WHATCOM COUNTY COUNCIL AGENDA BILL

CLEARANCES

Initial

Date

Date Received in Council Office

Agenda Date

Assigned to:


Division Head: 3/13/2018 Justice/Safety

Dept. Head: 2/21/18

Prosecutor:

Purchasing/Budget:

Executive:

TITLE OF DOCUMENT:
Discussion of the Criminal Justice & Public Safety Committee work plan for 2018 and other meeting-related items.

ATTACHMENTS:

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

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

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

COMMITTEE ACTION:
2/27/18: Discussed in Criminal Justice and Public Safety Committee

COUNCIL ACTION:

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

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

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**TITLE OF DOCUMENT:**
Briefing of Mineral Resource Lands (MRL) County-wide Designation Process

**ATTACHMENTS:**
1. Cover Letter
2. Map of Potential Resource Area Overlay

**SEPA review required?**

<table>
<thead>
<tr>
<th>( ) Yes</th>
<th>( X ) NO</th>
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**SEPA review completed?**

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**Should 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.)

Policy 8R-1 of the Comprehensive Plan states "Through a county-led-countywide assessment, seek to identify and designated potential commercially significant mineral resource lands, to meet future demand, compatible with water resources, agricultural lands, forest lands and other GMA goals." Support for this process was further displayed through the docketing process in 2017 and again in 2018.

The purpose of the attached memo is to discuss the impending countywide review of potential resource lands for inclusion as designated mineral resource lands. Prior to convening the Surface Mining Advisory Committee, staff hopes to receive feedback/direction from the County Council Natural Resources Committee on potential alternatives as well as other considerations.

**COMMITTEE ACTION:**

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Memorandum

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

FROM: Joshua Fleischmann, Planner

THROUGH: Mark Personius, Interim Director

DATE: March 1, 2018

SUBJECT: Briefing of Mineral Resource Lands (MRL) County-wide Designation Process

The purpose of this memo is to discuss the impending countywide review of potential resource areas for inclusion in the Whatcom County Comprehensive Plan as designated mineral resource lands.

BACKGROUND

A Whatcom County led review of potential resource areas for designation was first recommended by the Planning Commission during their review of surface mining rules under PLN2013-00008. The County Council subsequently voiced support for this review through the 2016 Comprehensive Plan update:

- Policy 8R-1: 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.

Support for this process was further displayed through the docketing process in 2017 (PLN2017-00004) and again on February 27, 2018.

As a Level 3 issue identified in the Public Participation Plan, PDS staff will generate alternative approaches this issue prior to review and comment by the Surface Mining Advisory Committee and further outreach to the public through town hall meetings.

Prior to convening the Surface Mining Advisory Committee, staff hopes to receive feedback/direction from the County Council Natural Resources Committee on potential alternatives as well as other considerations.

ALTERNATIVES

- Designate all Potential Resource Areas (PRAs)

This approach would designate all PRAs as shown in the attached map. Nothing other than the geologic resource is considered when identifying what areas in Whatcom
County will be designated MRL. This approach would result in designation of certain areas that may not be compatible with long-term mineral extraction, such as agriculturally zoned lands, Limited Areas of More Intensive Rural Development (LAMIRDS), wildlife areas managed by the Washington Department of Fish & Wildlife (WDFW), park and other public recreation areas, Urban Growth Areas (UGAs), and developed areas. Designation of these areas may not be consistent with GMA.

- **Designate PRAs with Exclusions**

This approach would remove certain areas from the PRAs so that they do not become designated MRLs. Skagit County and Snohomish County used this approach in designating mineral resource lands. Whatcom County currently has 17 Designation Criteria for Non-Metallic Mineral Deposits. Due to their current application at the localized, landowner-initiated process, some of these criteria apply seamlessly to a county-wide review while others do not.

Further, even when areas are excluded from PRAs, additional considerations on what to include are necessary. In the table below, the permissive approach outlines considerations that would result in a larger designated area, while the restrictive approach skews towards a smaller mineral resource lands designation.

<table>
<thead>
<tr>
<th>Permissive</th>
<th>Restrictive</th>
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<tbody>
<tr>
<td>Include parcels that do not meet primary designation criteria to prevent irregular designation boundaries (picture including a bay of non-PRA)</td>
<td>Exclude parcels that meet primary designation criteria to prevent irregular designation boundaries (picture excluding a peninsula of PRA)</td>
</tr>
<tr>
<td>Include parcels that are only partially within PRAs, even if within other designation (AG) wellhead protection area, or other excluding criteria; Snohomish County designated any parcel showing any amount within PRA</td>
<td>Parcels must be completely within PRAs</td>
</tr>
<tr>
<td>Include 5-acre parcels surrounded by 20-acre parcels.</td>
<td>Do not create non-conforming parcels; i.e. subdivision cannot create lots smaller than 20 acres, so all parcels must be larger than 20 acres.</td>
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<tr>
<td></td>
<td>Forestry and AG &quot;protect the resource&quot;. No need for additional designation</td>
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<td></td>
<td>Dual designation similar to Skagit's &quot;Rural Resource&quot; designation</td>
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Staff is open to suggestions on which criteria to use, avoid, modify, or create.

- **Designate no new PRAs**

The No Action Alternative would not designate additional areas as MRL. Any new MRL designations would continue to be done through the landowner initiated approach as is done now.

**DEVELOPMENT REGULATIONS**

While RCW 36.70A.170 directs counties to designate mineral resource lands of long-term commercial significance in order to protect the resource from incompatible uses, the designation itself does not protect the resource. Rather, it is the development regulations adopted consistent with RCW 36.70A.060 (Zoning Overlay in Whatcom County) that protects the resource through the limitations on subdivision, as shown in the table below.
<table>
<thead>
<tr>
<th>Comprehensive Plan Designation</th>
<th>No Comprehensive Plan Designation</th>
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<tr>
<td>Zoning Overlay</td>
<td>- Surface mining subject to Surface Mining Act</td>
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<td>- 20 acre minimum lot size on subdivisions, which protects resource from incompatible uses (people)</td>
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<td></td>
<td>- Surface mining subject to Surface Mining Act</td>
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<tr>
<td></td>
<td>- 20 acre minimum lot size on subdivisions, which protects resource from incompatible uses (people)</td>
</tr>
<tr>
<td>No Zoning Overlay</td>
<td>- Surface mining subject to SMA is prohibited</td>
</tr>
<tr>
<td></td>
<td>- Minimum lot size on subdivisions based on zoning; Only AG, CF, and RF have minimum lot sizes of 20+ acres to protect resource from incompatible uses (people)</td>
</tr>
<tr>
<td></td>
<td>- Surface mining subject to SMA is prohibited</td>
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<td>- Minimum lot size on subdivisions based on zoning; Only AG, CF, and RF have minimum lot sizes of 20+ acres to protect resource from incompatible uses (people)</td>
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Throughout Whatcom County, there are Designated Mineral Resource Lands (MRL) where the primary zoning may be Agriculture, R10, R5, Commercial Forestry, or Rural Forestry, depending upon the location of the MRL. Each of these designations also has a Mineral Resource Lands zoning overlay, which allows for the application of permits for activities subject to the Washington State Surface Mining Act, as well as limiting the subdivision of property to a 20-acre minimum lot size.

Importantly, as discussed above, limitations on subdivisions (20 acre minimum lot size) are presently the only mechanism used to protect the resource. If a property is less than 40 acres in size and designated MRL with an MRL Zoning Overlay, subdivision would not be allowed. If the limitation on subdivisions is removed, other mechanisms to protect the resource from incompatible uses would be necessary.
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**TITLED DOCUMENT:**
Pollution Identification and Correction Program - Jordan Creek Watershed

**ATTACHMENTS:**
Memo
Lummi Nation December 2017 letter to Washington State Department of Ecology

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

Public Works staff will provide a brief presentation about Pollution Identification and Correction (PIC) Program work in the Jordan Creek/ Lummi Bay watershed.

**COMMITTEE ACTION:**

**COUNCIL ACTION:**

**Related County Contract #:**

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**Ordinance or Resolution Number:**

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MEMORANDUM

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

THROUGH: Jon Hutchings, Public Works Director

FROM: Gary Stoyka, Natural Resources Manager
       Erika Douglas, Senior Planner

DATE: February 23, 2018

RE: Pollution Identification and Correction (PIC) Program- Jordan Creek

An informational presentation will be provided by Public Works staff regarding PIC Program work in the Jordan Creek- Lummi Bay watershed.

Background and Purpose
Lummi Bay is a critical shellfish growing area for Lummi Nation. Jordan Creek, which discharges into the northern portion of Lummi Bay exhibits bacteria levels that exceed both state and Lummi Nation water quality standards. In the past two years, increasing levels of bacteria have been observed in Lummi Bay resulting in the Washington State Department of Health classifying this shellfish growing area as “Of Concern” in the 2016 Annual Growing Area Review. Due to the continued increase of bacteria levels over the last year, we anticipate the area will be classified as “Threatened” in the 2017 Annual Growing Area Review. With the current seasonal closures of Portage Bay shellfish growing areas, a downgrade in Lummi Bay would have a significant adverse impact on Lummi tribal members.

In December 2017, Lummi Nation sent a letter to the Washington State Department of Ecology to express concerns about declining water quality in Lummi Bay and to request that Ecology, in collaboration with other local and state agencies, take a proactive approach to reversing the pattern of increasing bacteria levels. This presentation will provide an overview of PIC Program efforts, under the Whatcom Clean Water Program, that will be undertaken in the Jordan Creek watershed in 2018.

If you have any questions, please contact Erika at extension 6294.

Attachment
Ms. Maia Bellon, Director  
Department of Ecology  
P.O. Box 47600  
Olympia, WA 98504-7600

SUBJECT: Jordan Creek Water Quality and Tribal Shellfish Beds in Lummi Bay

Dear Maia,

I am writing to express my concerns regarding deteriorating water quality in Lummi Bay, an important shellfish growing area on the Lummi Indian Reservation (Reservation) that is being impacted by fecal coliform contamination originating off-Reservation in the Jordan Creek watershed. Jordan Creek drains a watershed of approximately 4,097 acres, 3,870 acres of which are located upstream of the northern Reservation boundary, and discharges to Lummi Bay via the Northern Distributary of the Lummi River (Figure 1). As it flows onto the Reservation, Jordan Creek has had very high fecal coliform counts and has consistently failed to meet the Lummi Nation Water Quality Standard for fecal coliform since 1996. The chronic and continuous fecal coliform contamination in Jordan Creek is likely causing elevated fecal coliform counts in the Lummi Bay shellfish growing area, which lead to the National Shellfish Sanitation Program monitoring site nearest to the freshwater outlet of Jordan Creek to be placed in 'Concerned' status in 2016. As such, it has become increasingly urgent that this longstanding problem be completely and permanently resolved. Potential sources of bacterial pollution in the Jordan Creek watershed include commercial agricultural facilities, hobby farms, on-site septic systems, and other non-point sources.

Jordan Creek Water Quality: Jordan Creek is classified Class AA Freshwaters under the Water Quality Standards for Surface Waters of the Lummi Indian Reservation (Lummi Administrative Regulation 17.07). The Class AA Freshwater fecal coliform criteria are:

- Geometric mean not to exceed 50 colonies/100ml
- 90th percentile not to exceed 100 colonies/100ml
- Minimum 30 samples used to calculate criteria

Water quality at the monitoring site located where Jordan Creek enters the Reservation (site SW011) has consistently failed to meet both the geometric mean and the 90th percentile fecal coliform criteria (Figure 2). As of May 2017, the fecal coliform geometric mean and 90th percentile at site SW011 were 123.7 colonies/100 ml and 728.2 colonies/100 ml, respectively. Due to the proximity of site SW011 to the Reservation boundary, off-Reservation sources of contamination into the Jordan Creek watershed are the only cause of elevated fecal coliform counts at site SW011.

Downstream of the Reservation boundary, Jordan Creek combines with the Northern Distributary of the Lummi River, a relic channel of the Lummi River that no longer receives surface water flow from

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1 A copy of the December 2016 WDOH Office of Environmental Health and Safety Annual Growing Area Review for Lummi Bay is enclosed for reference
Jordan Creek and the Northern Distributary of the Lummi River Watersheds and Water Quality Sample Site Locations

Figure 1. Jordan Creek/Northern Distributary of the Lummi River watershed and water quality sample site locations
Figure 2. Fecal coliform trends at SW011 (Jordan Creek at Reservation boundary) from 1993 to May 2017, including sample results, geometric mean statistics, 90th percentile statistics, and Class AA Freshwater fecal coliform criteria under the Water Quality Standards for Surface Waters of the Lummi Indian Reservation (Lummi Administrative Regulation 17.07). Fecal coliform observations capped at 2,500 CFU/100ml for this figure; actual values used for statistics calculation.

the Lummi River. The Northern Distributary of the Lummi River also contributes fecal coliform into the watershed where it crosses the Reservation boundary (monitoring site SW010). However, this site typically has low flows, flows only intermittently, and is frequently stagnant, suggesting that this drainage is not the primary source of fecal coliform loading into the northeast region of Lummi Bay.

Lummi Bay Water Quality: In consultation with the Lummi Nation and pursuant to the Shellfish Consent Decree (Order Regarding Shellfish Sanitation, United States v. Washington [Shellfish], Civil Number 9213, Subproceeding 89-3, Western District of Washington, 1994), the Washington State Department of Health (DOH) is responsible to the federal Food and Drug Administration to ensure that the National Shellfish Sanitation Program (NSSP) standards for certification of shellfish growing waters are met on the Reservation. The NSSP fecal coliform criteria are:

- Geometric mean not to exceed 14 colonies/100ml
- 90th percentile not to exceed 43 colonies/100ml
- Minimum 30 samples used to calculate criteria

National Shellfish Sanitation Program (NSSP) monitoring in Lummi Bay has recently found high fecal coliform counts at the monitoring site near the mouth of Jordan Creek/Northern Distributary of the Lummi River (site DOH286), which resulted in this site being placed in 'Concerned' status as of
December 2016 due to the 90th percentile statistic. At year-end 2016, the 90th percentile was 25.5 colonies/100ml – as of October 2017, the 90th percentile was 31.0 colonies/100ml (Figure 3).

![Graph](image)

**Figure 3.** Fecal coliform trends at DH286 (Lummi Bay nearest to outlet of Jordan Creek/Distributary of the North Lummi River) from 2002 to October 2017, including sample results, geometric mean statistics, 90th percentile statistics, and Class AA marine fecal coliform criteria under the Water Quality Standards for Surface Waters of the Lummi Indian Reservation (Lummi Administrative Regulation 17.07) and the National Shellfish Sanitation Program.

This deterioration in water quality at site DOH 286 in Lummi Bay is gravely concerning and it is clear that off-Reservation fecal coliform pollution is contributing to the problem. Because off-Reservation fecal coliform sources continue to adversely impact Lummi Nation waters, I am requesting that Ecology adopt a proactive approach to resolving elevated fecal coliform counts in the Jordan Creek watershed to avoid further degradation of water quality in Lummi Bay. Specifically, I am requesting that Ecology, in collaboration with other state and local agencies as appropriate: (1) commence ambient water quality monitoring in the Jordan Creek watershed; (2) conduct source identification tracking in the Jordan Creek watershed to determine the location and extent of bacterial sources; (3) conduct inspections of septic systems, commercial animal facilities, and hobby farms to ensure compliance and use of best management practices; (4) provide technical assistance to landowners in the Jordan Creek watershed for implementation of best management practices and farm plans to reduce bacterial loading; and (6) undertake enforcement actions as necessary.
Based on past experience in the Nooksack River watershed and the Portage Bay shellfish harvesting area closures, without continued technical assistance, compliance inspection activities, and water quality monitoring and source identification, the likelihood of continuing declining water quality or future downgrades of tribal shellfish beds in Lummi Bay is significantly increased. History has shown that a reactive management approach leads to closed shellfish beds — I look forward to working with you to avoid repeating past mistakes and impacts to tribal reserved Treaty resources and tribal shellfish harvesting areas.

Please keep me informed regarding the actions that your agency takes in response to this request and please notify me (360-312-2328 or merlel@lummi-nsn.gov) or the Interim Water Resources Manager, Kara Kuhlman (360-312-2128 or karak@lummi-nsn.gov), of my staff to request any support needed from my department.

Sincerely,

Merle Jefferson/Executive Director
Lummi Natural Resources Department

Enclosure: 2016 Lummi Bay Annual Growing Area Review

cc Doug Allen, WA Department of Ecology Bellingham Field Office Manager
John Wiesman, DrPH, MPH, WA DOH Secretary of Health
Rick Porso, WA DOH Shellfish Program Office Director
Scott Berbells, WA DOH Shellfish Program Growing Area Section Manager
Lawrence Sullivan, WA DOH Shellfish Program Growing Area Section Unit Supervisor
Christine Psyk, EPA Region 10 Office of Water and Watersheds Acting Director
Westley Foster, EPA Region 10 Tribal Coordinator
Derek Sandison, WA Department of Agriculture Director
Ginny Prest, WA Department of Agriculture Nutrient Management Program Manager
Jon Hutchings, Whatcom County Public Works Director
Gary Stoyka, Whatcom County Natural Resources Program Manager
George Boggs, Whatcom Conservation District Executive Director
TITLE OF DOCUMENT:
Presentation of 2017 Public Works Natural Resources Annual Report

ATTACHMENTS:
2017 Public Works Natural Resources Annual Report

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

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Public Works Natural Resources Division staff will present the 2017 Public Works Natural Resources Annual Report to Council.

COMMITTEE ACTION:

COUNCIL ACTION:

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Whatcom County Public Works
Natural Resources
2017 Annual Report
322 N. Commercial St., Suite 110
Bellingham, WA 98225
(360) 778-6230
Natural Resources Division

The mission of the Whatcom County Public Works Natural Resources Division is to protect public health, safety, and welfare and preserve the natural environment by providing services in the areas of water quality protection, water resource management, marine resource protection, salmon recovery, and other ecosystem-related natural resources. Funding for Natural Resources programs comes primarily from the Whatcom County Flood Control Zone District supplemented by state and federal grants.

In 2017, a full time staff of 10 worked with assistance from part time interns to provide services in the following areas:

- Invasive species control
- Marine resource protection
- Water quality protection
- Salmon recovery
- Water supply management
- Environmental technical assistance

Clockwise from upper right: Wayne Drop plays the poop toss game at the Run with the Chums, sampling for aquatic invasive weeds in Lake Whatcom, improved Nooksack River side channel in Deming, diving into Silver Lake during an aquatic plant survey.
Invasive Species

Noxious Weeds

Whatcom County’s Noxious Weed Program focuses on working with landowners to control noxious weeds on their properties as required by state law. Noxious Weed staff provides landowners with advice and information for managing invasive weeds in many different environments: residential landscapes, pastures, forests, streambanks, lakes, marine shorelines, and wherever a difficult plant is creating problems. In addition, staff also partners with agencies and groups on local weed management projects where invasive plant problems cross multiple property lines. This includes managing knotweed along our roads and the Nooksack River, controlling flowering rush in Silver Lake, conducting Spartina surveys and management on our marine shorelines, and performing ongoing surveys of local lakes for early detection of invasive aquatic weeds.

2017 Accomplishments

- Worked directly with approximately 800 landowners and land managers to address invasive weed problems
- Provided information at 12 public events; gave 19 classes and trainings to local groups, landowners, managers, and agency staff
- Conducted aquatic plant inventory and surveys on Lake Whatcom, Lake Samish, Lake Terrell, Silver Lake, and Cain Lake
- Removed more than 12,000 pounds of noxious weeds by hand from county roadsides and sensitive areas
Aquatic Invasive Species

In response to the threat of Aquatic Invasive Species (AIS), the City of Bellingham, Whatcom County, and Lake Whatcom Water and Sewer District created the Whatcom Boat Inspection Program. This program is supported through the ongoing collaboration of all three partners. In 2017, the Boat Inspection Program completed its sixth season of required inspections for all watercraft launching on Lake Whatcom and Lake Samish. The objective of the program is to prevent introducing AIS into our local waters. Zebra and quagga mussels, very serious threats to the health and functions of freshwater bodies, are among the targeted species of the Boat Inspection Program. Staff also inspect for other AIS, including aquatic plants like Eurasian watermilfoil. For more detail on 2017 program results visit the Whatcom Boat Inspections website and view the interactive story map at whatcomboatinspections.com/2017-story-map.

