a simple, ministerial planning staff approval of a change of occupancy or use where such new use remains consistent with current code provisions and is below SEPA review thresholds. This same provision should also create a clear obligation to review and properly address or mitigate impacts of change of occupancy or use that are above SEPA thresholds or otherwise require a discretionary review.
5.5 Consistency Provisions Regarding DNR Aquatic Reserve, the Magnuson Amendment and Tribal Treaty Rights

While the County is not charged directly with enforcing state or federal laws and treaty obligations, the County can provide in its reviews that there be evidence showing that project applicants have taken appropriate steps to address state and federal requirements. For instance, as part of a discretionary review, one element that could be required is that state leases must have been acquired and federal permitting requirements must have been met, including those that require properly addressing tribal treaty rights. For example, the Corps of Engineers recently denied an additional pier for the Gateway Pacific project because the Corps concluded that the project would violate treaty fishing rights. See Appendix 7. The County could expend substantial time and resources to go through a complete project review and approval process only to find out later that a state tideland lease or Corps permit could not be obtained. In addition, the County could make clear that a State Section 401 Water Quality Certification and a Coastal Zone Management Federal Consistency Determination must be issued by the state prior to any County action. See: https://apps.oria.wa.gov/permithandbook/permitdetail/43 and https://apps.oria.wa.gov/permithandbook/permitdetail/46.

Accordingly, while the County would not be directly enforcing a federal or state law or obligation, the codes can be written to require a showing that necessary state and federal permits and certifications have been acquired and that there would be no adverse impact on treaty fishing rights. An alternative would be a clear provision that any County permits are issued conditionally upon acquiring all necessary state and federal permits. In addition, the County’s SEPA policies should make more clear that SEPA documents are required to contain analysis of and demonstrate consistency with state and federal laws and obligations, such as consistency with tribal treaty rights.
6 Appendices

Appendix 1: Additional issues in other jurisdictions

Appendix 2: Additional media reports regarding current status of fossil fuel actions in other jurisdictions


Appendix 4: Lighthouse v. Inslee complaint, No. 3:18-cv-05005-RJB (W.D. Wash.)

Appendix 5: LUBA Decision 2017-001, Columbia Pacific Building Trades Council v. City of Portland

Appendix 6: Oregon Court of Appeals Decision, 289 Ore. App. 729

Appendix 7: U.S. Corps of Engineers 2016 Memorandum for Record: Gateway Pacific Terminal Project and Lummi Nation’s Usual and Accustomed Treaty Fishing Rights at Cherry Point, Whatcom County

Appendix 8: DNR Commissioner’s January 2017 Order Expanding Cherry Point Aquatic Reserve

Appendix 9: Magnuson Amendment, 33 USC 476

Appendix 10: Franchise Authority

Appendix 11: WAC 197-11-660, Substantive authority and mitigation

Appendix 12: Cascadia Law Group and the attorneys responsible for this report
FULL REPORT, WITH APPENDICES, FOUND AT

http://www.co.whatcom.wa.us/DocumentCenter/View/32762
**WHATCOM COUNTY COUNCIL AGENDA BILL**

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**EXECUTIVE:**

**TITLE OF DOCUMENT:**

Ordinance (interim) imposing moratorium on Cherry Point applications and permit

**ATTACHMENTS:**

<table>
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<tr>
<th>SEPA review required?</th>
<th>( ) Yes</th>
<th>( ) NO</th>
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<tbody>
<tr>
<td>SEPA review completed?</td>
<td>( ) Yes</td>
<td>( ) NO</td>
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</table>

**Should Clerk schedule a hearing?**

| ( ) Yes | ( ) NO |

**Requested Date:**

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

Ordinance imposing an interim moratorium on the acceptance and processing of applications and permits for new or expanded facilities in the Cherry Point Urban Growth Area, the primary purpose of which would be the shipment of unrefined fossil fuels not to be processed at Cherry Point.