2017 Accomplishments

- Conducted 12,150 watercraft inspections at Lake Whatcom and Lake Samish
- Inspected watercraft that had previously visited 728 different waterbodies in 45 different states and provinces
- Received over 1,635 visitors to AIS check stations asking for information on the program

City of Bellingham AIS Inspector Randy Lewis inspecting a fishing boat for AIS
Marine Resources

*Whatcom County Marine Resources Committee*

Natural Resources provides staff support for the Whatcom County Marine Resources Committee (MRC). The MRC is a citizen-based committee comprised of 19 members working to address local marine issues and recommend remedial actions to local authorities. There are five interest groups represented on the MRC: Conservation and Environmental Interest, Economic Interest, Recreational Interest, Relevant Scientific Expertise, and Citizen At-Large. In addition, the MRC has representation from elected officials, local tribes, and local government staff. The MRC strives to raise awareness of marine issues and encourage marine stewardship through education and community events and to gather support for remedies consistent with the Northwest Straits Initiative Benchmarks for Performance. For more information on the MRC, visit [www.mrc.whatcomcounty.org](http://www.mrc.whatcomcounty.org).

2017 Accomplishments

- Co-hosted five public speaker events with the Whatcom Watershed Information Network (WWIN), including the two-day Baker to Bay Symposium and one-day Water Supply Symposium
- Staffed local community outreach events promoting clean water and shellfish resources protection using the MRC display, fact sheets, and hands-on materials
- Supported Whatcom Water Week and hosted two Water Week events
- Completed preliminary habitat surveys for a pilot Olympia Oyster restoration project in north Chuckanut Bay
- Completed design and production of the Jerry’s Journey interpretive trail at Birch Bay State Park
- Monitored bull kelp density at southwest Lummi Island, Aiston Preserve, Alden Bank, and Gulf Road beach in collaboration with the Northwest Straits Commission
- Continued twice a month fecal coliform bacteria water quality sampling in north Chuckanut Bay to characterize seasonal variation of bacteria levels and inform water quality improvement efforts
- Hosted monthly public meetings providing an opportunity for community members to engage in marine resource discussions and presentations
- Conducted monthly forage fish spawning surveys at two beaches in Bellingham in collaboration with Washington Department of Fish and Wildlife and the Northwest Straits Commission
- Launched the North Sound Stewards program, a pilot citizen science training program, in partnership with RE Sources for Sustainable Communities
MRC volunteers Doug Stark and Bob Seaman with live oysters at the MRC booth at Bellingham SeaFeast

MRC Volunteers conducting kayak based bull kelp survey at Gulf Road beach
Shellfish Protection Districts

Natural Resources also supports the Birch Bay, Drayton Harbor, and Portage Bay Shellfish Protection Districts. These districts are established, according to state law, for shellfish growing areas that have been closed to shellfish harvest due to declining water quality. Each district has a citizen advisory committee to provide recommendations on the district’s shellfish recovery plan. The primary purpose of the shellfish protection districts is to work with community members and partners to keep fecal coliform bacteria out of creeks and rivers flowing to shellfish beds so that year-round shellfish harvest is safe for human consumption. This work is accomplished through the Pollution Identification and Correction (PIC) program described on the next page.

2017 Accomplishments

- Provided staff support for five shellfish protection district advisory committee meetings and additional data and outreach subcommittee meetings
- Coordinated shellfish bed recovery efforts with the Washington State Department of Health
- Completed annual shellfish protection district reports for each of the three districts
- Additional work completed through the PIC program

PIC program staff at the Drayton Harbor Shellebration celebrating the second year of reopened shellfish beds
Water Quality Protection

Pollution Identification and Correction (PIC) Program

Whatcom County’s Pollution Identification and Correction (PIC) program uses water quality monitoring data to identify priority areas for water quality improvement to meet public health and shellfish bed safety standards. The PIC program provides water quality monitoring, source tracking, community outreach and education, and technical and financial assistance to landowners for the purpose of keeping fecal coliform bacteria out of waterways. Natural Resources staff work closely with Whatcom County Health and Planning and Development Services; Whatcom Conservation District (WCD); Washington State Departments of Agriculture, Ecology, and Health; tribes; federal agencies; and other local organizations to identify and address potential bacteria sources.

2017 Accomplishments

- Completed 170 water quality sampling runs and collected 4,127 water quality samples
- Contacted 746 landowners about declining water quality in focus areas
- Offered technical and financial resources to landowners through a partnership with the WCD: 29 farm plans completed and 30 best management practices (BMPs) installed
- Mailed over 1,000 septic system rebate flyers and issued 82 rebates for septic system evaluation, equipment, or pumping costs totaling $19,850
- Provided six presentations for community groups, County Council, and agency workshops about water quality and the PIC program
- Participated in 11 community outreach events including: Small Farm Expo, Whatcom Conservation District Native Plant Sale, Custer community meeting, GEMS (Girls in Engineering, Math, and Science) Fair, Birch Bay Beach Fest, Drayton Harbor Days, Northwest Washington Fair, Run with the Chums, Whatcom Water Week, Bellingham SeaFeast, and the 2nd annual Drayton Harbor Shellebration
- Distributed over 150 dog waste pick-up kits
- Completed two video shorts with focused water quality messages to use on the County website and Facebook page
- Distributed 2,000 water quality newsletters
- Improved public access to water quality information and current monitoring data on the Whatcom County website
- Worked with partners to improve water quality outreach and data collection coordination
Lake Whatcom Management Program

The Lake Whatcom Management Program (LWMP) is a collaborative effort between Whatcom County, the City of Bellingham, and the Lake Whatcom Water and Sewer District to jointly implement programs that improve water quality in Lake Whatcom. Natural Resources staff work within a larger LWMP team including staff from Whatcom County Public Works Stormwater and Maintenance and Operations, Whatcom County Health and Planning and Development Services Departments, City of Bellingham Public Works, and others. Currently, Natural Resources staff support the Lake Whatcom Total Maximum Daily Load (TMDL) response, the Lake Whatcom Homeowner Incentive Program (HIP), and education and outreach efforts within the overall LWMP. Natural Resources contributions to these program areas in 2017 are summarized below. For a complete summary of all LWMP accomplishments in 2017, visit www.lakewhatcom.whatcomcounty.org/resources and download the 2017 LWMP Progress Report.

2017 Accomplishments

- Facilitated the formation of a Lake Whatcom Stormwater Utility Service Area to provide a supplemental local funding source to implement the Lake Whatcom Management Program
- Worked with City of Bellingham and Whatcom Conservation District staff to implement the revised HIP including outreach to homeowners, training to certify HIP trained professionals, and developing program databases
- Developed new, streamlined HIP procedures like expedited reimbursements and permitting
- Facilitated LWMP Education Team meetings and participated in follow up to implement education and outreach objectives outlined in the LWMP five-year work plan

Left: New Lake Whatcom Homeowner Incentive Program (HIP) homepage  
Right: New HIP-sponsored native landscaping area installed on school grounds in the Lake Whatcom watershed
Salmon Recovery

Salmon Recovery in Water Resource Inventory Area (WRIA) 1 is a collaboration between Whatcom County, the salmon co-managers (Lummi Nation, Nooksack Tribe, and Washington Department of Fish and Wildlife), City of Bellingham, small cities of Whatcom County, Nooksack Salmon Enhancement Association (NSEA), Whatcom Land Trust, Whatcom Conservation District, and many others in the community. The local vision of salmon recovery is to return self-sustaining salmonid runs to harvestable levels through the restoration of rivers and marine shorelines, promotion of natural habitat forming processes, careful use of hatcheries, and responsible harvest. Implementation of this vision is guided by the WRIA 1 Salmonid Recovery Plan, which was approved by local governments and the salmon co-managers in 2005 and incorporated into the federally approved Puget Sound Chinook Recovery Plan in 2006. The WRIA 1 Watershed Management Board guides plan implementation (more information on WRIA 1 below). Natural Resource staff participates in technical assessments that guide refinement of habitat protection and restoration priorities. Staff also conceives and develops project proposals, reviews annual salmon recovery projects proposed for grant funding, and helps integrate salmon recovery into projects done under other county programs such as River & Flood, Roads, and Stormwater. Learn more about WRIA 1 Salmon Recovery Program at salmonwria1.org.

2017 Accomplishments

- Represented Whatcom County in WRIA 1 salmon recovery process including restoration project strategy revisions, project planning, and review and ranking of state and federal project funding proposals
- Acquired grant funding for the Lower Mainstem Nooksack Salmon Habitat Assessment to provide salmon habitat restoration and protection information in support of integrated floodplain management plan development
- Continued development of the WRIA 1 fish barrier correction strategy
- Sponsored a Washington Conservation Corps (WCC) crew hosted jointly with the Nooksack Salmon Enhancement Association (NSEA) to support: water quality sampling; maintenance of salmon recovery, flood, stormwater, and instream flow augmentation structure project sites; and public education and outreach events
- Reviewed development proposals in the floodplain for Endangered Species Act (ESA) compliance
- Staffed community outreach events promoting knowledge about salmon and key actions needed to recover healthy salmon populations

Maturing plantings and complex instream habitat formed by Acme Early Chinook project log jams
Water Resources Management and Watershed Planning

The Natural Resources Division supports coordinated water resources and watershed planning efforts for Whatcom County. This support includes being the lead for integrated watershed management and Puget Sound Ecosystem recovery efforts for Water Resource Inventory Area (WRIA) 1, which includes the Nooksack River basin and adjoining smaller coastal watersheds. For more information on the WRIA 1 Watershed Management Project, visit wria1project.whatcomcounty.org.

2017 Major Accomplishments

- Provided administrative support for integrated watershed planning efforts in Whatcom County including supporting the WRIA 1 Watershed Management Board, WRIA 1 Management Team, Watershed Staff Team, Salmon Recovery Staff Team, and the WRIA 1 Planning Unit
- Led Puget Sound ecosystem recovery coordination efforts in Whatcom County under the auspices of the Whatcom Local Integrating Organization (LIO)
- Participated in preparation of near-term actions for the 2018 Puget Sound Action Agenda update
- Initiated the fourth of four phases of the Lynden-Everson-Nooksack-Sumas groundwater flow model to provide an understanding of the interactions of groundwater and surface water and aid in water resource planning decisions
- Participated on county-wide water supply task force
- Participated on County task force to address the Hirst Supreme Court Decision on use of exempt wells
- Provided technical input to the geological hazards and habitat conservation elements of the 2017 Critical Areas Ordinance updates
- Managed the operation and maintenance of the Friday Creek flow augmentation structure to ensure in-stream flows are maintained to support aquatic life and are not impacted by domestic water withdrawals from Lake Samish

Environmental Technical Assistance

Natural Resources staff provide technical assistance to other Whatcom County programs, community groups, and government agencies in the program areas listed above. For example, staff evaluate geologic hazards, identify unknown weeds, provide project management and permitting support, and review and comment on technical documents.

For More Information

For more information on Whatcom County Public Works Natural Resources Programs call (360) 778-6230 or visit http://Whatcomcounty.us/308/Public-Works.
Community Solutions for Clean Water

- Secure Pet Food and Garbage from Wildlife
- Pick up Pet Waste
- Inspect Your Septic System
- Follow a Farm Plan
- Manage Storm Water
- Plant Streamside Vegetation

lidarportal.dnr.wa.gov

www.whatcomcounty.us/1072/Water-Quality

Restoring the River
Building Salmon Habitat on the Nooksack River

salmonwria1.org/restoring-river-building-salmon-habitat-nooksack-river
### WHATCOM COUNTY COUNCIL AGENDA BILL

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### TITLE OF DOCUMENT:
Discussion of recommendations outlined in Cascadia Law Group report

### ATTACHMENTS:

### SUMMARY STATEMENT OR LEGAL NOTICE LANGUAGE:
(If this item is an ordinance or requires a public hearing, you must provide the language for use in the required public notice. Be specific and cite RCW or WCC as appropriate. Be clear in explaining the intent of the action.)
Discussion of recommendations outlined in Cascadia Law Group report entitled Reducing Impacts from Fossil Fuel Projects

### COMMITTEE ACTION:

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Please Note: Once adopted and signed, ordinances and resolutions are available for viewing and printing on the County's website at: [www.co.whatcom.wa.us/council](http://www.co.whatcom.wa.us/council)
Reducing Impacts from Fossil Fuel Projects
Report to the Whatcom County Council
February 23, 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

\[ \text{This latter issue was significant in the City of Portland litigation discussed below.} \]
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;

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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, andexpediency 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

(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 Joel 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 defer 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 Gateway Pacific 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-load 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
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 rail 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.”
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.

Commented [A9]: The Major Projects Review process should be revised to make it clear that it is a discretionary review. The County should develop decision making criteria that provide the ability to deny a permit if it does not meet land use compatibility criteria. For projects that are approvable, the Major Projects provisions should establish clear requirements that a "Development Agreement" be negotiated that provides for a bond or other appropriate financial assurance from project sponsors to ensure required community improvements are provided on a timely basis. A liability insurance requirement should also be required to provide appropriate coverage for local emergency response or damages that might result from hazardous activities. Clear guidance should be given to Executive Staff regarding what uses will be required to have discretionary reviews and what thresholds for expansion of existing uses should be established. The Council could decide that no additional limits are necessary for expansion of existing uses or that a threshold be set for requiring discretionary review.
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.

Commented [A10]: Similar to the comments above regarding federal permitting, we would recommend one of the County's decision-making criterion for piers or uses that impact aquatic lands adjacent to Cherry Point be that State approvals for tidelands leases by the Department of Natural Resources and by the Department of Ecology for Coastal Zone Management and 401 water quality certifications be completed in advance of permit applications to the County. While there is an option to allow state permits and approvals to be acquired in parallel with county permitting processes, because of the strict State leasing provisions for additional piers the County could expend very substantial time and resources without any assurance a project will meet federal and state standards. If the County Council wishes to allow parallel permit processing, a discretionary criterion could still be added to County codes requiring acquisition of State and Federal permits and certifications before any local permits become effective.
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

Commented [A11]: We recommend the County put discretionary criteria into the Major Projects review process rather than create a new land use code conditional use permit process. The effect would ultimately be the same, which is providing a discretionary review for land use compatibility before a permit is issued. The discretionary criteria for a Major Projects permit could be the same as those normally required for a conditional use permit. Because the land use code already has a Major Projects review process the code can be amended to add new discretionary review criteria and clear process structure. However, as noted below, we recommend that new facilities within the jurisdiction of the Shoreline Management Act be required to obtain a shoreline conditional use permit as that is typically the device used under the Shoreline Management Act for review of sensitive aquatic uses.
(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
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

Commented [A12]: Requiring a Shoreline Conditional Use permit recognizes the sensitive nature of adding uses that impact the endangered hermit and tribal fisheries adjacent to Cherry Point. The state-specific shoreline conditional use criteria require consideration of cumulative impacts of past uses in the vicinity and also allow conditions to be attached to a shoreline conditional use permit should approval be appropriate. The additional layer of State Department of Ecology approval means the State agency would also be required to review consistency with the policies of the State Shoreline Management Act and the local Master Program. As noted in the text, this will require amendment of the County’s Shoreline Master Program as it currently has use preferences for marine terminals with oil and gas transfer within the Cherry Point shoreline area.
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

Commented [A13]: The County Council should give the Executive and staff clear direction regarding what types of expansions of existing uses would be permitted. A distinction can be made regarding additions to the existing refineries and other existing Cherry Point uses that are consistent with existing Federal and State restrictions. The County Council should give direction regarding which uses would require new discretionary approvals under a revised Major Projects review process. For instance, those could include new pipelines, or new pipelines that do not serve local uses, fossil fuel terminals or other uses the Council believes should require additional discretionary review for land use and shoreline compatibility before being allowed. Of course, an alternative is providing direction that some uses should be completely prohibited rather than only requiring a discretionary review. Appropriate reports, studies and findings would bolster a decision to require the code revisions.
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

Commented [A14]: Clear direction should be given to the County Prosecutor’s Office and to Executive staff that the total package must be reviewed for internal consistency and consistency with the existing Comprehensive Plan, the Shoreline Master Program and other local and State land use and shoreline regulations. Necessary amendments to other code and plan provisions will likely be necessary to create that consistency.

Commented [A15]: Clear direction should be given that recovering County review costs be part of the code amendment package.
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 county action. See:
https://apps.cria.wa.gov/permithandbook/permitdetail/43 and

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.

Commented [A20]: As discussed in an earlier comment, direction to add this as part of the decision-making criteria would avoid the expenditure of County resources on projects that cannot obtain necessary federal and state approvals.
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
WHATCOM COUNTY COUNCIL  
Special Committee of the Whole  

January 30, 2018

CALL TO ORDER  
Council Chair Rud Browne called the meeting to order at 10:45 a.m. in the Council Chambers, 311 Grand Avenue, Bellingham, Washington.

ROLL CALL  
Absent: None.

SPECIAL ORDER OF BUSINESS  
1. ANNUAL REORGANIZATION OF THE WHATCOM COUNTY COUNCIL (FINALIZATION OF COUNCIL ASSIGNMENTS) (AB2018-021)  
Councilmembers discussed who could potentially fill the five Chair positions of the Council committees. Traditionally, neither the Council Chair nor newly-elected councilmembers chair a committee.

Dana Brown-Davis, Clerk of the Council, answered questions on committee quorum rules and appointing councilmembers as alternates to the Lummi Island Ferry Advisory Committee.

Donovan moved to remove himself as representative to the Portage Bay Shellfish Protection District and to nominate and appoint Councilmember Ballew to the position.

The motion was seconded.

The motion carried by the following vote:  
Ayes: Ballew, Brenner, Browne, Buchanan, Byrd, Donovan, and Sidhu (7)  
Nays: None (0)

Ballew moved to nominate and appoint himself to the Developmental Disabilities Board.

The motion was seconded.

The motion carried by the following vote:  
Ayes: Ballew, Brenner, Browne, Buchanan, Byrd, Donovan, and Sidhu (7)  
Nays: None (0)
**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 nominate and appoint Ballew to the Public Works and Health Committee.

The motion was seconded.

The motion carried by the following vote:

- **Ayes:** Ballew, Brenner, Browne, Buchanan, Byrd, Donovan, and Sidhu (7)
- **Nays:** None (0)

**Donovan moved** to nominate and appoint Ballew to the Natural Resources Committee.

The motion was seconded.

The motion carried by the following vote:

- **Ayes:** Ballew, Brenner, Browne, Buchanan, Byrd, Donovan, and Sidhu (7)
- **Nays:** None (0)

**Donovan moved** to nominate and appoint Ballew to the Lake Whatcom Policy Group.

The motion was seconded.

The motion carried by the following vote:

- **Ayes:** Ballew, Brenner, Browne, Buchanan, Byrd, Donovan, and Sidhu (7)
- **Nays:** None (0)

**Donovan moved** to remove himself as representative to the Council of Governments (COG) and appoint Ballew to the position.

The motion was seconded.

The motion carried by the following vote:

- **Ayes:** Ballew, Brenner, Browne, Buchanan, Byrd, Donovan, and Sidhu (7)
- **Nays:** None (0)

**Brenner moved** to table the Lummi Island Ferry Advisory Committee alternate appointments.

The motion was seconded.

The motion carried by the following vote:

- **Ayes:** Ballew, Brenner, Browne, Buchanan, Byrd, Donovan, and Sidhu (7)
- **Nays:** None (0)

**OTHER BUSINESS**

There was no other business.
ADJOURN

The meeting adjourned at 10:56 a.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

Council Chair Rud Browne called the meeting to order at 1:32 p.m. in the Council Chambers, 311 Grand Avenue, Bellingham, Washington.

ROLL CALL


Absent: None.

COMMITTEE DISCUSSION

1. DISCUSSION 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)

Browne stated that discussion of agenda item one may take place in executive session pursuant to RCW42.30.110 (1)(i). Executive session will conclude no later than 2:00 p.m. If the executive session ends beyond the stated conclusion time, he will step out of the meeting to make a public announcement.

Buchanan moved to go into executive session until no later than 2:00 p.m. to discuss the agenda items pursuant to RCW citations as announced by the Council Chair. The motion was seconded.

The motion carried by the following vote:

Ayes: Ballew, Brenner, Browne, Buchanan, Byrd, Donovan, and Sidhu (7)
Nays: None (0)

(Clerk’s Note: The committee came out of executive session at 1:50 p.m.)

COUNCIL CHAMBERS

COMMITTEE DISCUSSION AND RECOMMENDATIONS TO COUNCIL
1. DISCUSSION OF ESSB 6091 (HIRST AGREEMENT) AND A PROPOSED EMERGENCY INTERIM ORDINANCE RELATING TO THE USE OF PERMIT EXEMPT WATER WITHDRAWALS FOR DEVELOPMENT PURPOSES (ORDINANCE SCHEDULED FOR COUNCIL ACTION THIS EVENING) (AB2018-057)

Karen Frakes, Prosecutor’s Office, gave a staff report and answered questions on the emergency interim ordinance process.

Mark Personius, Planning and Development Services Department, gave a staff report on the differences between the effect of the emergency interim ordinance scheduled for adoption at the evening meeting and the interim ordinance scheduled for introduction at the evening meeting. He answered questions on the definition of “legal availability,” the requirements from Engrossed Substitute Senate Bill (ESSB) 6091, whether applicants will continue to be required to hire hydrogeologists to prove legal availability, whether anyone on the County Council was involved in writing the ordinance, and the process for updating the watershed management plan by February 2019.

The following staff answered questions:
• Gary Stoyka, Public Works Department
• Jack Louws, County Executive
• Amy Keenan, Planning and Development Services Department

Councilmembers and staff discussed how they have to come up with a watershed management plan update by February 2019, permit applicants versus the State paying for mitigation, input from State legislators, deadlines, State law’s precedence, whether the Whereas statements are legally binding and how they serve as findings of fact to support the ordinance for coming forward as an emergency interim ordinance, State Environmental Policy Act (SEPA) requirements and determination of non-significance (DNS), and cluster language in the code.

OTHER BUSINESS

There was no other business.

ADJOURN

The meeting adjourned at 3:13 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
WHATCOM COUNTY COUNCIL
Regular County Council Meeting

January 30, 2018

CALL TO ORDER

Council Chair Rud Browne called the meeting to order at 7:00 p.m. in the Council Chambers, 311 Grand Avenue, Bellingham, Washington.

ROLL CALL

Absent: None.

FLAG SALUTE

ANNOUNCEMENTS

1. CONSIDERATION 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)

Browne reported for the Special Committee of the Whole.

Brenner moved to uphold the Hearing Examiner’s decision.

The motion carried by the following vote:
Ayes: Ballew, Brenner, Browne, Buchanan, Byrd, Donovan, and Sidhu (7)
Nays: None (0)

MINUTES CONSENT

Buchanan moved to approve Minutes Consent items one through eight.

The motion was seconded.

Browne moved to withdraw item seven from consent.

The motion was seconded.
The motion to withdraw carried by the following vote:

Ayes: Ballew, Brenner, Browne, Buchanan, Byrd, Donovan, and Sidhu (7)
Nays: None (0)

The motion to approve items one through six and eight carried by the following vote:

Ayes: Ballew, Brenner, Browne, Buchanan, Byrd, Donovan, and Sidhu (7)
Nays: None (0)

1. COUNTY COUNCIL FOR OCTOBER 10, 2017
2. SPECIAL COMMITTEE OF THE WHOLE FOR OCTOBER 24, 2017
3. COUNTY COUNCIL FOR OCTOBER 24, 2017
4. SPECIAL COMMITTEE OF THE WHOLE FOR NOVEMBER 8, 2017
5. COMMITTEE OF THE WHOLE FOR NOVEMBER 8, 2017
6. COUNTY COUNCIL FOR NOVEMBER 8, 2017
7. SURFACE WATER WORK SESSION FOR NOVEMBER 14, 2017

Buchanan moved to approve the minutes.

The motion was seconded.

The motion carried by the following vote:

Ayes: Ballew, Brenner, Buchanan, Byrd, Donovan, and Sidhu (6)
Nays: None (0)
Abstains: Browne (1)

8. COMMITTEE OF THE WHOLE FOR NOVEMBER 21, 2017

PUBLIC HEARINGS

1. RESOLUTION CLARIFYING 2018 PROPERTY TAX LEVY ORDINANCES (AB2018-040)

Browne opened the public hearing, and hearing no one, closed the public hearing.

Brenner moved to approve the resolution.

The motion was seconded.

The motion carried by the following vote:

Ayes: Ballew, Brenner, Browne, Buchanan, Byrd, Donovan, and Sidhu (7)
Nays: None (0)
OPEN SESSION

The following people spoke about the State legislative Hirst fix by Engrossed Substitute Senate Bill (ESSB) 6091 and the proposed emergency interim ordinance (AB2018-057):

- Debbie (inaudible)
- John Westerfield
- Jeremiah Ramsey
- Denise Thompson
- Mary Kay Robinson
- Jane Agard
- Bud Breakey
- Ben Elenbaas
- Paul Isaacson
- Matthew Goggin
- Jay Markarian
- Larry Helm
- John Soine
- Rosemary Vanbeek
- Theresa Sygitowicz
- Luke White
- Brent McMillan
- Roger Almskaar, Citizens Alliance for Property Rights
- Perry Eskridge, Whatcom Association of Realtors
- Natalie McClendon
- Robin Dexter
- Patty Hammer

The following people spoke about other issues:

- Gary Honcoop spoke about Planning Commission appointments.
- Ben Elenbaas also spoke about Planning Commission appointments.
- John Maberry spoke about the Planning Commission appointments.
- Joy Gilfilen, Restorative Community Coalition, spoke about the Incarceration Prevention and Reduction Task Force appointments, amending the Task Force ordinance regarding membership, and repairs to the jail.
- Brad Rader spoke about the Planning Commission appointments.
- Rob Dhaliwal spoke about the Planning Commission appointments.
- Larry Helm also spoke about the Planning Commission appointments.
- Jim Dickinson spoke about his application for membership on the Lummi Island Ferry Advisory Committee.
- Theresa Sygitowicz submitted handouts (on file) and also spoke about appointments to the Planning Commission, Flood Control Zone District Advisory Committee, and Acme/Van Zandt Flood Subzone.
- Dana Briggs spoke about homeless issues in Whatcom County.

OTHER ITEMS
7. **EMERGENCY ORDINANCE (INTERIM) REPEALING ORDINANCE 2017-057**
   AND ADOPTING AMENDMENTS TO THE WHATCOM COUNTY COMPREHENSIVE PLAN AND WHATCOM COUNTY CODE TITLE 15 (BUILDINGS AND CONSTRUCTION), TITLE 20 (ZONING), TITLE 21 (LAND DIVISION REGULATIONS), AND TITLE 24 (HEALTH CODE), RELATING TO WATER RESOURCES (AB2018-057)

Browne reported for the Special Committee of the Whole.

**Brenner moved** to adopt the substitute ordinance as distributed on January 30, 2018 at 11:45 a.m.

The motion was seconded.

Councilmembers discussed whether or not this problem is an emergency, thanked staff for their quick work on developing the ordinance after the State’s adoption of Engrossed Substitute Senate Bill (ESSB) 6091, and discussed the lack of time for review and discussion, not going to the Planning Commission, the State Environmental Policy Act (SEPA) determination of non-significance, local control, engaging in a good legislative process, implementing the water resources inventory area (WRIA) 1 plan, the importance of maintaining local control, finding a long-term solution, County liability, working within the State’s legislation, keeping the citizens involved as they continue to work on water issues, the work councilmembers have done to solve the problem, and verifying untrue comments about what councilmembers have or have not said or done.

Karen Frakes, Prosecutor’s Office, explained the differences between this emergency interim ordinance and the interim ordinance being introduced later in this evening.

The motion carried by the following vote:

**Ayes:** Ballew, Brenner, Browne, Buchanan, Byrd, and Sidhu (6)

**Nays:** Donovan (1)

*(Clerk’s Note: the Council took a break at 8:51 to 9:04 p.m.)*

**CONSENT AGENDA**

**Sidhu** reported for the Finance and Administrative Services Committee and **moved** to approve Consent Agenda items one through eight.

The motion carried by the following vote:

**Ayes:** Ballew, Brenner, Browne, Buchanan, Byrd, Donovan, and Sidhu (7)

**Nays:** None (0)

1. **REQUEST AUTHORIZATION FOR THE COUNTY EXECUTIVE TO ENTER INTO A CONTRACT BETWEEN WHATCOM COUNTY AND THE WASHINGTON STATE DEPARTMENT OF TRANSPORTATION TO OBLIGATE FEDERAL FUNDS FOR PRELIMINARY ENGINEERING AND ENVIRONMENTAL PERMITTING FOR THE GUARDRAIL SAFETY PROGRAM CRP NO. 918002, IN THE AMOUNT OF $110,000 (AB2018-046)**
2. REQUEST AUTHORIZATION FOR THE COUNTY EXECUTIVE TO ENTER INTO A CONTRACT AMENDMENT BETWEEN WHATCOM COUNTY AND WHATCOM CONSERVATION DISTRICT TO MODIFY THE SCOPE OF WORK TO PROVIDE ADDITIONAL ASSISTANCE TO SUPPORT HOMEOWNERS PARTICIPATING IN THE HOMEOWNER INCENTIVE DO-IT-YOURSELF NATIVE LANDSCAPING PROGRAM, IN 2018 IN THE AMOUNT OF $33,698 FOR A TOTAL AMENDED CONTRACT AMOUNT OF $305,492 (AB2018-047)

3. REQUEST AUTHORIZATION FOR THE COUNTY EXECUTIVE TO ENTER INTO AN INTERLOCAL AGREEMENT BETWEEN WHATCOM COUNTY AND WHATCOM COUNTY FIRE PROTECTION DISTRICTS 1, 4, 5, 7, 8, 11, 14, 16, 17, 18, 19, AND 21, BELLINGHAM FIRE DEPARTMENT, LYNDEN FIRE DEPARTMENT, AND SOUTH WHATCOM FIRE AUTHORITY FOR BASIC LIFE SUPPORT AND FIRST RESPONSE SERVICES THROUGH DECEMBER 31, 2022 (AB2018-048)

4. REQUEST AUTHORIZATION FOR THE COUNTY EXECUTIVE TO ENTER INTO A CONTRACT BETWEEN WHATCOM COUNTY AND WASHINGTON DEPARTMENT OF HEALTH TO RECEIVE FUNDING FOR PUBLIC HEALTH PROGRAMS, IN THE AMOUNT OF $1,294,039 (AB2018-049)

5. REQUEST APPROVAL FOR THE COUNTY EXECUTIVE TO AUTHORIZE PURCHASE OF AUTO BODY REPAIR SERVICES FROM VENDOR GITT’S AUTOBODY USING THE WASHINGTON STATE CONTRACT #05015, IN AN AMOUNT NOT TO EXCEED $70,000 (AB2018-050)

6. REQUEST APPROVAL FOR THE COUNTY EXECUTIVE TO AUTHORIZE PURCHASE OF 25 REPLACEMENT TASERS AND RELATED ACCESSORIES FROM VENDOR AXON ENTERPRISE, INC. USING WASHINGTON STATE CONTRACT #02315, IN THE AMOUNT OF $40,490.21 (AB2018-051)

7. REQUEST AUTHORIZATION FOR THE COUNTY EXECUTIVE TO ENTER INTO A CONTRACT BETWEEN WHATCOM COUNTY AND ELECTION SYSTEMS & SOFTWARE LLC (ES&S) FOR ACQUISITION, INSTALLATION, TRAINING, AND FIRST YEAR MAINTENANCE OF ES&S MAIL BALLOT VERIFIER EQUIPMENT, IN THE AMOUNT OF $89,095 (AB2018-052)

8. REQUEST AUTHORIZATION FOR THE COUNTY EXECUTIVE TO ENTER INTO A CONTRACT AMENDMENT BETWEEN WHATCOM COUNTY AND NORTH SOUND BEHAVIORAL HEALTH ORGANIZATION TO CLARIFY THE TERMS AND CONDITIONS OF COST REIMBURSEMENT (AB2018-053)

OTHER ITEMS

1. ORDINANCE AMENDING THE 2018 WHATCOM COUNTY BUDGET, THIRD REQUEST, IN THE AMOUNT OF $1,888,113 (AB2018-037)

Sidhu reported for the Finance and Administrative Services Committee and moved to adopt the ordinance.
Jack Louws, County Executive, answered questions on the electronic patient care reporting system and having better success measurements before approving the budget, the administration’s responsibility to do the best job possible and the contracting process providing more detail.

Staff and councilmembers discussed the process for Council appropriating money and then approving contracts.

The motion carried by the following vote:

**Ayes:** Ballew, Brenner, Browne, Buchanan, Byrd, Donovan, and Sidhu (7)

**Nays:** None (0)

2. **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)**

Sidhu reported for the Finance and Administrative Services Committee and **moved** to adopt the ordinance.

The motion carried by the following vote:

**Ayes:** Ballew, Brenner, Browne, Buchanan, Byrd, Donovan, and Sidhu (7)

**Nays:** None (0)

3. **ORDINANCE INCREASING TREASURER PETTY CASH FUND (AB2018-039)**

Sidhu reported for the Finance and Administrative Services Committee and **moved** to adopt the ordinance.

The motion carried by the following vote:

**Ayes:** Ballew, Brenner, Browne, Buchanan, Byrd, Donovan, and Sidhu (7)

**Nays:** None (0)

4. **REQUEST AUTHORIZATION FOR THE COUNTY EXECUTIVE TO ENTER INTO A CONTRACT AMENDMENT BETWEEN WHATCOM COUNTY FLOOD CONTROL ZONE DISTRICT AND THE NATURE CONSERVANCY TO ALLOCATE THE SECOND YEAR OF FEDERAL FUNDING FOR THE DEMING LEVEE IMPROVEMENT PROJECT AND THE LOWER NOOKSACK RIVER GEOMORPHIC ASSESSMENT IN THE AMOUNT OF $150,000, FOR A TOTAL AMENDED CONTRACT AMOUNT OF $400,000 (COUNCIL ACTING AS THE WHATCOM COUNTY FLOOD CONTROL ZONE DISTRICT BOARD OF SUPERVISORS) (AB2018-043)**

Sidhu reported for the Finance and Administrative Services Committee and **moved** to approve the request.

The motion carried by the following vote:

**Ayes:** Ballew, Brenner, Browne, Buchanan, Byrd, Donovan, and Sidhu (7)
5. REQUEST AUTHORIZATION FOR THE COUNTY EXECUTIVE TO ENTER INTO AN INTERLOCAL AGREEMENT BETWEEN WHATCOM COUNTY FLOOD CONTROL ZONE DISTRICT AND WHATCOM CONSERVATION DISTRICT TO ENHANCE AND SUPPORT ELEMENTS OF WHATCOM COUNTY’S POLLUTION IDENTIFICATION AND CORRECTION PROGRAM, IN THE AMOUNT OF $55,000 (COUNCIL ACTING AS THE WHATCOM COUNTY FLOOD CONTROL ZONE DISTRICT BOARD OF SUPERVISORS) (AB2018-044)

Sidhu reported for the Finance and Administrative Services Committee and moved to approve the request.

The motion carried by the following vote:

Ayes: Ballew, Brenner, Browne, Buchanan, Byrd, Donovan, and Sidhu (7)
Nays: None (0)

6. RESOLUTION ACCEPTING THE TREASURER’S LIST OF PETITIONS FOR TAX REFUNDS (AB2018-045)

Sidhu reported for the Finance and Administrative Services Committee and moved to approve the request.

Steve Oliver, Treasurer, answered questions on the tax implication of downzoning an area.

The motion carried by the following vote:

Ayes: Ballew, Brenner, Browne, Buchanan, Byrd, Donovan, and Sidhu (7)
Nays: None (0)

8. APPROVAL OF SPECIAL STANDING COUNCIL MEETING DATES FOR 2018 (ADDING HEALTH BOARD AND LAKE WHATCOM JOINT COUNCILS AND COMMISSION MEETING DATES TO THE COUNCIL’S SCHEDULE) (AB2018-027)

Buchanan moved to approve the request.

The motion was seconded.

The motion carried by the following vote:

Ayes: Ballew, Brenner, Browne, Buchanan, Byrd, Donovan, and Sidhu (7)
Nays: None (0)

COUNCIL APPOINTMENTS TO BOARDS, COMMISSIONS, AND COMMITTEES

1. ANNUAL APPOINTMENTS TO COUNCIL-APPOINTED POSITIONS ON CITIZEN BOARDS, COMMISSIONS, AND COMMITTEES (FROM JANUARY 16) (AB2018-029)
Sidhu moved to accept and consider the late applications for this item and the next two items on the agenda.

The motion was seconded.

The motion carried by the following vote:
Ayes: Ballew, Brenner, Browne, Buchanan, Byrd, Donovan, and Sidhu (7)
Nays: None (0)

(Clerk’s Note: See attached voting forms for Council appointments, Attachment A.)

2. ANNUAL APPOINTMENTS TO FLOOD CONTROL ZONE DISTRICT ADVISORY COMMITTEE, AND FLOOD CONTROL SUB-ZONES ADVISORY COMMITTEE (COUNCIL ACTING AS THE WHATCOM COUNTY FLOOD CONTROL ZONE DISTRICT BOARD OF SUPERVISORS) (FROM JANUARY 16) (AB2018-030)

(Clerk’s Note: See the above item regarding consideration of late applications and the attached voting forms for Board of Supervisors appointments, Attachment B.)

3. APPOINTMENTS TO THE CLIMATE IMPACT ADVISORY (AB2018-028)

(Clerk’s Note: See the above item regarding consideration of late applications.)

Browne moved to vote for 11 candidates each.

The motion was seconded.

The motion carried by the following vote:
Ayes: Ballew, Brenner, Browne, Buchanan, Byrd, Donovan, and Sidhu (7)
Nays: None (0)

(Clerk’s Note: See the attached voting forms for Council appointments, Round 1, Attachment C.)

Donovan moved to approve the appointment of all the applicants who received at least four votes: Seth Fleetwood, Sharon Shewmake, Derek Gremban, Alex Ramel, Kate Blystone, Treva Gabrish, William Harman, and Gabriel Westergreen.

The motion was seconded.

The motion carried by the following vote:
Ayes: Ballew, Brenner, Browne, Buchanan, Byrd, Donovan, and Sidhu (7)
Nays: None (0)

Donovan moved to vote for three people from the list of applicants who received three votes in the first round: Grossman, Hartsoch, Kershner, Miller, and Verburg.

The motion was seconded.

Byrd moved to amend the motion to also include Rachael Mueller.
The motion was seconded.

The motion to amend carried by the following vote:

**Ayes:** Ballew, Brenner, Browne, Buchanan, Byrd, and Donovan (6)

**Nays:** Sidhu (1)

The motion as amended carried by the following vote:

**Ayes:** Ballew, Brenner, Browne, Buchanan, Byrd, Donovan, and Sidhu (7)

**Nays:** None (0)

*(Clerk’s Note: See the attached voting forms for Council appointments, Round 2, Attachment D.)*

**Browne stated** the Council needs to assign staggered terms to the appointed committee members. Six members will have three year terms and five members will have two year terms.

Sidhu moved that people who got the most votes, the first six, will have a full term and the other five will have a partial term.

The motion was seconded.

The motion carried by the following vote:

**Ayes:** Ballew, Brenner, Browne, Buchanan, Byrd, Donovan, and Sidhu (7)

**Nays:** None (0)

**Byrd moved** to approve the appointment of Eric Grossman, David Kershner, and Tim Miller.

The motion was seconded.

The motion carried by the following vote:

**Ayes:** Ballew, Brenner, Browne, Buchanan, Byrd, Donovan, and Sidhu (7)

**Nays:** None (0)

Dana Brown-Davis, Clerk of the Council, stated there are eight top vote recipients, not three.

**Donovan moved** to assign Harmon, Westergreen, Miller, Kershner, and Grossman to two-year terms and the remaining committee members to three-year terms: Fleetwood, Shewmake, Gremban, Ramel, Blystone and Gabrish.

The motion was seconded.

The motion carried by the following vote:

**Ayes:** Ballew, Brenner, Browne, Buchanan, Byrd, Donovan, and Sidhu (7)

**Nays:** None (0)
The Council appointed the following applicants to the Climate Impact Advisory Committee:

- **Three-Year Terms**: Seth Fleetwood, Sharon Shewmake, Derek Gremban, Alex Ramel, Kate Blystone, Treva Gabrish
- **Two-Year Terms**: William Harman, Gabriel Westergreen, Eric Grossman, David Kershner, and Tim Miller

**EXECUTIVE APPOINTMENTS TO BOARDS, COMMISSIONS, AND COMMITTEES**

1. **REQUEST CONFIRMATION OF THE EXECUTIVE’S APPOINTMENTS TO BOARDS, COMMITTEES, AND COMMISSIONS FOR THE YEAR 2018 (AB2018-054)**

   *Byrd moved* to confirm the appointments.

   The motion was seconded.

   Byrd withdrew the Rural Library Board.