**COMMITTEE ACTION:**

**COUNCIL ACTION:**

2/13/2018: Introduced 5-2, Brenner and Byrd opposed

**Related County Contract #:**

**Related File Numbers:**

**Ordinance or Resolution Number:**

**Please Note:** Once adopted and signed, ordinances and resolutions are available for viewing and printing on the County’s website at: www.co.whatcom.wa.us/council.
PROPOSED BY: 
INTRODUCTION DATE: FEBRUARY 27, 2018

ORDINANCE NO. ____
(INTERIM ORDINANCE)

IMPOSING AN INTERIM MORATORIUM ON THE ACCEPTANCE AND PROCESSING OF APPLICATIONS AND PERMITS FOR NEW OR EXPANDED FACILITIES IN THE CHERRY POINT URBAN GROWTH AREA THE PRIMARY PURPOSE OF WHICH WOULD BE THE SHIPMENT OF UNREFINED FOSSIL FUELS NOT TO BE PROCESSED AT CHERRY POINT

WHEREAS, on July 12, 2016, the county received a letter from Chairman Ballew of the Lummi Business Council which included the statement that they "hope that the amendments to the Comprehensive Plan not unfairly impact the current employers within Cherry Point."; and

WHEREAS, the County Council previously adopted Title 20-Zoning of Whatcom County Code which regulates land use within unincorporated areas of Whatcom County; and

WHEREAS, the County Council adopted the Whatcom County Comprehensive Plan on May 20, 1997, which contains goals, objectives and policies regarding land use compatibility and environmental considerations; and

WHEREAS, the Whatcom County Council recently updated the Whatcom County Comprehensive Plan as required by Revised Code of Washington 36.70A; and

WHEREAS, during the Comprehensive Plan review process the Whatcom County Council received many individual public comments on fossil fuel transshipment, transport, and transfer from Cherry Point related to the protection of the health of Whatcom County’s environment, economy, and residents; and

WHEREAS, the County recognizes that the existing refineries have for decades been significant shippers of refined fossil fuels such as jet fuel and calcined coke used in manufacture of aluminum while providing substantial local employment; and

WHEREAS, the refining of fossil fuels at Cherry Point provides high wage jobs which could be lost if the existing refineries were converted to crude oil export facilities; and

WHEREAS, the Whatcom County Council has requested the Whatcom County Planning Commission review language that would discourage new development that would primarily facilitate the shipment of unrefined fossil fuels not to be processed or consumed at Cherry Point; and

WHEREAS, multiple trains carrying crude oil from the Bakken formation moving through the United States and Canada have derailed and exploded causing damage to property and the environment, one derailment caused significant fatalities, which is the reason regulations must be improved; and
WHEREAS, a unit train carrying Bakken crude traveling through Mosier, Oregon, on June 3, 2016, derailed and exploded causing damage to property and the Columbia River, demonstrating that recently adopted state and federal policies and corporate investment intended to reduce the risks associated with oil by rail have proven insufficient to protect communities along the rail corridor; and

WHEREAS, the Washington State Department of Natural Resources has designated waters adjacent to the Cherry Point Urban Growth Area as an aquatic reserve to ensure long-term protection of this unique aquatic environment; and

WHEREAS, the United States recently lifted a ban on the export of crude oil from the country, increasing pressure on deep water ports such as Cherry Point to develop into crude export terminals; and

WHEREAS, existing refineries at Cherry Point have recently increased their ability to accept crude oil by rail by constructing new rail offloading facilities to serve the refineries; and

WHEREAS, existing and proposed pipeline facilities have increased, or proposed to increase, their capacity to move crude oil, diluted bitumen, and natural gas to Cherry Point; and

WHEREAS, Title 20 currently does not explicitly prohibit transshipment, transport, and transfer of unrefined fossil fuels and construction of infrastructure to facilitate expanded shipment of unrefined fossil fuels not to be processed at Cherry Point; and

WHEREAS, according to the June 27, 2016 Land Capacity Analysis report produced by Planning and Development Services, Cherry Point contains only 1,072.6 acres of developable land that is zoned Heavy Impact Industrial (HII) for the purposes of “supplying a reasonable amount of land, commensurate with demand, for the location and grouping of heavy impact industrial uses” and to “minimize the scope of impacts generated within the HII District and to provide protection for nonindustrial districts situated outside thereof...” (WCC 20.68.010); and