   The motion to confirm all appointments, except the Rural Library Board, carried by the following vote:

   **Ayes:** Ballew, Brenner, Browne, Buchanan, Byrd, Donovan, and Sidhu (7)
   **Nays:** None (0)

   The motion to confirm the Rural Library Board appointments carried by the following vote:

   **Ayes:** Ballew, Brenner, Browne, Buchanan, Donovan, and Sidhu (6)
   **Nays:** None (0)
   **Abstains:** Byrd (1)

**INTRODUCTION ITEMS**

*Sidhu moved* to accept the Introduction Items.

The motion was seconded.

The following staff answered questions:

- Mark Personius, Planning and Development Services Department
- Dana Brown-Davis, Clerk of the Council

Staff and councilmembers discussed the process for making amendments in committee.

The motion carried by the following vote:

**Ayes:** Ballew, Brenner, Browne, Buchanan, Byrd, Donovan, and Sidhu (7)
**Nays:** None (0)
1. ORDINANCE ADOPTING AMENDMENTS TO THE URBAN FRINGE SUBAREA
PLAN, WHATCOM COUNTY COMPREHENSIVE PLAN, AND WHATCOM COUNTY
ZONING CODE (AB2018-055)

2. ORDINANCE ADOPTING AMENDMENTS TO WHATCOM COUNTY CODE TITLE 2,
ADMINISTRATION AND PERSONNEL; TITLE 9, PUBLIC PEACE, MORALS AND
WELFARE; TITLE 15, BUILDING AND CONSTRUCTION; TITLE 16,
ENVIRONMENT; TITLE 20, ZONING; TITLE 21, LAND DIVISION
REGULATIONS; TITLE 23, SHORELINE MANAGEMENT PROGRAM; TITLE 24,
HEALTH; AND CREATING A NEW TITLE 22, LAND USE AND DEVELOPMENT
PROCEDURES, TO RELOCATE AND REVISE PROCEDURES FOR LAND USE AND
DEVELOPMENT RELATED PROJECT PERMITS AND LEGISLATIVE ACTIONS
CODE (AB2018-056)

3. ORDINANCE (INTERIM) REPEALING ORDINANCE 2017-057 AND ADOPTING
AMENDMENTS TO THE WHATCOM COUNTY COMPREHENSIVE PLAN AND
WHATCOM COUNTY CODE TITLE 15 (BUILDINGS AND CONSTRUCTION),
TITLE 20 (ZONING), TITLE 21 (LAND DIVISION REGULATIONS), AND TITLE
24 (HEALTH CODE), RELATING TO WATER RESOURCES (AB2018-057A)

COMMITTEE REPORTS, OTHER ITEMS, AND COUNCILMEMBER UPDATES

Committee chairs gave committee reports.

Councilmembers gave updates on recent activities and upcoming events.

ADJOURN

The meeting adjourned at 11:30 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
### Drayton Harbor Shellfish Protection District Advisory Committee

**Nominee:** Donovan

- **Richard Beauregard**: Yes (7), No (0)

### Incarceration Prevention & Reduction Task Force - Community Health Center

**Nominee:** Buchanan

- **Kate Hansen**: Yes (7), No (0)

### Incarceration Prevention & Reduction Task Force - EMS

**Nominee:** Buchanan

- **Jerry DeBruin**: Yes (7), No (0)

### Incarceration Prevention & Reduction Task Force - Community Action Agency

**Nominee:** Buchanan

- **Byron Manering**: Yes (7), No (0)

- **Moonwater**: Yes (7), No (0)

### Incarceration Prevention & Reduction Task Force - Consumer

**Nominee:** Donovan

- **Deborah Hawley**: Yes (7), No (0)

- **Citizen**: Barry Mchale, nominated by Byrd

### Lummis Island Ferry Advisory Committee - Resident/Property Owner

**Nominee:** Donovan

- **Elizabeth Louis**: Yes (2)

- **James Dickinson**: Yes (5)

- **Patricia Dunn**: Yes (7)

### Lummis Island Ferry Advisory Committee - Off-Island resident/property owner

**Nominee:** Donovan

- **Crispin Colburn**: Yes (7), No (0)

### Planning Commission - District 5

**Nominee:** Donovan

- **Kelvin Barton, nominated by Tyler Byrd**: Yes (2)

- **Natalie McLeod, nominated by Todd Donovan**: Yes (5)

### Planning Commission - District 1, 4, or 5

**Nominee:** Byrd

- **Jon Maberry**: Yes (7), No (0)

### Planning Commission - District 1 or 5

**Nominee:** Buchanan

- **Kelvin Barton**: Yes (5), No (0)

- **Jacob Tilbury**: Yes (0)

- **Rachel Nybert**: Yes (0)

- **Andrew Reding**: Yes (2)

### Portage Bay Shellfish Protection District

**Nominee:** Brenner

- **Andy Ross**: Yes (7), No (0)
<table>
<thead>
<tr>
<th>SOLID WASTE ADVISORY COMMITTEE - Citizen</th>
<th>Ballew</th>
<th>Brenner</th>
<th>Browne</th>
<th>Buchanan</th>
<th>Byrd</th>
<th>Donovan</th>
<th>Sidhu</th>
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<th>SOLID WASTE ADVISORY COMMITTEE - Public Interest Group (full term position):</th>
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<td>Michael Schoneveld</td>
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<td>Holly H'Neil</td>
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<td>Scott Hulse</td>
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**CLIMATE IMPACT ADVISORY COMMITTEE - ROUND 1: Donovan nominated**

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The Council appointed the following in round 1: Kate Blystone, Treva Gabrish, William Harman, Gabriel Westergreen, Derek Gremban, Alex Ramel, Seth Fleetwood, Sharon Shewmake
**CLIMATE IMPACT ADVISORY COMMITTEE - ROUND 2: Donovan nominated**

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The Council appointed the following in round two: Tim Miller, Eric Grossman, David Kershner
### WHATCOM COUNTY COUNCIL AGENDA BILL

<table>
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<th>CLEARANCES</th>
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### TITLE OF DOCUMENT:
Ordinance amending WCC 9.44.030 - Public Peace, Morals, and Welfare

### ATTACHMENTS:

### SUMMARY STATEMENT OR LEGAL NOTICE LANGUAGE: (If this item is an ordinance or requires a public hearing, you must provide the language for use in the required public notice. Be specific and cite RCW or WCC as appropriate. Be clear in explaining the intent of the action.)
Ordinance amending WCC 9.44.030 - Public Peace, Morals, and Welfare

### COMMITTEE ACTION:

### COUNCIL ACTION:
2/27/18: Introduced 7-0

### Related County Contract #:

### Related File Numbers:

### Ordinance or Resolution Number:

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

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:

Karen N. Frakes
Civil Deputy Prosecutor

( ) Approved ( ) Denied

Jack Louws, County Executive

Date Signed: ____________________
### CLEARANCES

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**Mar 06 2018**

**WHATCOM COUNTY COUNCIL**

### TITLE OF DOCUMENT:

Request for County Council confirmation for County Executive’s appointment of Mark Personius for Planning & Development Services Director effective 3/26/18 pursuant to Whatcom County Code Section 2.32

### ATTACHMENTS:

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

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

Mark Personius has worked for Whatcom County’s Planning and Development Services department since 2012. He began as the Division Manager for Long Range Planning and has served as the Assistant Director since 2015. Prior to Whatcom County Mark worked for 10 years as an independent Growth Management Consultant as well as the Planning Director for EarthTech from 1994-2002. He has over 7 additional years of Planning experience early in his career in the state of Florida. Mark possesses certification from the American Institute of Certified Planners (AICP). He obtained his Bachelor’s degree in Geography from Humboldt State University and has completed graduate studies in Geography/Urban Planning at the University of Minnesota.

The appointment of Mark Personius is supported by representatives of the BIAW, Realtors Association and Sustainable Connections as well as the Directors of Public Works, Health Department and Human Resources whom all served as members of the screening committee for the selection process.

### 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.
TITLE OF DOCUMENT:
Contract between Whatcom County and Compass Health

ATTACHMENTS:
1. Memo to County Executive
2. Contract Information Sheet
3. 2 Originals of Contract

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

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

The purpose of this contract is to provide mental health treatment services to youth ages 13 - 24 who utilize the services of Northwest Youth 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: Jack Louws, County Executive

FROM: Regina A. Delahunt, Director

RE: Youth Mental Health Support Services Contract

DATE: February 13, 2018

Enclosed are two (2) originals of a contract between Whatcom County and Compass Health for your review and signature.

- Background and Purpose

The purpose of this contract is to place a Compass Health professional at Northwest Youth Services to provide mental health services to youth ages 13 – 24. Mental health services will decrease the likelihood of ongoing substance abuse, suicidal ideation, and other behavioral health related risks. Services are intended to promote wellness and optimize opportunities for achieving safe and stable housing.

- Funding Amount and Source

The source of funding for this contract, in an amount not to exceed $44,330, is the Behavioral Health Program fund. Funding for this contract is included in the 2018 budget and Council approval is required as funding exceeds $40,000. This contract was awarded under RFQ 17-67. This contract begins January 1, 2018, and was delayed in processing due to a last minute change in contractors. The original awardee decided against pursuing the contract, so the award and subsequent contract negotiations with Compass Health were delayed.

Please contact Perry Mowery at extension 6059 you have any questions regarding this agreement.

Encl.
| Originating Department: | Health |
| Division/Program: (i.e. Dept. Division and Program) | 8510 Human Services / 855020 Mental Health |
| Contract or Grant Administrator: | Perry Mowery |
| Contractor's / Agency Name: | Compass Health |

| Is this a New Contract? | Yes ☑ No ☐ |
| If not, is this an Amendment or Renewal to an Existing Contract? | Yes ☑ No ☐ |
| Does contract require Council Approval? | Yes ☑ No ☐ |
| If No, include WCC: | (see Whatcom County Codes 3.06.010, 3.08.090 and 3.08.100) |

| Is this a grant agreement? | Yes ☑ No ☐ |
| If yes, grantor agency contract number(s): | CFDA#: |
| Is this contract 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): | 17 – 67 |
| Contract Cost Center: | 124100 |
| Is this agreement excluded from E-Verify? | No ☐ Yes ☑ |
| If no, include Attachment D Contractor Declaration form. | |
| Indicate exclusion(s) below: | |
| ☐ Professional services agreement for certified/licensed professional. | |
| ☑ Contract work is for less than $100,000. | ☐ Contract for Commercial off the shelf items (COTS). |
| ☐ Contract work is for less than 120 days. | ☐ Work related subcontract less than $25,000. |
| ☐ Interlocal Agreement (between Governments). | ☐ Public Works - Local Agency/Federally Funded FHWA. |

| Contract Amount: (sum of original contract amount and any prior amendments): | 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. |
| This Amendment Amount: | 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. |
| Total Amended Amount: | 4. Contract is for manufacturer’s technical support and hardware maintenance of electronic systems and/or technical support and software maintenance from the developer of proprietary software currently used by Whatcom County. |
| $ | |

| Summary of Scope: | The purpose of this contract is to reduce risks associated with poor mental health and substance abuse among youth seeking care at Whatcom Northwest Youth Services (NWYS). Services provided will be oriented toward youth and young adults who utilize the services of NWYS. |

| Term of Contract: | 1 Year |
| Expiration Date: | 12/31/2018 |

| Date: | 11/20/17 |
| 2. Attorney signoff: | RB |
| Date: | 1/3/2018 |
| 3. AS Finance reviewed: | B. Bennet |
| Date: | 2/16/18 |
| 4. IT reviewed (if IT related): | |
| Date: | |
| 5. Contractor signed: | |
| Date: | 2/7/18 |
| 6. Submitted to Exec.: | |
| Date: | 2/21/18 |
| 7. Council approved (if necessary): | |
| Date: | |
| 8. Executive signed: | |
| Date: | |
| 9. Original to Council: | |
| Date: | |
COMPASS HEALTH, hereinafter called Contractor, and Whatcom County, hereinafter referred to as County, agree and contract as set forth in this Agreement, including:

General Conditions, pp. 3 to 8.
Exhibit A (Scope of Work), pp. 9 to 10.
Exhibit B (Compensation), pp. 11 to 14.
Exhibit C (Certificate of Insurance).

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

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

The general purpose or objective of this Agreement is to provide mental health services to youth at Northwest Youth Services, as more fully and definitively described in Exhibit A hereto. The language of Exhibit A controls in case of any conflict between it and that provided here.

The maximum consideration for the initial term of this agreement or for any renewal term shall not exceed $44,330. 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 1st day of Feb., 2018.

CONTRACTOR:
Compass Health

Tom Sebastian, Executive Director

STATE OF WASHINGTON
COUNTY OF Snohomish ss.

On this 1st day of Feb., 2018, before me personally appeared Compass Health, the known to be the CEO (title of Company) and who executed the above instrument and who acknowledged to me the act of signing and sealing thereof.

Melissa Judd

NOTARY PUBLIC in and for the State of Washington, residing at Everett, Washington, My commission expires 5-4-20.

CONTRACTOR INFORMATION:
Compass Health
Tom Sebastian, Executive Director
PO Box 38104526 Federal Ave.
Everett, WA 98213-8810
Phone: 425-349-6200
Tom.Sebastian@CompassHealth.org
WHATCOM COUNTY:
Recommended for Approval:

Anne Deacon, Human Services Manager

Date

Regina Delahunt, Director

Date

Approved as to form:

Royce Buckingham, Prosecuting Attorney

Date

Approved:
Accepted for Whatcom County:

By:
Jack Louws, Whatcom County Executive

STATE OF WASHINGTON )
COUNTY OF WHATCOM ) ss

On this ______ day of _________, 2018, before me personally appeared Jack Louws, to me known to be the Executive of Whatcom County, who executed the above instrument and who acknowledged to me the act of signing and sealing thereof.

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

My commission expires __________________.
GENERAL CONDITIONS

Series 00-08: Provisions Related to Scope and Nature of Services

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

Series 10-19: Provisions Related to Term and Termination

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

10.2 **Extension:**
The duration of this Agreement may be extended by mutual written consent of the parties, for a period of up to one year, and for a total of no longer than three years.

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

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

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

Series 20-29: Provisions Related to Consideration and Payments

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

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

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

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

22.1 Witholding 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:** Not Applicable

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

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

34.1 **Proof of Insurance:**
The Contractor shall carry for the duration of this Agreement general liability and property damage insurance with the following minimums:
- Property Damage per occurrence - $500,000.00 (this amount may vary with circumstances)
- General Liability & Property Damage for bodily injury- $1,000,000.00 (this amount may vary with circumstances)

A Certificate of insurance, that also identifies the County as an additional insured, is attached hereeto as Exhibit "C". This insurance shall be considered as primary and shall waive all rights of subrogation. The County insurance shall be noncontributory.

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

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

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

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

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

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

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

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

36.1 Waiver of Noncompetition: Not Applicable

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

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

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

Perry Mowery, Human Services Supervisor
Whatcom County Health Department
509 Girard Street
Bellingham, WA 98225
(360) 778-6059
37.2 Notice:
Except as set forth elsewhere in the Agreement, for all purposes under this Agreement except service of process, notice shall be given by the Contractor to the County’s Administrative Officer under this Agreement. Notice to the Contractor for all purposes under this Agreement shall be given to the address provided by the Contractor herein above in the “Contractor Information” section. Notice may be given by delivery or by depositing in the US Mail, first class, postage prepaid.

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

38.2 Certification Regarding Federal Debarment, Suspension, Ineligibility and Voluntary Exclusion - Lower Tier Covered Transactions:
The Contractor further certifies, by executing this contract, that neither it nor its principles is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or Agency.

The Contractor also agrees that it shall not knowingly enter into any lower tier covered transactions (a transaction between the Contractor and any other person) with a person who is proposed for debarment, debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, and the Contractor agrees to include this clause titled "Certification Regarding Federal Debarment, Suspension, Ineligibility and Voluntary Exclusion - Lower Tier Covered Transaction" without modification, in all lower tier covered transactions and in all solicitations for lower tier transactions.

The "Excluded Parties List System in the System for Award Management (SAM) website is available to research this information at WWW.SAM.GOV. Contractor shall immediately notify Whatcom County if, during the term of this Contract, Contractor becomes debarred.

38.3 E-Verify: Not Applicable

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

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

40.2 Contractor Commitments, Warranties and Representations: Not Applicable

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

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

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

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

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

d. Arbitration:
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 expenses, costs and attorney fees to the prevailing party and pre-award interest, but shall not have the power to award punitive damages. The decision of the arbitrator shall be final and binding and an order confirming the award or judgment upon the award may be entered in any court having jurisdiction. The parties agree that the decision of the arbitrator shall be the sole and exclusive remedy between them regarding any dispute presented or pled before the arbitrator. At the request of either party made not later than forty-five (45) days after the arbitration demand, the parties agree to submit the dispute to nonbinding mediation, which shall not delay the arbitration hearing date; provided, that either party may decline to mediate and proceed with arbitration.

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

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

44.1 Survival:
The provisions of paragraphs 11.1, 11.2, 11.3, 21.1, 22.1, 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)

I. Background

The 2017 Whatcom County Point-in-Time Homeless Count identified 175 individuals under the age of 18 as homeless. This was 24% of the total count. Homeless youth are at significant physical, mental, and emotional risk. Over 60% of youth surveyed in Whatcom County report experiencing anxiety in the past 30 days. One-third of Whatcom youth also report depression, with nearly 20% reporting they have considered suicide. Additionally, nearly one in three youth report using alcohol in the past month, while one in four report using marijuana in that same time frame. Mental health and substance use are interrelated. Poor mental health can increase the risk of substance use and substance use has been shown to greatly increase rates of attempted and completed suicides. Youth who use marijuana report nearly three times the amount of suicide contemplation, as well as attempted suicide. More broadly, many youth are struggling with issues that challenge their ability to connect and build resilience. About one in three (29%) twelfth grade students reported 'feeling more alone than not' in the past year, and only 28% of students reported feeling satisfied with their lives. While most are looking forward to the future, about 15% demonstrated low hope for the future (source: Healthy Youth Survey).

The services provided under this contract have been designed to reduce risks associated with poor mental health and substance use. Youth seeking care at Whatcom Northwest Youth Services (NWYS) struggle with a variety of stresses, traumas and anxieties. Services provided by a Compass Health provider located at NWYS will be oriented toward youth and young adults who utilize the services of NWYS.

II. Statement of Work

The contractor will:

1. Provide a Mental Health Provider to deliver services to individuals aged 13 – 24 that include, but are not limited to the following:

   • Screening and assessment of behavioral health issues for each client served
   • Developing formal and informal individualized service plans as appropriate
   • Connecting to treatment as indicated by screening, assessment and needs
   • Engaging and connecting to services identified in the individualized service plan
   • Referring to and coordinating with community resources and programs as appropriate for the identified needs of the individual
   • Providing Support and Case Management to assist in symptom stabilization and problem-solving
   • Creating a positive, supportive, and welcoming environment at NWYS for youth and young adults who are experiencing distress.

2. Ensure that services are provided 20 hours per week, excluding agency holidays.

3. Develop and implement protocols for after-hours response in the event of a crisis.

4. Ensure access to clinical supervision for the Mental Health Provider no less than once every other week.
5. Ensure that Mental Health Provider remains current and in good standing with licensure or agency affiliation as appropriate, and compliant with continuing education requirements.

6. Ensure services comply with all state and federal laws regulating confidentiality, as relevant.

III. Program Requirements

Ensure all services are delivered by a Mental Health Provider, as defined by WAC, who is properly credentialed to provide mental health treatment in the state of Washington. The Mental Health Provider must demonstrate the ability, as a result of training and experience, to work effectively with youth and young adults, as well as a diverse population.

IV. Reporting Requirements

Monthly reports will be submitted and include the following information:

- Number of individuals who received services
- Number of individuals referred to ongoing mental health or substance use disorder services (assessment and/or treatment)

V. Other Administrative Contract Requirements

The contractor shall collaboratively develop a Memorandum of Understanding (MOU) with Northwest Youth Services to ensure the provision of consistent services. Specifics of the MOU will include:

- A clear procedure for scheduled supervision meetings to support the mental health provider in provision of services to Northwest Youth Services clients.
- Established goals and expectations of mental health services delivered to NWYS clients.
- An established protocol for communication between the Contractor and Northwest Youth Services administration to ensure accurate and timely information sharing in regard to staff absences of both short and extended term duration.
- An effective protocol the Contractor will use to ensure significant lead time of communicated information regarding changes in staff schedule, services, or personnel.
I. Budget and Funding

The source of funding for this contract, in an amount not to exceed $44,330, is the local Behavioral Health Fund.

The budget for this program/project is as follows:

<table>
<thead>
<tr>
<th>Activity/Line Item</th>
<th>Unit Cost</th>
<th>Budget</th>
</tr>
</thead>
<tbody>
<tr>
<td>Clinician II</td>
<td>52 weeks @ 20 hours</td>
<td>$40,300</td>
</tr>
<tr>
<td>Indirect Cost Rate</td>
<td>10%</td>
<td>$4,030</td>
</tr>
<tr>
<td>Total</td>
<td></td>
<td>$44,330</td>
</tr>
</tbody>
</table>

II. Invoicing

1. The Contractor shall submit itemized invoices on a monthly basis in a format approved by the County.

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

   Attention: Business Office
   Whatcom County Health Department
   509 Girard Street
   Bellingham, WA 98225

3. Payment by the County will be considered timely if it is made within 30 days of the receipt and acceptance of billing information from Contractor. The County may withhold payment of an invoice if the Contractor submits it more than 30 days after the expiration of this contract.

4. Invoices must include the following statement, with an authorized signature and date:

   I certify that the materials have been furnished, the services rendered, or the labor performed as described on this invoice.

5. Duplication of Billed Costs or Payments for Service: The Contractor shall not bill the County for services performed or provided under this contract, and the County shall not pay the Contractor, if the Contractor has been or will be paid by any other source, including grants, for those costs used to perform or provide the services in this contract. The Contractor is responsible for any audit exceptions or disallowed amounts paid as a result of this contract.
CERTIFICATE OF LIABILITY INSURANCE

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERs NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER
Lockton Companies
8110 E. Union Avenue
Suite 700
Denver CO 80237
(303) 414-6000

INSURED
Compass Health, Inc.
1075167 4526 Federal Avenue
Everett, WA 98203

CONTACT NAME

PHONE (303) 414-6000

EMAIL ADDRESS:

INSURER(S) AFFORDING COVERAGE
NAIC 

INSURER A: Arch Specialty Insurance Company
21199

INSURER B: Philadelphia Indemnity Insurance Co.
18058

INSURER C:

INSURER D:

INSURER E:

INSURER F:

COVERAGES
CERTEIFICATE NUMBER: 2741043

REVISION NUMBER: XXXXXXXX

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

<table>
<thead>
<tr>
<th>TYPE OF INSURANCE</th>
<th>POLICY NUMBER</th>
<th>POLICY EFF</th>
<th>POLICY EXP</th>
<th>LIMITS</th>
</tr>
</thead>
<tbody>
<tr>
<td>COMMERCIAL GENERAL LIABILITY</td>
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<td>3/31/2018</td>
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<tr>
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<td>FLP003571304</td>
<td>3/1/2017</td>
<td>3/31/2018</td>
<td>EACH OCCURRENCE</td>
</tr>
</tbody>
</table>

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

Whatcom County Health Department is added as Additional Insured, but only with respect to operations of the Named Insured.

CERTIFICATE HOLDER

2741043

Whatcom County Health Department
509 Girard Street
Bellingham, WA 98225

ACCEPTED

AUTHORIZED REPRESENTATIVE

Charles M. McDaniel

ACORD 25 (2016/03)

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WHATCOM COUNTY COUNCIL AGENDA BILL  

CLEARANCES | Initial | Date | Date Received in Council Office | Agenda Date | Assigned to: Board of Supervisors
--- | --- | --- | --- | --- | ---
Originator: | JNT | 2/12/2018 | | March 13, 2018 | |
Division Head: | | 2/20/18 | RECEIVED | | |
Dept. Head: | | 2/20/18 | | | |
Prosecutor: | | 02/13/18 | | | |
Purchasing/Budget: | | 3/1/18 | WHATCOM COUNTY COUNCIL | | |
Executive: | | 3/5/18 | | | |

TITILE OF DOCUMENT:
Agreement with Washington Department of Fish & Wildlife to receive federal EPA National Estuary Program funds to support Lower Nooksack River Floodplain Integrated Planning

ATTACHMENTS:
- Sub-recipient Agreement

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

SUMMARY STATEMENT OR LEGAL NOTICE LANGUAGE: (If this item is an ordinance or requires a public hearing, you must provide the language for use in the required public notice. Be specific and cite RCW or WCC as appropriate. Be clear in explaining the intent of the action.)
National Estuary Program (NEP) funds from the U.S. Environmental Protection Agency (EPA) and administered through the Washington Department of Fish and Wildlife will be used for technical studies and consultant services to support the floodplain integrated-planning update of the Lower Nooksack River Comprehensive Flood Hazard Management Plan. The sub-recipient agreement is for $750,000 in federal funds; local match is not required.

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.
TO: The Honorable Members of the Whatcom County Flood Control Zone District Board of Supervisors

THROUGH: Jon Hutchings, Public Works Director

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

RE: National Estuary Program Grant for Floodplain Integrated Planning

DATE: February 20, 2018

Enclosed are two (2) originals of a sub-recipient agreement between Washington Department of Fish and Wildlife and Whatcom County Flood Control Zone District for your review and signature.

- **Requested Action**
  Public Works respectfully requests that the County Executive, acting for the Whatcom County FCZD Board of Supervisors, execute the proposed agreement with the Washington Department of Fish and Wildlife to receive federal EPA National Estuary Program (NEP) funding for technical studies and consultant services in support of floodplain integrated planning.

- **Background and Purpose**
  The Lower Nooksack River Comprehensive Flood Hazard Management Plan (CFHMP) was originally completed in 1999. That plan identified project concepts to reduce community flood risk in the lower 36 miles of the Nooksack River. The CFHMP adoption timing coincided with the federal Endangered Species Act listings of Chinook salmon, steelhead, and bull trout as threatened and the associated preparation of the WRIA 1 Salmonid Recovery Plan (2005). Flood and salmon recovery planning and project implementation over the last 18 years has occurred against the background of growing community awareness that floodplain lands are also essential to many long-established farming operations in Whatcom County. An approach to floodplain management that successfully integrates the needs of “fish/flood/farms” has the best potential to provide broad public benefits and successfully meet multiple objectives over the long-term. This grant will support technical studies and consultant services in support of the planning process.

- **Funding Amount and Source**
  This grant for $750,000 is a National Estuary Program (NEP) grant from the U.S. EPA and administered by Washington Department of Fish and Wildlife. No local match is required.

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

Encl.
WHATCOM COUNTY CONTRACT INFORMATION SHEET

Originating Department: Public Works
Division/Program: (i.e. Dept. Division and Program) 9075 Flood / 907525 CFHMP
Contract or Grant Administrator: Paula Harris, River & Flood Manager/District Engineer
Contractor’s / Agency Name: Washington Department of Fish & Wildlife

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): 18-10194 CFDA#: 66.123

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

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

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

If YES, indicate exclusion(s) below:
☒ Professional services agreement for certified/licensed professional.
☒ Contract work is for less than $100,000.
☒ Contract work is for less than 120 days.
☒ Interlocal Agreement (between Governments).
☒ Contract for Commercial off the shelf items (COTS).
☒ Work related subcontract less than $25,000.
☒ Public Works - Local Agency/Federally Funded FHWA.

Contract Amount:(sum of original contract amount and any prior amendments):
$ 750,000

This Amendment Amount: $ __________

Total Amended Amount: $ __________

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

Summary of Scope: National Estuary Program funds from the EPA and administered through the Washington Department of Fish and Wildlife will be used for technical studies and consultant services to support the floodplain integrated planning update of the Lower Nooksack River Comprehensive Flood Hazard Management Plan. The sub-recipient agreement totals $750,000 in federal funds; local match is not required.

Term of Contract: February 1, 2018 Expiration Date: December 1, 2018

Contract Routing:
1. Prepared by: John N. Thompson Date: 2/12/2018
2. Attorney signoff: Daniel L. Gibson Date: 02/13/18
3. AS Finance reviewed: M. Caldwell Date: 2/12/18
4. IT reviewed (if IT related):
5. Contractor signed:
6. Submitted to Exec.: Date: 3-1-18
7. Council approved (if necessary):
8. Executive signed:
9. Original to Council:

Last edited 10/31/16
GRANT AGREEMENT - EPA FUNDS

TITLE: Develop Data and Support for Floodplain Management Strategies

GRANTEE: Whatcom County Flood Control Zone District

TYPE: Payable / Grant / Sub-Recipient Federal – EPA - #16-05251

WDFW NUMBER: 18-10194

CONTRACT PERIOD: 02/01/2018 to 12/01/2019

CONTRACT VALUE: $750,000.00

A. PARTIES TO THIS CONTRACT
This contract is entered into between the Washington State Department of Fish and Wildlife (WDFW), Post Office Box 43200, Olympia, WA 98504-3200; and Whatcom County Flood Control Zone District (Grantee), 322 Commercial St #120, Bellingham, WA 98225-4042; and shall be binding upon the agents and all persons acting by or through the parties.

B. PURPOSE OF CONTRACT
The purpose of this contract is to provide a grant award to the Grantee for the project specified herein.

C. DESCRIPTION OF PROJECT
The Grantee shall perform the project as described in Attachments, which are incorporated herein by this reference:
Attachment - A- General Terms and Conditions
Attachment - B - Contract/Project Summary
Attachment - C - Special Terms and Conditions
Attachment - D - Statement of Work

The Grantee is a subrecipient of federal funds as identified under “Federal Funding Information” in Attachment -B.

D. PERIOD OF PERFORMANCE
The performance period under this contract shall commence on 02/01/2018 and terminate on 12/01/2019. No expenditures made before or after this period are eligible for reimbursement unless incorporated by written amendment into this contract. The contract may be terminated or the performance period extended pursuant to terms set forth in Attachment - A.

E. COMPENSATION / PAYMENT
The total dollars provided by WDFW for this contract shall not exceed $750,000.00 minus any matching requirements identified in this contract. The Grantee shall be responsible for all project costs exceeding this amount. Only eligible reimbursement activities that are in direct support of the project deliverables identified in this contract will be reimbursed. Any additional services provided by the Grantee must have prior written approval of WDFW.

Compensation for services rendered shall be payable upon receipt of properly completed invoices, which shall be submitted to the Project Manager by the Grantee not more often than monthly. The invoices shall describe the document to WDFW’s satisfaction, a description of work performed, activities accomplished, or the progress of the project. The rates shall be in accordance with those herein agreed to.

Payment shall be considered timely if made by WDFW within 30 days after receipt of properly completed invoices. Payment shall be sent to the address designated by the Grantee. WDFW may, in its sole discretion, terminate the contract or withhold payments claimed by the Grantee for the services rendered if the Grantee fails to satisfactorily comply with any term or conditions of this contract.

F. RIGHTS AND OBLIGATIONS
All rights and obligations of the parties of this contract are subject to this contract, including the Attachments, which are incorporated herein by this reference. By signing this contract the Grantee acknowledges that they have read, fully understand, and agree to be bound by all terms and conditions set forth in this contract.
G. **COMPLIANCE WITH APPLICABLE STATUTES, AND RULES**
The Grantee shall comply with, all applicable state, federal, and local laws and regulations while performing under this contract.

H. **ORDER OF PRECEDENCE**
In the event of an inconsistency in this contract, unless otherwise provided herein, the inconsistency shall be resolved by giving precedence in the following order:

Applicable Federal and State of Washington statutes and regulations.
Attachment - A - General Terms and Conditions.
Attachment - B - Contract/Project Summary
Attachment - C - Special Terms and Conditions
Attachment - D - Statement of Work, and
Any other provision, term or material incorporated herein by reference or otherwise incorporated.

I. **CONTRACT REPRESENTATIVES**
The below named representatives for each of the parties shall be the contact people for all communications and billings regarding the performance of this contract. All written communications regarding this contract shall be sent to the designated representatives at the addresses below unless notified in writing of any change.

**Grantee's Representative**
Paula Harris  
River & Flood Manager/District Engineer  
322 N Commercial Street, Suite 120  
Bellingham, Washington, 98225-4042  
360-778-6285  
pharris@co.whatcom.wa.us

**WDFW's Representative**
Julie Watson  
Project Manager  
Post Office Box 43200  
Olympia, WA 98504-3200  
360-902-2580  
Julie.watson@dfw.wa.gov

Kayla Jenkins  
Budget Manager  
Post Office Box 43200  
Olympia, WA 98504-3200  
360-902-8136  
kayla.jenkins@dfw.wa.gov

J. **ENTIRE CONTRACT**
This contract, along with all attachments and exhibits, constitutes the entire agreement of the parties. No other understandings, verbal or otherwise, regarding this contract shall exist or bind any of the parties.

K. **APPROVAL**
This contract shall be subject to the written approval of WDFW'S authorized representative and shall not be binding until so approved. This contract may be altered, amended, or waived only by a written amendment executed by both parties.

IN WITNESS WHERE, WDFW and the Grantee have signed this contract.

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**WHATCOM COUNTY FLOOD CONTROL ZONE DISTRICT**

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**WASHINGTON DEPARTMENT OF FISH AND WILDLIFE**

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PLEASE SEE ATTACHED WCFCZD SIGNATURE PAGE

Signature and Date

Signature and Date

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PRINTED NAME AND TITLE  
WDFW #18-10194  

PRINTED NAME AND TITLE
WHATCOM COUNTY FLOOD CONTROL ZONE DISTRICT:
Recommended for Approval:

Jon Hutchings
Public Works Department Director Date

Approved as to form:

Daniel Gibson 03/01/18
Chief Civil Deputy Prosecuting Attorney Date

Approved:
Accepted for Whatcom County Flood Control Zone District:

By:__________
Jack Louws, Whatcom County Executive, acting for the Whatcom County Flood Control Zone District Board of Supervisors

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 ________________
DEFINITIONS
As used throughout this contract, the following terms shall have the meaning set forth below:

A. "AGENCY" or "WDFW" shall mean the Department of Fish and Wildlife of the State of Washington, any division, section, office, unit or other entity of the AGENCY, or any of the officers or other officials lawfully representing that AGENCY.

B. "AGENT" shall mean the AGENCY Director, and/or the delegate authorized in writing to act on the Director's behalf.

C. "CFR" shall mean the Code of Federal Regulations. All references in the contract to CFR chapters or sections shall include any successor, amended or replacement regulations.

D. "EPA" shall mean the Environmental Protection Agency.

E. "GRANTEE" shall mean any organization or individual that is performing service(s) under this contract, and shall include all employees of the GRANTEE.

F. "RCW" shall mean the Revised Code of Washington. All references in the contract to RCW chapters or sections shall include any successor, amended or replacement statutes.

G. "Subcontractor" shall mean one not in the employment of the GRANTEE, who is performing all or part of those services under this contract under a separate contract with the GRANTEE. The terms "Subcontractor" and "Subcontractors" means Subcontractor(s) in any tier.

H. "USC" shall mean United States Code. All references in the contract to USC chapters or sections shall include any successor, amended or replacement statutes.

ACCESS TO DATA
In compliance with RCW 39.26.180, the GRANTEE shall provide access to data generated under this contract to AGENCY, the Joint Legislative Audit and Review Committee, and the State Auditor at no additional cost. This includes access to all information that supports the findings, conclusions, and recommendations of the GRANTEE's reports, including computer models and methodology for those models.

ADVANCE PAYMENTS PROHIBITED
No payments in advance of or in anticipation of goods or services to be provided under this contract shall be made by the AGENCY.

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

AMERICANS WITH DISABILITIES ACT (ADA) OF 1990, PUBLIC LAW 101-336, also referred to as the "ADA" 28 CFR Part 35
Both parties shall comply with the ADA, which provides comprehensive civil rights protection to individuals with disabilities in the areas of employment, public accommodations, state and local government services, and telecommunications.

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

ATTORNEYS' FEES
In the event of litigation or other action brought to enforce contract terms, each party agrees to bear its own attorney fees and costs.

BUY AMERICAN ACT
The GRANTEE shall comply with 41 USC 10a-10c (the "Buy American Act") by purchasing only American-made equipment and products with contract funds except articles, materials, and supplies — a) for use outside the United States; b) for which the cost would be unreasonable, as determined in accordance with federal regulations; c) for which the AGENCY determines that domestic preference would be inconsistent with the public interest; or d) that are not mined, produced, or manufactured in the United States in sufficient and reasonable available commercial quantities, of a satisfactory quality.

CENTRAL CONTRACTOR REGISTRATION AND DATA UNIVERSAL NUMBERING SYSTEM (DUNS)
Unless exempt under 2 CFR 25.110, the GRANTEE shall comply with 2 CFR 25 and be registered in the federal Central Contractor Registration (CCR) system; maintain an active CCR registration with current information at all times during the period of performance for this contract; and provide its DUNS number to the AGENCY.

CONFIDENTIALITY/SAFEGUARDING OF INFORMATION
The GRANTEE shall not use or disclose any information concerning the AGENCY, or information that may be classified as confidential, for any purpose not directly
connected with the administration of this contract, except with prior written consent of the AGENCY, or as may be required by law.

CONSULTANT CAP
EPA participation in the salary rate (excluding overhead) paid to individual consultants retained by the GRANTEE shall be limited to the maximum daily rate for a Level IV of the Executive Schedule, available at: https://www.opm.gov/policy-data-oversight/pay-leave/sALARIES-WAGES/, to be adjusted annually. This limit applies to consultation services of designated individuals with specialized skills who are paid at a daily or hourly rate. This rate does not include transportation and subsistence costs for travel performed (the GRANTEE will pay these in accordance with their normal travel reimbursement practices). Subcontracts with firms for services which are awarded using the procurement requirements in Subpart D of 2 CFR 200, are not affected by this limitation unless the terms of the subcontract provide the GRANTEE with responsibility for the selection, direction and control of the individuals who will be providing services under the subcontract at an hourly or daily rate of compensation.

CONFLICT OF INTEREST
Notwithstanding any determination by the Executive Ethics Board or other tribunal, the AGENCY may, in its sole discretion, by written notice to the GRANTEE terminate this contract if it is found after due notice and examination by the AGENT that there is a violation of the Ethics in Public Service Act, Chapter 42.52 RCW; or any similar statute involving the GRANTEE in the procurement of, or performance under this contract. In the event this contract is terminated as provided above, the AGENCY shall be entitled to pursue the same remedies against the GRANTEE as it could pursue in the event of a breach of the contract by the GRANTEE. The rights and remedies of the AGENCY provided for in this clause shall not be exclusive and are in addition to any other rights and remedies provided by law. The existence of facts upon which the AGENT makes any determination under this clause shall be an issue and may be reviewed as provided in the “Disputes” clause of this contract.

EPA’s conflict of interest (COI) policy is posted at http://www.epa.gov/ogd/coi.htm. The GRANTEE must notify WDFW of any potential conflicts of interest identified in EPA’s COI Policy within 5 calendar days of the discovery of the potential COI.

COST PRINCIPLES AND AUDIT REQUIREMENTS
The GRANTEE agrees to comply with the costs principles contained in 2 CFR Part 200 as appropriate for this contract. The GRANTEE agrees to comply with the organizational audit requirements of 2 CFR Subpart F, and further understands and agrees that funds may be withheld, or other related requirements may be imposed, if outstanding audit issues (if any) from 2 CFR Subpart F audits (and any other audits of Contract funds) are not satisfactorily and promptly addressed.

COPYRIGHT PROVISIONS
Unless otherwise provided, all materials produced under this contract shall be considered “works for hire” as defined by the U.S. Copyright Act and shall be owned by the AGENCY. The AGENCY shall be considered the author of such materials. In the event the materials are not considered “works for hire” under the U.S. Copyright laws, the GRANTEE hereby irrevocably assigns all right, title, and interest in materials, including all intellectual property rights, to the AGENCY effective from the moment of creation of such materials.

Material means all items in any format and includes, but is not limited to, data, reports, documents, pamphlets, advertisements, books, magazines, surveys, studies, computer programs, films, tapes, and/or sound reproductions. Ownership includes the right to copyright, patent, register and the ability to transfer these rights.

For materials that are delivered under the contract, but that incorporate pre-existing materials not produced under the contract, the GRANTEE hereby grants to the AGENCY a nonexclusive, royalty-free, irrevocable license (with rights to sublicense others) in such materials to translate, reproduce, distribute, prepare derivative works, publicly perform, and publicly display. The GRANTEE warrants and represents that the GRANTEE has all rights and permissions, including intellectual property rights, moral rights and rights of publicity, necessary to grant such a license to the AGENCY.

The GRANTEE shall exert all reasonable effort to advise the AGENCY, at the time of delivery of materials furnished under this contract, of all known or potential invasions of privacy contained therein or of any portion of such document that was not produced in the performance of this contract.