WHEREAS, expansion of existing facilities for purposes of shipping unrefined fossil fuels not to be processed or consumed at Cherry Point will increase the transport of dangerous fuels through our community and increase the risk of possible derailment, spills, explosions, and the fallout will pose a serious threat to the community; and

WHEREAS, pursuant to the Washington State Constitution, the general police powers granted to counties empower and authorize Whatcom County to adopt land use controls to provide for the regulation of land uses within the County and to provide that such uses shall be consistent with applicable law; and

WHEREAS, on August 9, 2016, the Whatcom County Council adopted Ordinance 2016-031, an emergency ordinance imposing a sixty day moratorium on the filing, acceptance, and processing of new applications for conversion of land or water, new building or structure permits, or other County permits or authorizations in the Cherry Point Urban Growth Area for new or expanded facilities whose purpose is to facilitate the increased shipment of unrefined fossil fuels not to be processed or consumed at Cherry Point; and
WHEREAS, on September 27, 2016, March 21, 2017, and September 26, 2017, the Whatcom County Council adopted interim measures (Ordinance 2016-039, Ordinance 2017-011, and Ordinance 2017-049) prohibiting the filing, acceptance, and processing of new applications for conversion of land or water, new building or structure permits, or other County permits or authorizations in the Cherry Point Urban Growth Area for new or expanded facilities whose purpose is to facilitate the increased shipment of unrefined fossil fuels not to be processed or consumed at Cherry Point, unless the applications:

1. Were filed and complete prior to the effective date of the ordinance and vested pursuant to Washington statutes;

2. Were for building permits for remodels, maintenance, or repairs of existing structures where no increased capacity for shipping unrefined fossil fuels not to be processed or consumed at Cherry Point would result; or

3. Were necessary to protect health and safety of the community.

WHEREAS, the County Council finds that extending the moratorium imposed by Ordinance 2017-049 is necessary for the protection of public health and safety; 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 sixty (60) days of adoption; and

WHEREAS, the Whatcom County Council is scheduled to hold a public hearing on this issue on March 13, 2018, or a later date; and

WHEREAS, the County Council fully recognizes the limits to its authority over transportation of certain goods imposed by federal statutes and the US Constitution, and finds that this action is within its authority;

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 by the Whatcom County Council that an interim moratorium is hereby imposed prohibiting the filing, acceptance, and processing of new applications for conversion of land or water, new building or structure permits, or other County permits or authorizations in the Cherry Point Urban Growth Area for new or expanded facilities whose purpose is to facilitate the increased shipment of unrefined fossil fuels not to be processed or consumed at Cherry Point, unless the applications:

1. Were filed and complete prior to the effective date of this ordinance and vested pursuant to Washington statutes;

2. Are for building permits for remodels, maintenance, or repairs of existing structures where no increased capacity for shipping unrefined fossil fuels not to be processed or consumed at Cherry Point will result; or

3. Are necessary to protect health and safety of the community.
BE IT FURTHER ORDAINED by the Whatcom County Council that this interim 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.

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 that for the purpose of this ordinance the definition of "unrefined fossil fuel" includes but is not limited to all forms of crude oil whether stabilized or not; raw bitumen, diluted bitumen, or syncrude; coal; methane, propane, butane, and other "natural gas" in liquid or gaseous formats excluding those that are the byproduct of refinery processes in the Cherry Point UGA; and condensate.

BE IT FINALLY ORDAINED that for the purpose of this ordinance, the definition of "facility" includes but is not limited to piers, wharfs, buildings, tank farms, pipelines, rail loading and offloading facilities, road spurs, or any other such physical infrastructure intended to receive, transfer, or store unrefined fossil fuels;

APPROVED this ______ day of ___________, 2018.