The AGENCY shall receive prompt written notice of each notice or claim of infringement received by the GRANTEE with respect to any data delivered under this contract. The AGENCY shall have the right to modify or remove any restrictive markings placed upon the data by the GRANTEE.

In accordance with 40 CFR 31.34 for State, local and Indian Tribal governments or 40 CFR 30.36 for other recipients, the EPA has the right to reproduce, publish, use, and authorize others to use copyrighted works or other data developed under this contract for Federal purposes.

COVENANT AGAINST CONTINGENT FEES
The GRANTEE warrants that no person or selling agent has been employed or retained to solicit or secure this contract upon an agreement or understanding for a commission, percentage, brokerage or contingent fee, excepting bona fide employees or bona fide established agents maintained by the GRANTEE for securing business. The AGENCY shall have the right, in the event of breach of this clause by the GRANTEE, to annul this contract without liability or, in its discretion, to deduct from the contract price or consideration or recover by other means the full amount of such commission, percentage, brokerage or contingent fee.
CYBERSECURITY
The GRANTEE agrees to comply with the current EPA
general terms and conditions “Cybersecurity”. The terms and
conditions can be found on the EPA Grants Terms and
Conditions Website.
For STATE AGENCIES:
http://www2.epa.gov/sites/production/files/2015-
07/documents/state_grant_cyber_security_condition.pdf.
For TRIBES: http://www2.epa.gov/sites/production/files/2015-
07/documents/tribal_grant_cyber_security_condition.pdf.
For Other Recipients:
http://www2.epa.gov/sites/production/files/2015-
07/documents/cyber_security_grant_condition_for_other_recipients.pdf.

DAVIS-BACON AND RELATED ACTS
If any work performed by the GRANTEE or Subcontractor
employees is subject to the Davis Bacon Act and Davis-
Bacon prevailing wage provisions contained in applicable
federal laws, the GRANTEE shall ensure that they and their
Subcontractor(s) a) pay at least once per week wages to
GRANTEE and/or Subcontractor laborers and mechanics at a
rate not less than the minimum wages specified in wage
determinations made by the U.S. Department of Labor; and b)
provide to the AGENCY each week U.S. Department of Labor
Form WH-347 “Payroll (For Contractors Optional Use)” stating
the wages paid to GRANTEE and /or Subcontractor laborers
and mechanics engaged in work funded by this contract.

DISADVANTAGED BUSINESS ENTERPRISE
The GRANTEE agrees to comply with the requirements of
the Program for Utilization of Small, Minority and Women’s
Business Enterprises in procurement under assistance
agreements, contained in 40 CFR, Part 33.

DISALLOWED COSTS
The GRANTEE is responsible for any audit exceptions or
disallowed costs incurred by its own organization or that of its
Subcontractors.

DISPUTES
Except as otherwise provided in this contract, when a dispute
arises between the parties and it cannot be resolved by direct
negotiation, either party may request a dispute hearing with
AGENT.

1. The request for a dispute hearing must:
   - Be in writing;
   - State the disputed issue(s);
   - State the relative positions of the parties;
   - State the GRANTEE’S name, address, and contract
     number; and
   - Be mailed to the AGENT and the other party’s
     (respondent’s) contract manager within 3 working
calendar days after the parties agree that they cannot
resolve the dispute.

2. The respondent shall send a written answer to the
requester’s statement to both the AGENT and the
requester within 5 calendar days.

3. The AGENT shall review the written statements and reply
in writing to both parties within 10 calendar days. The
AGENT may extend this period if necessary by notifying
the parties.

4. The parties agree that this dispute process shall precede
any action in a judicial or quasi-judicial tribunal.

Nothing in this contract shall be construed to limit the parties’
choice of a mutually acceptable alternate dispute resolution
method in addition to the dispute resolution procedure
outlined above.

DRUG-FREE WORKPLACE
The GRANTEE shall comply with the Drug-Free Workplace Act
of 1988, 41 USC 701-707, as amended. Compliance with the
Drug-Free Workplace Act includes publishing a drug-free
workplace statement and establishing a drug-free awareness
program for GRANTEE employees; and taking actions
concerning GRANTEE employees who are convicted of
violating drug statutes in the workplace. The GRANTEE shall
provide written notice of a conviction of a GRANTEE employee
of a drug violation in the workplace to the AGENCY within
seven (7) calendar days after the GRANTEE learns of the
conviction.

DUPLICATE PAYMENT
The AGENCY shall not pay the GRANTEE, if the GRANTEE
has charged or will charge the State of Washington or any
other party under any other contract or agreement, for the
same services or expenses.

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

EQUIPMENT MANAGEMENT
The GRANTEE may keep any equipment funded through this
contract and continue to use it on the project originally funded
through this contract or on other federally funded projects
whether or not the project or program continues to be
supported by federal funds. If the GRANTEE is a state agency,
the GRANTEE will manage and dispose of equipment acquired
under this contract in accordance with state laws and
procedures.

FEDERAL DEBARMENT AND SUSPENSION
The GRANTEE certifies, that neither it nor its “principals” (as
defined in 49 CFR 29.105) is presently debarred, suspended,
proposed for debarment, declared ineligible, or voluntarily
excluded from participation in this transaction by any Federal
department or agency. Further, the GRANTEE agrees not to
enter into any arrangements or other contracts with any party that is on the "List of Parties Excluded from Federal Procurement or Non-procurement Programs" which can be found at https://www.sam.gov.

FEDERAL FUNDING ACCOUNTABILITY AND TRANSPARENCY ACT
This contract is subject to the requirements of the Federal Funding Accountability and Transparency Act (FFATA) as stated in 2 CFR 170. The GRANTEE agrees to comply with applicable requirements to assist the AGENCY in reporting first-tier subawards of $25,000 or more and, in certain circumstances, in reporting the names and total compensation of the five most highly compensated executives of first-tier subrecipients of award funds. Such data will be submitted to the FFATA Subaward Reporting System (FSRS).

FINAL INVOICE
The GRANTEE shall submit the final invoice not later than 60 calendar days from the end of the contract period.

GOVERNANCE
This contract is entered into pursuant to and under the authority granted by the laws of the State of Washington and any applicable federal laws. The provisions of this contract shall be construed to conform to those laws. In the event of an inconsistency in the terms of this contract, or between its terms and any applicable statute or rule, the inconsistency shall be resolved by giving precedence in the following order:

a. Applicable state and federal statutes and rules;
b. Statement of work; and
c. Any other provisions of the contract, including materials incorporated by reference.

GOVERNING LAW
This contract shall be construed and interpreted in accordance with the laws of the State of Washington, and the venue of any action brought hereunder shall be in the Superior Court for Thurston County.

HOTEL-MOTEL FIRE SAFETY ACT
The GRANTEE agrees to ensure that all space for conferences, meetings, conventions, or training seminars funded in whole or in part by this contract complies with the protection and control guidelines of the Hotel and Motel Fire Safety Act (PL 101:391, as amended).

INDEMNIFICATION
To the fullest extent permitted by law, the GRANTEE shall indemnify, defend, and hold harmless State, agencies of State and all officials, agents and employees of State, from and against all claims for injuries or death arising out of or resulting from the performance of the contract. "Claim," as used in this contract, means any financial loss, claim, suit, action, damage, or expense, including but not limited to attorney's fees, attributable for bodily injury, sickness, disease, or death, or injury to or destruction of tangible property including loss of use resulting therefrom.

The GRANTEE'S obligations to indemnify, defend, and hold harmless includes any claim by the GRANTEES' agents, employees, representatives, or any Subcontractor or its employees.

The GRANTEE expressly agrees to indemnify, defend, and hold harmless the State for any claim arising out of or incident to the GRANTEE'S or any Subcontractor's performance or failure to perform the contract. Provided that nothing herein shall require a sponsor to defend or indemnify the State against and hold harmless the State from claims, demands or suits based solely upon the negligence of the State, its employees and agents for whom the State is vicariously liable.

The GRANTEE waives its immunity under Title 51 RCW to the extent it is required to indemnify, defend and hold harmless State and its agencies, officials, agents or employees.

INDEPENDENT CAPACITY OF THE GRANTEE
The parties intend that an independent contractor relationship will be created by this contract. The GRANTEE and his or her employees or agents performing under this contract are not employees or agents of the AGENCY. The GRANTEE will not hold himself/herself out as or claim to be an officer or employee of the AGENCY or of the State of Washington by reason hereof, nor will the GRANTEE make any claim of right, privilege or benefit that would accrue to such employee under law. Conduct and control of the work will be solely with the GRANTEE.

INDUSTRIAL INSURANCE COVERAGE
The GRANTEE shall comply with the provisions of Title 51 RCW, Industrial Insurance. If the GRANTEE fails to provide industrial insurance coverage or fails to pay premiums or penalties on behalf of its employees, as may be required by law, the AGENCY may collect from the GRANTEE the full amount payable to the Industrial Insurance accident fund. The AGENCY may deduct the amount owed by the GRANTEE to the accident fund from the amount payable to the GRANTEE by the AGENCY under this contract, and transmit the deducted amount to the Department of Labor and Industries, (L&I) Division of Insurance Services. This provision does not waive any of L&I's rights to collect from the GRANTEE.

INSURANCE
The GRANTEE shall provide insurance coverage as set out in this section. The intent of the required insurance is to protect the state should there be any claims, suits, actions, costs, damages or expenses arising from any negligent or intentional act or omission of the GRANTEE or Subcontractor, or agents of either, while performing under the terms of this contract.

The GRANTEE shall provide insurance coverage, which shall be maintained in full force and effect during the term of this contract, as follows:
1. Commercial General Liability Insurance Policy. Provide a Commercial General Liability Insurance Policy, including contractual liability, in adequate quantity to protect against legal liability arising out of contract activity but no less than $1,000,000 per occurrence. Additionally, the GRANTEE is responsible for ensuring that any Subcontractors provide adequate insurance coverage for the activities arising out of subcontracts.

2. Automobile Liability. In the event that services delivered pursuant to this contract involve the use of vehicles, either owned or unowned by the GRANTEE, automobile liability insurance shall be required. The minimum limit for automobile liability is $1,000,000 per occurrence, using a Combined Single Limit for bodily injury and property damage.

3. Marine Insurance. If the GRANTEE will be using a vessel or boat in the performance of this contract, the GRANTEE shall maintain a Commercial Marine Protection and Indemnity (P&I) Policy with P&I limit of not less than $1,000,000 per occurrence and with a deductible not to exceed $25,000 (to include diving operations if diving is a part of the contracted service for any liability which includes coverage for injury to the crew and passengers).

4. The insurance required shall be issued by an insurance company/ies authorized to do business within the state of Washington, and shall name the state of Washington, its agents and employees as additional insureds under the insurance policy/ies. All policies shall be primary to any other valid and collectible insurance. GRANTEE shall instruct the insurers to give AGENCY thirty (30) calendar days advance notice of any insurance cancellation.

If the GRANTEE is self-insured, evidence of its status as a self-insured entity shall be provided to the AGENCY. If requested by the AGENCY, the GRANTEE must describe its financial condition and the self-insured funding mechanism.

The GRANTEE shall submit to AGENCY within fifteen (15) calendar days of the contract effective date, a certificate of insurance or evidence of its status as a self-insured entity that outlines the coverage and limits defined in this section. The GRANTEE shall submit renewal certificates as appropriate during the term of the contract; the failure of the AGENCY to enforce this term in no way reduces the GRANTEE’s responsibilities under this section.

LICENSING, ACCREDITATION AND REGISTRATION
The GRANTEE shall comply with all applicable local, state, and federal licensing, accreditation and registration requirements/standards, necessary for the performance of this contract.

LIGHT REFRESHMENTS AND/OR MEALS
The GRANTEE will obtain prior approval from WDFW for the use of contract funds for light refreshments and/or meals served at meetings, conferences, training workshops and outreach activities (events).

LIMITATION OF AUTHORITY
Only the AGENT or AGENT’S delegate by writing (delegation to be made prior to action) shall have the express, implied, or apparent authority to alter, amend, modify, or waive any clause or condition of this contract. Furthermore, any alteration, amendment, modification, or waiver or any clause or condition of this contract is not effective or binding unless made in writing and signed by the AGENT.

MANAGEMENT FEES
Management fees or similar charges in excess of the direct costs and approved indirect rates are not reimbursable under this contract. The term “management fees or similar charges” refers to expenses added to the direct costs in order to accumulate and reserve funds for ongoing business expenses, unforeseen liabilities, or for other similar costs which are not allowable under this contract.

MATCHING FUNDS
The GRANTEE shall be responsible for providing matching funds as indicated in the contract (if any). If the GRANTEE is responsible for matching funds they shall state the amount of match used during the billing period and the cumulative amount of match used to date on every invoice submitted for payment to the AGENCY. The GRANTEE shall comply with the uniform administrative rules on matching or cost sharing for Federal grants and cooperative agreements and subawards as contained in 2 CFR Section 200.

MINORITY, WOMEN AND VETERAN-OWNED BUSINESSES
The AGENCY encourages participation by minority and women-owned business enterprises certified by the Office of Minority and Women’s Business Enterprises (OMWBE); and veteran-owned businesses certified by the Department of Veteran’s Affairs (DVA). If any part of this contract is subcontracted to an OMWBE or DVA-certified firm the GRANTEE shall submit a statement of participation indicating what OMWBE or DVA certified firm was used and the dollar amount of their subcontracts.

Pursuant to 40 CFR, Section 33.301, the GRANTEE agrees to make good faith efforts whenever procuring construction, equipment, services and supplies funded through this contract, and to require that sub-recipients, loan recipients, and prime contractors also comply. Records documenting compliance with the six good faith efforts shall be retained by the GRANTEE.

NONDISCRIMINATION
During the performance of this contract, both parties shall comply with all federal and state nondiscrimination laws, regulations and policies. In the event of the GRANTEE’s non-compliance or refusal to comply with any nondiscrimination law, regulation, or policy, this contract may be rescinded, canceled or terminated in whole or in part, and the GRANTEE may be declared ineligible for further contracts with the
AGENCY. The GRANTEE shall, however, be given a reasonable time in which to cure this noncompliance. Any dispute may be resolved in accordance with the "Disputes" procedure set forth herein.

PREVAILING WAGE
If any work performed by the GRANTEE or its Subcontractors is subject to Chapter 39.12 of the Revised Code of Washington, the GRANTEE shall ensure that the GRANTEE and its Subcontractors pay the prevailing rate of wages to all GRANTEE and/or Subcontractor workers, laborers or mechanics in the performance of any part of the work described in the contract in accordance with state law and Department of Labor and Industries rules and regulations.

PRIVACY
Personal information including, but not limited to, "Protected Health Information," collected, used, or acquired in connection with this contract shall be protected against unauthorized use, disclosure, modification or loss. The GRANTEE shall ensure its directors, officers, employees, Subcontractors or agents use personal information solely for the purposes of accomplishing the services set forth herein. The GRANTEE and its Subcontractors agree not to release, divulge, publish, transfer, sell or otherwise make known to unauthorized persons personal information without the express written consent of the AGENCY or as otherwise required by law.

Any breach of this provision may result in termination of the contract and the demand for return of all personal information. The GRANTEE agrees to indemnify and hold harmless the AGENCY for any damages related to the GRANTEE’S unauthorized use of personal information.

PROCUREMENT STANDARDS
The GRANTEE will meet the procurement standards contained in 2 CFR 200.217 through 2 CFR 200.326.

RECOGNITION OF EPA FUNDING
The GRANTEE will ensure that reports, documents, signage, videos, or other media, developed as part of projects funded by this contract contain the following statement: "This project has been funded wholly or in part by the United States Environmental Protection Agency under assistance agreement PC-01J22301 through the Washington Department of Fish and Wildlife. The contents of this document do not necessarily reflect the views and policies of the Environmental Protection Agency or the Washington Department of Fish and Wildlife, nor does mention of trade names or commercial products constitute endorsement or recommendation for use."

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

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

RECYCLED PRODUCTS
The GRANTEE agrees to use recycled paper and double sided printing for all reports which are prepared as a part of this contract. If a governmental entity, the GRANTEE shall comply with all the requirements of Section 6002 of the Resource Conservation and Recovery Act (42 USC 6962), including but not limited to the regulatory provisions of 40 CFR Part 247, and Executive Order 12872 as they apply to procurement.

RESTRICTIONS ON LOBBYING
The GRANTEE certifies that under the requirements of Lobbying Disclosure Act, 2 USC, Section 1601 et seq., no Federal appropriated funds have been paid or will be paid, by or on behalf of the GRANTEE, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

RIGHT OF INSPECTION
The GRANTEE shall provide right of access to its facilities to the AGENCY, or any of its officers, or to any other authorized agent or official of the state of Washington or the federal government, at all reasonable times, in order to monitor and evaluate performance, compliance, and/or quality assurance under this contract.

SAVINGS
In the event funding from state, federal, or other sources is withdrawn, reduced, or limited in any way after the effective date of this contract and prior to normal completion, the AGENCY may terminate the contract under the "Termination " clause, without the thirty-day notice requirement, subject to renegotiation at the AGENCY’S discretion under those new funding limitations and conditions.

SEVERABILITY
The provisions of this contract are intended to be severable. If any term or provision is illegal or invalid for any reason
whichever, such illegality or invalidity shall not affect the validity of the remainder of the contract.

SITE SECURITY
While on AGENCY premises, the GRANTEE, its agents, employees, or Subcontractors shall conform in all respects with physical, fire or other security policies or regulations.

STATEWIDE VENDOR PAYMENT REGISTRATION
The GRANTEE is required to be registered in the Statewide Vendor Payment System prior to submitting a request for payment under this contract. The Washington State Department of Enterprise Services (DES) maintains the Statewide Vendor Payment System; to obtain registration materials contact the Statewide Payee Desk at (360) 407-8180; or go to:

SUBCONTRACTING
Neither the GRANTEE nor any Subcontractor(s) shall enter into subcontracts for any of the work contemplated under this contract without obtaining prior written approval of the AGENCY. In no event shall the existence of the subcontract operate to release or reduce the liability of the GRANTEE to the AGENCY for any breach in the performance of the GRANTEE’S duties. This clause does not include contracts of employment between the GRANTEE and personnel assigned to work under this contract.

Additionally, the GRANTEE is responsible for ensuring that all terms, conditions, assurances and certifications set forth in this contract are carried forward to any subcontracts. The GRANTEE and its Subcontractors agree not to release, divulge, publish, transfer, sell or otherwise make known to unauthorized persons personal information without the express written consent of the AGENCY or as provided by law.

TERMINATION
Except as otherwise provided in this contract, the AGENCY may, by 10 calendar days written notice, beginning on the second day after the mailing, terminate this contract, in whole or in part. If this contract is so terminated, the AGENCY shall be liable only for payment required under the terms of this contract for services rendered or goods delivered prior to the effective date of termination.

TERMINATION FOR CAUSE
In the event the AGENCY determines the GRANTEE has failed to comply with the conditions of this contract in a timely manner, the AGENCY has the right to suspend or terminate this contract. Before suspending or terminating the contract, the AGENCY shall notify the GRANTEE in writing of the need to take corrective action. If corrective action is not taken within 30 calendar days, the contract may be terminated or suspended.

The AGENCY reserves the right to suspend all or part of the contract, withhold further payments, or prohibit the GRANTEE from incurring additional obligations of funds during investigation of the alleged compliance breach and pending corrective action by the GRANTEE or a decision by the AGENCY to terminate the contract. A termination shall be deemed a “Termination for Convenience” if it is determined that the GRANTEE: (1) was not in default; or (2) failure to perform was outside of his or her control, fault or negligence.

The rights and remedies of the AGENCY provided in this contract are not exclusive and are, in addition to any other rights and remedies, provided by law.

TERMINATION PROCEDURES
Upon termination of this contract, the AGENCY, in addition to any other rights provided in this contract, may require the GRANTEE to deliver to the AGENCY any property specifically produced or acquired for the performance of such part of this contract as has been terminated. The provisions of the "Treatment of Assets" clause shall apply in such property transfer.

The AGENCY shall pay to the GRANTEE the agreed upon price, if separately stated, for completed work and services accepted by the AGENCY, and the amount agreed upon by the GRANTEE and the AGENCY for (i) completed work and services for which no separate price is stated, (ii) partially completed work and services, (iii) other property or services that are accepted by the AGENCY, and (iv) the protection and preservation of property, unless the termination is for default, in which case the AGENT shall determine the extent of the liability of the AGENCY. Failure to agree with such determination shall be a dispute within the meaning of the "Disputes" clause of this contract. The AGENCY may withhold from any amounts due the GRANTEE such sum as the AGENT determines to be necessary to protect the AGENCY against potential loss or liability.