ATTEST:

__________________________
Dana Brown Davis, Clerk of the Council

__________________________
Rud Browne, Council Chair

APPROVED AS TO FORM:

__________________________
Civil Deputy Prosecutor

__________________________
Jack Louws, County Executive

(  ) Approved   (  ) Denied

Date Signed: __________________
**WHATCOM COUNTY COUNCIL AGENDA BILL**

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**TITLE OF DOCUMENT:**
Receipt of application for Flood Control Zone District Advisory Committee

**ATTACHMENTS:**
Application

<table>
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<th>SEPA review required?</th>
<th>Yes</th>
<th>NO</th>
<th>Should Clerk schedule a hearing?</th>
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**SUMMARY STATEMENT OR LEGAL NOTICE LANGUAGE:** (If this item is an ordinance or requires a public hearing, you must provide the language for use in the required public notice. Be specific and cite RCW or WCC as appropriate. Be clear in explaining the intent of the action.)
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:**
2/13/2018: Introduced 7-0

<table>
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<tr>
<th>Related County Contract #:</th>
<th>Related File Numbers:</th>
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**Please Note:** Once adopted and signed, ordinances and resolutions are available for viewing and printing on the County’s website at: www.co.whatcom.wa.us/council.
Board and Commission Application

Step 1

Application for Appointment to Whatcom County Boards and Commissions

Public Statement
THIS IS A PUBLIC DOCUMENT: As a candidate for a public board or commission, the information provided will be available to the County Council, County Executive, and the public. All board and commission members are expected to be fair, impartial, and respectful of the public, County staff, and each other. Failure to abide by these expectations may result in revocation of appointment and removal from the appointive position.

| First Name | John          |
| Last Name  | 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

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

Field not completed.

9. Please describe your experience:

Mayor of the City of Everson - 2010 - Current Contractor - 1997
<table>
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<th>Question</th>
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<td>occupation (or former occupation if retired), qualifications, professional and/or community activities, and education</td>
<td>- Current</td>
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<td>10. Please describe why you're interested in serving on this board or commission</td>
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<td>References (please include daytime telephone number):</td>
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<td>Signature of applicant:</td>
<td>John Perry</td>
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<td>Place Signed / Submitted</td>
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*Email not displaying correctly? View it in your browser.*
Title of Document: Appointment to the American’s With Disabilities Act (ADA) Compliance Committee

Summary Statement or Legal Notice Language: County Executive Jack Louws requests confirmation of his appointment of Keith Willnauer, County Assessor, to serve in one of the elected official positions on the American’s 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.
### CLEARANCES

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### TITLE OF DOCUMENT:
Ordinance amending WCC 9.44.030 - Public Peace, Morals, and Welfare

### ATTACHMENTS:

### SEPA review required?  
Yes ( ) No ( )

### SEPA review completed?  
Yes ( ) No ( )

### Should Clerk schedule a hearing?  
Yes ( ) No ( )

### Requested Date:

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

Ordinance amending WCC 9.44.030 - Public Peace, Morals, and Welfare

### COMMITTEE ACTION:

### COUNCIL ACTION:

### Related County Contract #:

### Related File Numbers:

### Ordinance or Resolution Number:

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ORDINANCE NO. ________

AMENDING WHATCOM COUNTY CODE 9.44.030, PUBLIC PEACE, MORALS, AND WELFARE

WHEREAS, Whatcom County Code (WCC) 9.44.030 sets forth the penalty for a breach of the peace violation; and

WHEREAS, the breach of the peace prohibition in WCC 9.44.010 is essentially a noise ordinance and a violation is currently punishable as a misdemeanor; and

WHEREAS, treating such a violation as a criminal offense results in a penalty that is too harsh; and

WHEREAS, Whatcom County law enforcement rarely, if ever, cites to this code violation; and

WHEREAS, it would be in the best interest of the public to amend the penalty to a class 2 civil infraction.

NOW, THEREFORE, BE IT ORDAINED by the Whatcom County Council that Whatcom County Code Section 9.44.030 is hereby amended as follows:

9.44.030 Penalty. A violation of this chapter shall constitute a misdemeanor class 2 civil infraction punishable as set forth in RCW 7.80.120(1)(b).

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: ( ) Approved ( ) Denied

______________________________
Karen N. Frakes
Civil Deputy Prosecutor

______________________________
Jack Louws, County Executive

Date Signed: _____________________