The rights and remedies of the AGENCY provided in this section shall not be exclusive and are in addition to any other rights and remedies provided by law or under this contract.

After receipt of a notice of termination, and except as otherwise directed by the AGENT, the GRANTEE shall:

1. Stop work under the contract on the date, and to the extent specified, in the notice;

2. Place no further orders or subcontracts for materials, services, or facilities except as may be necessary for completion of such portion of the work under the contract that is not terminated;

3. Assign to the AGENCY, in the manner, at the times, and to the extent directed by the AGENT, all of the rights, title, and interest of the GRANTEE under the orders and subcontracts so terminated, in which case the AGENCY has the right, at its discretion, to settle or pay any or all claims arising out of the termination of such orders and subcontracts;
4. Settle all outstanding liabilities and all claims arising out of such termination of orders and subcontracts, with the approval or ratification of the AGENT to the extent AGENT may require, which approval or ratification shall be final for all the purposes of this clause;

5. Transfer title to the AGENCY and deliver in the manner, at the times, and to the extent directed by the AGENT any property which, if the contract had been completed, would have been required to be furnished to the AGENCY;

6. Complete performance of such part of the work as shall not have been terminated by the AGENT; and

7. Take such action as may be necessary, or as the AGENT may direct, for the protection and preservation of the property related to this contract, which is in the possession of the GRANTEE and in which the AGENCY has or may acquire an interest.

TRAFFICKING VICTIMS PROTECTION ACT
As described in 2 CFR Part 175 the AGENCY may terminate this contract, without penalty, if the GRANTEE is found to be in violation of the Trafficking Victims Protection Act of 2000.

UNIFORM ADMINISTRATIVE REQUIREMENTS FOR GRANTS AND COOPERATIVE AGREEMENTS
The GRANTEE shall comply with the uniform administrative rules for Federal grants and cooperative agreements and subawards contained in 2 CFR Part 200 and as appropriate for this contract:

Federal Grantor Agency
Department of Agriculture
Department of Commerce
Department of Defense
Department of the Interior
Environmental Protection Agency

2 CFR Chapter
IV
XIII
XI
XIV
XV

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

WHISTLEBLOWER PROTECTION
If this contract exceeds the federal simplified acquisition threshold of $100,000 the contract and all employees working on the contract are subject to the whistleblower protections established at 41 USC 4712 by section 828 of the National Defense Authorization Act for Fiscal Year 2013. If subject to this statute the GRANTEE shall inform their employees in writing, in the predominant language of the workforce, of the employee whistleblower rights and protections under 41 USC 4712. This section is applicable to all subcontractors and subawardees related to this contract that exceed the federal simplified acquisition threshold of $100,000, and the GRANTEE shall include this section in all such subcontracts and/or subawards.

APPROVED AS TO FORM BY THE OFFICE OF THE ATTORNEY GENERAL 3/20/2015
Attachment B -
CONTRACT/PROJECT SUMMARY

| TITLE: D e v e l o p D a t a a n d S u p p o r t f o r F l o o d p l a i n M a n a g e m e n t S t r a t e g i e s | WDFW CONTRACT NUMBER: 18-10194 |
| PERIOD: 02/01/2018 to 12/01/2019 | WDFW MANAGER: Julie Watson 360-902-2580 |
| GRANTEE: Whatcom County Flood Control Zone District | |
| GRANTEE CONTACT: Paula Harris 360-778-6285 | |
| CONTRACT TYPE: Payable / Grant / Sub-Recipient Federal EPA 16-05251 | |

SUMMARY CONTRACT DESCRIPTION:

The Whatcom County Flood Control Zone District (County) is updating the Lower Nooksack River Comprehensive Flood Hazard Management Plan (CFHMP) originally completed in 1999. That plan identified project concepts to reduce community flood risk in the lower 36 miles of the Nooksack River in western Whatcom County. The CFHMP adoption timing coincided with the federal Endangered Species Act listings of Chinook salmon, steelhead, and bull trout as threatened and the associated preparation of the WRIA 1 Salmonid Recovery Plan (2005). Flood and salmon recovery planning and project implementation over the last 18 years has occurred against the background of growing community awareness that floodplain lands are also essential to many long-established farming operations in Whatcom County. An approach to floodplain management that successfully integrates the needs of “fish/flood/farms” has the best potential to provide broad public benefits and successfully meet multiple objectives over the long-term. The purpose of this project is to perform technical analyses and provide the project management and facilitation necessary to support the development of reach-scale floodplain management strategies and project concepts and the integration of these strategies into floodplain, salmon habitat, and watershed recovery planning efforts.

Master Index Number(s): 37374

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Attachment C -
SPECIAL TERMS AND CONDITIONS

1. Summary
The Whatcom County Flood Control Zone District (County) is updating the Lower Nooksack River Comprehensive Flood Hazard Management Plan (CFHMP) originally completed in 1999. That plan identified project concepts to reduce community flood risk in the lower 36 miles of the Nooksack River in western Whatcom County. The CFHMP adoption timing coincided with the federal Endangered Species Act listings of Chinook salmon, steelhead, and bull trout as threatened and the associated preparation of the WRIA 1 Salmonid Recovery Plan (2005). Flood and salmon recovery planning and project implementation over the last 18 years has occurred against the background of growing community awareness that floodplain lands are also essential to many long-established farming operations in Whatcom County. An approach to floodplain management that successfully integrates the needs of “fish/flood/farms” has the best potential to provide broad public benefits and successfully meet multiple objectives over the long-term. The purpose of this project is to perform technical analyses and provide the project management and facilitation necessary to support the development of reach-scale floodplain management strategies and project concepts and the integration of these strategies into floodplain, salmon habitat, and watershed recovery planning efforts.

2. Description of all Project Requirements
The Grantee will perform the project as described in Attachment “D” (Statement of Work).

3. Reporting Requirements
   a. Quarterly Reports. The Grantee shall submit a performance report to the WDFW Project Manager once every three months using the reporting tool supplied by WDFW, unless otherwise specified in this Contract. This report shall include brief information on each of the following areas:
      • A comparison of actual accomplishments to the outputs/outcomes established in the assistance agreement work plan for the period;
      • The reasons for slippages if established outputs/outcomes were not met; and
      • Additional pertinent information, including when appropriate, analysis and information of cost overruns or high unit costs.

      The reporting periods for these reports are from January 1 to March 31, April 1 to June 30, July 1 to September 30, and October 1 to December 31 for each year of the contract. Performance reports are due to the WDFW Project Manager not later than fifteen (15) calendar days after the end of each reporting period. More detailed information about reporting requirements may be found in Attachment “D”.

   b. Final Report. The Grantee will submit a final performance report to the WDFW Project Manager not later than sixty (60) calendar days after contract termination. The final report will describes the methods, results, lessons learned and recommendations for future work and will cover the entire project period. More detailed information about final report requirements may be found in Attachment “D”.

4. Budget
WDFW will reimburse the Grantee for allowable costs as described in the budget contained in Attachment “D”. Final payment is contingent on the approval and acceptance of all deliverables identified in Attachment “D” by the WDFW Project Manager.
5. **Peer Review**

The results of the project funded through this contract may affect management decisions relating to Puget Sound. Prior to finalizing any significant technical products, the Grantee’s project manager must solicit advice, review and feedback from a technical review or advisory group consisting of relevant subject matter specialists. A record of comments and a brief description of how respective comments are addressed by the Grantee's project manager will be provided to the WDFW Project Manager prior to releasing any final reports or products resulting from the funded study.

6. **Electronic and Information Technology Accessibility**

The Grantee is subject to the program accessibility provisions of Section 504 of the Rehabilitation Act, codified in 40 CFR Part 7, which includes an obligation to provide individuals with disabilities reasonable accommodations and an equal and effective opportunity to benefit from or participate in a program, including those offered through electronic and information technology (“EIT”). In compliance with Section 504, EIT systems or products funded by this contract must be designed to meet the diverse needs of users (e.g., U.S. public, recipient personnel) without barriers or diminished function or quality. Systems shall include usability features or functions that accommodate the needs of persons with disabilities, including those who use assistive technology. At this time, the EPA will consider a recipient’s websites, interactive tools, and other EIT as being in compliance with Section 504 if such technologies meet standards established under Section 508 of the Rehabilitation Act, codified at 36 CFR Part 1194. While Section 508 does not apply directly to grant recipients, the EPA encourages recipients of EPA grant funds to follow either the 508 guidelines or other comparable guidelines that concern accessibility to EIT for individuals with disabilities. Recipients may wish to consult the latest Section 508 guidelines issued by the US Access Board or W3C’s Web Content Accessibility Guidelines (WCAG) 2.0 (see [http://www.access-board.gov/sec508/guide/index.htm](http://www.access-board.gov/sec508/guide/index.htm)).

7. **Riparian Buffers**

Riparian buffer restoration projects in agricultural areas shall be consistent with the interim riparian buffer recommendations provided to EPA and the Natural Resource Conservation Service by National Marine Fisheries Service letters of January 30, 2013 and April 9, 2013; or the October 28, 2013 guidance previously agreed to by Lead Organizations). These documents are available from WDFW on request. For projects involving riparian buffer restoration in agricultural areas, the Grantee shall confirm with WDFW in writing projects’ consistency with the recommendations referenced above. When evaluating project proposals, WDFW will consider the extent to which proposals include appropriate riparian buffers or otherwise address pollution sources on other water courses on the properties in the project area to support water quality and salmon recovery. Deviations can only be obtained through an exception approved by EPA. In order for EPA to evaluate a request for an exception, the Grantee must submit to WDFW the scientific rationale demonstrating adequacy of buffers for supporting water quality and salmon recovery. The request must summarize tribal input on the scientific rationale or other relevant issues. The scientific rationale could be developed from sources such as site-specific assessment data, salmon recovery plans, Total Maximum Daily Loads (TMDLs) and the state nonpoint plan. EPA will confer with the National Oceanic and Atmospheric Administration (NOAA) and the Washington Department of Ecology and provide the opportunity for affected tribes to consult with EPA before making a final decision on a deviation request.

8. **STORET**

All water quality data generated in accordance with an EPA approved Quality Assurance Project Plan as a result of this contract will be required to be transmitted into the EPA’s Storage and Retrieval (STORET) data warehouse using either WQX or WQX web. Water quality data appropriate for STORET include physical, chemical, and biological sample results for water, sediment and fish tissue. The data include toxicity data, microbiological data, and the metrics and indices generated from biological and habitat data.
9. Quality Assurance Requirements

Acceptable Quality Assurance documentation must be submitted to the WDFW Project Manager within 30 days of acceptance of this contract or another date as negotiated with the WDFW Project Manager. The Washington Department of Ecology’s National Estuary Program (NEP) Quality Coordinator supports quality assurance for EPA-funded NEP projects. No work involving direct measurements or data generation, environmental modeling, compilation of data from literature or electronic media, and data supporting the design, construction, and operation of environmental technology shall be initiated under this contract until the WDFW Project Manager or the NEP Quality Coordinator has approved the Grantee’s quality assurance document. The Grantee will submit all Quality Assurance documentation to the following address; please copy the WDFW Project Manager on all correspondence with the NEP Quality Coordinator:

Thomas H. Gries, NEP Quality Coordinator
Department of Ecology
Tgr461@ecy.wa.gov
360.407.6327

10. Geospatial Data Standards

All geospatial data created must be consistent with Federal Geographic Data Committee (FGDC) endorsed standards. Information on these standards may be found at www.fgdc.gov.

11. Information Collection Requirements

The Grantee agrees to comply with the requirements of the Paperwork Reduction Act in completing the project under this contract. Because the scope of work includes a survey, a questionnaire or similar information-gathering activity, the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.), requires the EPA to obtain Office of Management and Budget (OMB) clearance prior to the Grantee’s collection of information by means of identical questions posed to 10 or more persons. The Grantee will provide to WDFW the following information: (1) description of the information to be collected; (2) explanation of the need for the information; and (3) to whom the survey is being directed.

12. International Travel (Including Canada)

All International Travel must be approved by EPA’s Office of International and Tribal Affairs (OITA) through WDFW BEFORE travel occurs. Even a brief trip to a foreign country, for example to attend a conference, requires OITA approval. The Grantee will contact WDFW as soon as possible if travel is planned out of the country, including Canada and/or Mexico, so that WDFW can obtain appropriate approvals from EPA Headquarters.

13. Animal Subjects

Attachment - D

STATEMENT OF WORK
Develop Data and Support for Floodplain Management Strategies

Project Tracking Number: 18-10194

Grantee: Whatcom County Flood Control Zone District
Grantee Contact: Paula Harris, River & Flood Manager/District Engineer
                360-778-6285; PHarrisa@co.whatcom.wa.us
                Whatcom County Public Works
                322 N. Commercial Street, Suite 120 Bellingham, WA 98225-4042

Habitat Strategic Initiative (SI) Grant Program Representative:
Libby Gier; Libby.Gier@dnr.wa.gov; 360-902-1589

Effective Date: February 1, 2018
Expiration Date: December 1, 2019
Not to exceed: $750,000

Tracking Information:

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The following Statement of Work is based on the grantee's Near-Term Action (NTA) proposal, which is referenced in the 2016 Puget Sound Action Agenda.
OVERVIEW
The Whatcom County Flood Control Zone District (County) is updating the Lower Nooksack River Comprehensive Flood Hazard Management Plan (CFHMP) originally completed in 1999. That plan identified project concepts to reduce community flood risk in the lower 36 miles of the Nooksack River in western Whatcom County. The CFHMP adoption timing coincided with the federal Endangered Species Act listings of Chinook salmon, steelhead, and bull trout as threatened and the associated preparation of the WRJA 1 Salmonid Recovery Plan (2005). Flood and salmon recovery planning and project implementation over the last 18 years has occurred against the background of growing community awareness that floodplain lands are also essential to many long-established farming operations in Whatcom County. An approach to floodplain management that successfully integrates the needs of “fish/flood/farms” has the best potential to provide broad public benefits and successfully meet multiple objectives over the long-term.

The purpose of this project is to perform technical analyses and provide the project management and facilitation necessary to support the development of reach-scale floodplain management strategies and project concepts and the integration of these strategies into floodplain, salmon habitat, and watershed recovery planning efforts.

GOALS & MEASURABLE OBJECTIVES
The goal of the project is to support the update of the 1999 Lower Nooksack River Comprehensive Flood Hazard Management Plan by developing reach-scale floodplain management strategies and project concepts which integrate flood risk reduction with salmon habitat protection and restoration and achieve broad support of floodplain agricultural landowners, the salmon co-managers, and the greater Whatcom County community. The measurable objectives for the project are as follows:

- Provide engineering, planning and facilitation expertise to the Floodplain Integrated Planning (FLIP) Team by scoping reach-scale floodplain management strategies, developing and analyzing project concepts and planning-level construction budgets, performing benefit-cost analyses, and supporting the FLIP Team in the selection of preferred project alternatives.
- Complete land elevation survey and structure type classification of floodplain structures and other key physical floodplain features as data essential to a benefit-cost analysis.
- Develop a benefit-cost analysis approach to evaluate economic effects of project alternatives on floodplain properties and key ecological functions.
- Evaluate how on-going changes in watershed hydrology and land-use, including flood mitigation alternatives, will affect sediment transport in the lower Nooksack River and delta to inform coordinated investments in salmon habitat restoration and flood risk reduction that will earn the support of the Lummi Nation, the diking district, agricultural landowners, and the broader community.

TASKS & DELIVERABLES
Whatcom County Flood Control Zone District (hereafter referred to as the grantee) will manage all aspects of the project including executing sub-contracts; managing sub-contractors; project invoicing and fiscal management; and coordinating the review of draft deliverables. The grantee will email all deliverables and invoices to the Habitat SI Grant Program Representative. The following are the tasks, deliverables, and deadlines associated with this sub-award.
TASK 1. Project Development

This task must be completed before initiating any other work under this sub-award. Work completed on other tasks prior to completion of Task 1 may be ineligible for reimbursement.

1.1 Detailed Project Plan

The grantee and its consultant will prepare a detailed project outline and timeline to describe project expectations and outcomes. The detailed project plan will also identify how the objectives of the project will be evaluated, including quantifiable performance measures and targets. As part of developing the detailed project plan, Whatcom County staff will meet with their Habitat SI Grant Program Representative to discuss the project goals, tasks, timeline, and shared workload. Habitat SI staff will have the opportunity to provide input on the plan and establish mutual expectations.

The grantee will provide relevant spatial data for their project and this will be identified in the detailed project plan. The grantee will consult with Habitat SI staff and spatial analysts where appropriate to determine the spatial data, associated metadata, and data storage location that are relevant for the project. Project coordinates (latitude, longitude) should be submitted in decimal degrees.

1.2 Quality Assurance Project Plan (QAPP) Development

Per EPA sub-award terms and conditions, the grantee will submit a Quality Assurance Project Plan (QAPP) or QAPP waiver to the Washington State Department of Ecology’s NEP Quality Assurance Coordinator (NEP QC) using EPA’s NEP guidance for QAPPs. See http://www.ecy.wa.gov/programs/eap/qa/docs/NEPQAPP/index.html. If a QAPP is required, the grantee will work with the NEP QC to develop and approve the QAPP. If a QAPP is needed, some products created under this agreement will be subject to review by the NEP QC. The grantee will work with the NEP QC to determine requirements.

Work related to collecting environmental data may not begin until the QAPP or waivers are completed and approved. The detailed project plan (Task 1.1) may be appended to the QAPP waiver form in lieu of completing page 2.

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Total Estimated Cost for Task 1: $20,500
TASK 2. Project Management

This task describes the administrative and reporting requirements associated with this sub-award.

2.1 PROJECT FACTSHEET

The grantee will create a project factsheet (using the provided template) and submit it in MS Word with the first quarterly progress report. A second fact sheet will be prepared at the project conclusion to update the first fact sheet and to share lessons learned. These will be made publically available.

2.2 QUARTERLY PROGRESS REPORTS

The grantee will email quarterly progress reports and invoices to the Habitat SI Grant Program Representative, Libby Gier (Libby.Gier@dnr.wa.gov). The reporting period is synced to inform the Grant Program's EPA reporting schedule; therefore it is critical that the grantee submit these reports to the Grant Program according to the following schedule.

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</tr>
</thead>
<tbody>
<tr>
<td>January 1 – March 31</td>
<td>April 1 – June 30</td>
<td>July 1 – September 30</td>
<td>October 1 – December 31</td>
<td></td>
<td></td>
<td></td>
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</tr>
</tbody>
</table>

*State fiscal year closeout. Please ensure all invoices for work performed through June 30 are submitted promptly.

Progress Reports shall use the provided template and include, at a minimum:

- A description of the work completed in the reporting period, including total spending by the project sponsor and any partners, project management tasks accomplished, and any completed deliverables.
- The status and completion date for the project activities and near-term deliverables.
- Description of any problem or circumstances affecting the completion date, scope of work, or costs.
- Evidence of satisfactory completion of all the reporting requirements relevant to the reporting period (see below 2.2.1 and 2.2.2).

The Final Report (2.3) replaces the Quarterly report in the final quarter of the grant.

Reporting Requirements:

2.2.1 EPA FEATS Reporting

The grantee will complete semi-annual FEATS (Financial and Ecosystem Accounting Tracking System) progress reports, as well as a final FEATS report. The final FEATS report, reflecting the final project billing, will be provided by the grantee during project closeout, within 60 days of the expiration of the grant, and will describe the entire project, highlighting project outcomes and discussing lessons learned.

FEATS Reporting Periods:

<table>
<thead>
<tr>
<th>Period</th>
<th>Report due by</th>
</tr>
</thead>
<tbody>
<tr>
<td>April 1 – September 30</td>
<td>October 15</td>
</tr>
<tr>
<td>October 1 – March 31</td>
<td>April 15</td>
</tr>
</tbody>
</table>

Draft final FEATS report completed by: December 1, 2019
2.2.2 Puget Sound Partnership NTA Reporting

Near Term Action (NTA) owners are required to report on the following schedule:

- Progress reporting of their actions on a semiannual basis (spring & fall)
- Financial status of their actions on an annual basis (summer)

2.3 Final Project Report

A final report will be written by the grantee with assistance from the contracted consultant that describes the methods, results, lessons learned and recommendations for future work. This report will be delivered in two phases including a draft and final report. A review period will allow the grantee to receive comments on the draft from the integrated planning team and the NEP grant administrator, make revisions, and generate the final report. The final report will include the status of reach strategy and project development and the alternatives analysis efforts. The final report will evaluate the success of achieving the performance measures identified in the detailed project plan. Included with the final project report will be an updated Project Factsheet (see 2.1).

<table>
<thead>
<tr>
<th>Task Number</th>
<th>Deliverable</th>
<th>Estimated Cost</th>
<th>Target Completion Date</th>
</tr>
</thead>
<tbody>
<tr>
<td>2.1</td>
<td>Project Factsheets (2)</td>
<td>$1,000</td>
<td>April 30, 2018</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>December 1, 2019</td>
</tr>
<tr>
<td>2.2</td>
<td>Quarterly progress reports</td>
<td>$4,500</td>
<td>April 15, 2018</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>July 15, 2018</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>October 15, 2018</td>
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<td></td>
<td></td>
<td></td>
<td>January 15, 2019</td>
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<tr>
<td></td>
<td></td>
<td></td>
<td>April 15, 2019</td>
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<tr>
<td></td>
<td></td>
<td></td>
<td>July 15, 2019</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>October 15, 2019</td>
</tr>
<tr>
<td>2.3</td>
<td>Final report including Final FEATS</td>
<td>$50,000</td>
<td>November 1, 2019</td>
</tr>
<tr>
<td></td>
<td>• Draft Report</td>
<td></td>
<td>December 1, 2019</td>
</tr>
<tr>
<td></td>
<td>• Final Report</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Total Estimated Cost for Task 2: $55,500
TASK 3. Planning and Engineering Support

This task describes the work to be done using consultant resources to coordinate the technical analyses and to develop the planning-level information needed to support development of an integrated floodplain management plan. This will likely include supporting the integrated planning group (FLIP Team) in identifying reach-scale floodplain management strategies, developing criteria for, and implementing a multiple objective alternatives analysis for reach strategies and project concepts, performing a benefit-cost analysis, and presenting supporting information and results to the FLIP Team. Assistance in preparing project outreach materials and report This task describes the work to be done using consultant resources to coordinate the technical analyses and to develop the planning-level information needed to support development of an integrated floodplain management plan. This will likely include supporting the integrated planning group (FLIP Team) in identifying reach-scale floodplain management strategies, developing criteria for, and implementing a multiple objective alternatives analysis for reach strategies and project concepts, performing a benefit-cost analysis, and presenting supporting information and results to the FLIP Team. Assistance in preparing project outreach materials and report preparation are also anticipated. Please note that this planning process is anticipated to extend beyond the term of this agreement in order to thoroughly engage in the community and intergovernmental processes necessary to result in successful plan adoption.

3.1 Planning Support and Alternatives Analysis Development

This sub-task involves grantee staff and consultant work on two integrated activities. First, the procedural and process support aspects of the planning process will be performed such as developing anticipated project timelines and milestones, meeting scheduling, meeting agenda and summary preparation, and development of process support materials. Second, the grantee and consultant will work with the FLIP Team to identify reach-scale floodplain management strategies, develop an alternatives analysis methodology, identify proposed project alternatives, conduct multi-objective alternatives analyses, and prepare conceptual engineering designs and cost estimates for preliminary preferred project alternatives. Concepts to be developed will be structured to address specific flood risk reduction, salmon recovery, agricultural, or a combination of these issues that are identified during the planning process. More detailed budget estimates to accomplish Task 3 will be developed under Task 1.1.

3.2 Benefit-Cost Analysis

The Army Corps of Engineers will assist the grantee with this sub-task. The sub-task will entail field elevation survey of floodplain structures and other key floodplain features to determine low-water entry and first floor elevations. Survey work will be done under the supervision of a professional licensed surveyor. This data will be integrated with flood hydraulic modeling results in a benefit-cost analysis tool to determine flood risk to individual structures or groups of structures, infrastructure, and crops. The benefit-cost analysis will help compare flood risk and anticipated flood damages under various alternatives developed under Sub-Task 3.1. A semi-quantitative analysis of non-market values, such as salmon habitat or water quality, may also be prepared to provide a more robust evaluation of the alternatives.
<table>
<thead>
<tr>
<th>Task Number</th>
<th>Deliverable</th>
<th>Estimated Cost</th>
<th>Target Completion Date</th>
</tr>
</thead>
</table>
| 3.1         | Interim Deliverables  
- Project timelines with key milestones  
- Meeting agendas and summaries  
- Technical memo describing the alternatives analysis methods and the preliminary set of conceptual alternatives to be analyzed  
Final Deliverable - Technical memorandum describing the planning process and participants, alternatives analysis methods and a preliminary set of project alternatives analyzed. If the process supports it, preliminary preferred conceptual alternatives with planning level cost estimates will also be included. | $285,500 | April 30, 2018 (timelines)  
October 15, 2019 (Agendas, summaries, memo) |
| 3.2         | Benefit-Cost Analysis – elevation survey and technical memorandum describing BCA model and how it will be used in the planning process. | $130,000 | October 15, 2019 |

**Total Estimated Cost for Task 3:** $415,500
**PUGET SOUND**
National Estuary Program

**TASK 4. Reach 1 Sedimentation Investigation**
Previous work in Reach 1 (Ferndale downstream to the Nooksack River delta) identified several levee setback, removal, or lowering alternatives that would lessen flood risk and restore floodplain habitat connectivity. However, the Lummi Nation Natural Resource Department had concerns regarding how the alternatives might adversely impact their ability to successfully exercise treaty reserved fishing rights including navigation and the ability to fish at accustomed locations should project-related changes to sediment transport processes result in reduced sediment transport capacity in the reach. The USGS is currently evaluating sedimentation patterns in the lower Nooksack River as part of a separate, but related, study; this work will provide background conditions and likely trends in sedimentation entering this reach. The USGS will assess changes in sediment transport processes and spatial extent of sedimentation associated with the influence of proposed project alternatives, storm surge, and sea-level rise under current and future conditions to help resolve Lummi Nation concerns and allow for selection of a preferred alternative(s) as part of the integrated planning process.

<table>
<thead>
<tr>
<th>Task Number</th>
<th>Deliverable</th>
<th>Estimated Cost</th>
<th>Target Completion Date</th>
</tr>
</thead>
<tbody>
<tr>
<td>4</td>
<td>Technical report and graphical outputs to support selection of preferred project alternatives for Reach 1.</td>
<td>$255,000</td>
<td>December 1, 2019</td>
</tr>
</tbody>
</table>

**Total Estimated Cost for Task 4:** $255,000
**TASK 5. Develop and Distribute Information**

The information developed under this scope will inform the development of an integrated floodplain management plan for the lower 36 miles of the Nooksack River. This will affect thousands of acres of agricultural land as well as hundreds of homes, the communities of Deming, Everson, Nooksack, Sumas, Lynden and Ferndale and reservation lands of both the Nooksack Tribe and the Lummi Nation. The following tools will be used to communicate project activities to provide a broader impact both within Whatcom County and regionally.

- Make planning process-related materials (e.g. background documents, stakeholder meeting agendas, meeting summaries, and supporting technical documents) readily available via the Whatcom County Public Works, River and Flood Division website.

- Provide regular briefings to the Whatcom County Flood Control Zone District Board of Supervisors, the WRIA 1 Watershed Management Board, and the Watershed Improvement Districts in Whatcom County.

- Present technical and/or planning topics that demonstrate innovative solutions at a regional meeting such as the Northwest Regional Floodplain Management Organization (NORFMA) annual conference or a salmon recovery conference.

<table>
<thead>
<tr>
<th>Task Number</th>
<th>Deliverable</th>
<th>Estimated Cost</th>
<th>Target Completion Date</th>
</tr>
</thead>
<tbody>
<tr>
<td>5.1</td>
<td>Regional conference abstract and copy of final deliverable (e.g. poster, presentation)</td>
<td>$3,500</td>
<td>December 1, 2019</td>
</tr>
</tbody>
</table>

**Total Estimated Cost for Task 5:** $3,500

**TOTAL GRANT AMOUNT:** $750,000
### Deliverables Table

<table>
<thead>
<tr>
<th>Task</th>
<th>Deliverable Description</th>
<th>Due Date</th>
<th>Cost ($)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Task 1.1</td>
<td>Detailed Project Plan &amp; AOP</td>
<td>30-Apr-18</td>
<td>$ 1,000</td>
</tr>
<tr>
<td>Task 1.2</td>
<td>Final Project Plan &amp; AOP</td>
<td>30-Apr-18</td>
<td>$ 1,000</td>
</tr>
<tr>
<td>Task 2</td>
<td>Final Project Report</td>
<td>30-Apr-18</td>
<td>$ 745</td>
</tr>
<tr>
<td>Task 3</td>
<td>Final Project Report</td>
<td>30-Apr-18</td>
<td>$ 575</td>
</tr>
<tr>
<td>Task 3.1</td>
<td>Quarterly Reports</td>
<td>30-Apr-18</td>
<td>$ 2,900</td>
</tr>
<tr>
<td>Task 3.2</td>
<td>Quarterly Reports</td>
<td>30-Apr-18</td>
<td>$ 2,900</td>
</tr>
<tr>
<td>Task 4</td>
<td>Technical &amp; Economic Analysis Report</td>
<td>1-Dec-19</td>
<td>$ 4,885</td>
</tr>
<tr>
<td>Task 5</td>
<td>Technical &amp; Economic Analysis Report</td>
<td>1-Dec-19</td>
<td>$ 2,130</td>
</tr>
<tr>
<td>Task 6</td>
<td>Draft and Final Elevation Survey and Support and Assistance Plan</td>
<td>1-Nov-19</td>
<td>$ 6,655</td>
</tr>
<tr>
<td>Task 7</td>
<td>Draft and Final Elevation Survey and Support and Assistance Plan</td>
<td>1-Nov-19</td>
<td>$ 2,870</td>
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<tr>
<td>Task 8</td>
<td>Draft and Final Elevation Survey and Support and Assistance Plan</td>
<td>1-Nov-19</td>
<td>$ 2,870</td>
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<td>Task 9</td>
<td>Draft and Final Elevation Survey and Support and Assistance Plan</td>
<td>1-Nov-19</td>
<td>$ 2,870</td>
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<tr>
<td>Task 10</td>
<td>Draft and Final Elevation Survey and Support and Assistance Plan</td>
<td>1-Nov-19</td>
<td>$ 2,870</td>
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</table>

**Total** $ 75,000

---

**Project Name:** Develop Data and Support for Floodplain Management Strategies

**Project Sponsor:** Washington County Flood Control Zone District

**Project Completion:** 30-Mar-19

**Project Closeout:** 30-Mar-19

---

**Project Budget and Narrative**

**Habitat Strategic Initiative NEP Grant**

**Puget Sound National Estuary Program**
# HABITAT STRATEGIC INITIATIVE NEP GRANT
## PROJECT BUDGET AND NARRATIVE

<table>
<thead>
<tr>
<th>Project Name:</th>
<th>Develop Data and Support for Floodplain Management Strategies</th>
</tr>
</thead>
<tbody>
<tr>
<td>Project Sponsor:</td>
<td>Whatcom County Flood Control Zone District</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>BUDGET NARRATIVE</th>
<th>Description of whole project cost estimates and how costs were calculated</th>
</tr>
</thead>
</table>
| Personnel        | Staff types, roles, and flat burden rates (including fringe benefits):  
  Engineering Manager/project lead and administrative oversight/ Rate - $94.95;  
  Engineer/technical and modeling assistance and peer review of consultant product/ Rate-$77.78;  
  Engineering Technician IV/technical assistance/ Rate - $66.97;  
  Engineering Technician III/ technical assistance and logistical support/ Rate - $60.59;  
  Senior Planner/ grant management and reporting, technical assistance and peer review of consultant products/  
  Rate- $74.14. Round hour estimates were used to develop the proposed task budgets. A  
  more specific breakdown of hours can be provided with the detailed scope of work  
  developed as a Task 1.1 deliverable if requested. |
| Fringe Benefits  | A flat burden rate of 74% encompassing benefits, insurance, taxes etc. is included in the  
  rates above. |
| Travel           | Local travel will not be charged to the grant. Out-of-area travel was estimated assuming 2  
  attendees at a 3 day conference in the Seattle area using at a combined (lodging and  
  meals) per diem of $253/person/day, 300 miles at the 2017 IRS mileage rate of  
  $0.535/mile, 2 conference registrations at $350/registration, and miscellaneous expenses  
  such as parking. |
| Equipment (anything over $5,000) | No equipment will be purchased |
| Supplies         | Broader impact presentation materials such as foam core board and printing of poster  
  display. |
| Contractual      | Best estimate of contracted/consultant costs are based on the anticipated scope of work  
  and recent consultant products using rates typical for firms operating in Western  
  Washington. Specific rates will not be known until consultants are selected and budgets  
  and associated rates are negotiated. |
| Other            | N/A |
| Indirect/Overhead| The sub-recipient will not request payment for indirect/overhead. |

**Matching dollars or resources being provided for this project (optional):**  
Local funds and other non-federal grant funding support the overarching objectives of this  
project but are not being tracked and claimed as match for the NEP grant. These sources  
total $585,250 and include the following: Facilitation Support-$60,000; Geomorphic  
Analysis - $150,000; Salmon Habitat Assessment - $225,250; and, Hydraulic Analysis -  
$150,000
### Definitions

<table>
<thead>
<tr>
<th>Category</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Personnel</strong></td>
<td>Wages and salaries for staff engaged in project implementation. Break down costs by staff type, by rates, and hours. Identify project roles for project managers and key staff.</td>
</tr>
<tr>
<td><strong>Fringe Benefits</strong></td>
<td>Costs employers incur for providing a package of benefits beyond salary or wages. Can be described as a percentage of wage costs.</td>
</tr>
<tr>
<td><strong>Travel</strong></td>
<td>Include the method used to calculate travel costs (mileage rate; estimated miles traveled). Costs must not exceed the Washington State per diem rates.</td>
</tr>
<tr>
<td><strong>Equipment</strong></td>
<td>Items with a value greater than $5,000 per unit and a useful life of more than 1 year. Items with a unit cost of less than $5,000 are deemed to be supplies, pursuant to 40 CFR 31.3 and 30.2. If applicable, provide an itemized list of equipment and indicate why it is more economical to purchase rather than lease.</td>
</tr>
<tr>
<td><strong>Supplies</strong></td>
<td>Material costs that are not equipment. Describe quantities and unit costs of supplies.</td>
</tr>
<tr>
<td><strong>Contractual</strong></td>
<td>Individual contracts should be itemized with a brief description of scope, recipient’s qualifications, the basis for the estimate (engineers estimate, firm fixed bid, etc.) and the status of the contract (bid documents prepared, RFP released, etc.). Indicate whether contractual costs have been finalized.</td>
</tr>
<tr>
<td><strong>Other</strong></td>
<td>Costs should be described by the nature of the expense and the method of estimation.</td>
</tr>
<tr>
<td><strong>Indirect</strong></td>
<td>Indicate indirect rate used.</td>
</tr>
</tbody>
</table>

The following costs are not eligible for funding:

- Proposal submittal costs
- Management fees or similar charges in excess of the direct costs and indirect costs. Expenses added to the direct costs in order to accumulate and reserve funds for ongoing business expenses, unforeseen liabilities, or for similar costs are not allowable under this agreement.
- Mitigation requirements or obligatory compensation incurred by the sponsor or a third-party. Funding, however, may be provided for actions associated with compensation or mitigation, if those elements are above and beyond the mitigation requirements and can be easily isolated from the required mitigation activities.
- Lobbying or litigation against Federal, State or local Governments
- Ordinary operating expenses of local government, such as the salaries and expenses of a mayor, city council member, city attorney, etc., overtime differential paid to employees of local government, and permits and fees required by federal, state, or local regulations.
- Bad debts, uncollected accounts or claims
- Alcoholic beverages
- Interest and other financial costs
- Raffle, door, or other prizes unless authorized by the Grant Program
TITLE OF DOCUMENT: Flood Control Zone District and Subzones 2018 Supplemental Budget Request #1

ATTACHMENTS: Resolution, Memoranda and Budget Modification Requests

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

Supplemental #1 requests funding from the Flood Control Zone District Fund:

1. To appropriate $50,000 in Natural Resources to fund ESSB 6091 process support.
RESOLUTION NO. __________
(A resolution of the Whatcom County Flood Control Zone District Board of Supervisors)

AMENDMENT NO. 1 OF THE 2018 BUDGET

WHEREAS, the 2018 budget for the Whatcom County Flood Control Zone District and Subzones was adopted December 5, 2017; and,

WHEREAS, changing circumstances require modifications to the approved 2018 budget; and,

WHEREAS, the modifications to the budget have been assembled here for deliberation by the Board of Supervisors,

NOW, THEREFORE, BE IT RESOLVED by the Whatcom County Flood Control Zone District Board of Supervisors that the 2018 budget as approved in Resolution 2017-065 is hereby amended by adding the following additional amounts to the budgets included therein:

<table>
<thead>
<tr>
<th>Spending Category</th>
<th>Expenditures</th>
<th>Revenues</th>
<th>Net Effect</th>
</tr>
</thead>
<tbody>
<tr>
<td>Flood Control Zone District Fund - Natural Resources</td>
<td>50,000</td>
<td></td>
<td>50,000</td>
</tr>
<tr>
<td>Total Supplemental</td>
<td>50,000</td>
<td></td>
<td>50,000</td>
</tr>
</tbody>
</table>

ADOPTED this ___ day of ____________________, 2018

WHATCOM COUNTY FCZD
BOARD OF SUPERVISORS
WHATCOM COUNTY, WASHINGTON

ATTEST:

Dana Brown-Davis, Council Clerk
Rud Browne, Chair of the Board of Supervisors

APPROVED AS TO FORM:

[Signature]
Civil Deputy Prosecutor

I:\BUDGET\SUPPLS\2018_Suppl\FCZDRes#2018-1.docx 131
<table>
<thead>
<tr>
<th>Flood Control Zone District and Subzones Budgets Amendment #1</th>
<th>Expenditures</th>
<th>Revenues</th>
<th>Fund Balance</th>
</tr>
</thead>
<tbody>
<tr>
<td>Flood Control Zone District Fund - Natural Resources</td>
<td>50,000</td>
<td>-</td>
<td>50,000</td>
</tr>
<tr>
<td>Total Supplemental</td>
<td>50,000</td>
<td>-</td>
<td>50,000</td>
</tr>
</tbody>
</table>
MEMORANDUM

TO: Jack Louws, County Executive for the Flood Control Zone District

THROUGH: Jon Hutchings, Public Works Director

FROM: Gary Stoyka, Natural Resources Manager

DATE: February 26, 2018

RE: Supplemental Budget Request

Requested Action

The Public Works Natural Resources Division is requesting supplemental budget authority for FY 2018 for administrative support services for the County’s implementation of Engrossed Substitute Senate Bill (ESSB) 6091.

In response to the Washington Supreme Court’s ruling in the “Hirst Decision”, the Washington State Legislature adopted ESSB 6091 to provide a mechanism for residents to use exempt wells for domestic purposes. ESSB 6091 allows Whatcom County to issue building and land division permits for landowners relying on exempt wells for their potable water supply with restrictions. The new law requires that Watershed Management Plans be updated to include recommendations for projects and actions that will measure, protect, and enhance instream resources and improve watershed functions that support the recovery of threatened and endangered salmonids to offset the effects of the consumptive use of water from these new groundwater uses. The plan update must be completed by February 1, 2019. If not completed by that date, the Department of Ecology takes over the update. The WRIA Watershed Management Board (consisting of Whatcom County, Whatcom PUD, all cities in the county, Nooksack Tribe, Lummi Nation, and WDFW) has chosen to utilize the Watershed Staff Team as the technical team for the update process. This staff team needs contracted administrative support services to complete this task. Furthermore, the WRIA 1 Planning Unit needs to approve any update. The Planning Unit currently only has minimal administrative support from County staff. It is anticipated that the Planning Unit will also require administrative and possibly facilitation support to achieve this goal. This supplemental budget request provides $50,000 for these and related purposes.

This request for funding is from the Flood Control Zone District fund balance.
Please contact Gary Stoyka at extension 6218, if you have any questions or concerns regarding this request.

Attachment
Supplemental Budget Request

Public Works  
Fund 169  Cost Center 169121  Originator: Gary Stoyka

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

Name of Request: ESSB 6091 Process Support

X  
Department Head Signature (Required on Hard Copy Submission) 2/24/18

<table>
<thead>
<tr>
<th>Costs:</th>
<th>Object</th>
<th>Object Description</th>
<th>Amount Requested</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>6630</td>
<td>Professional Services</td>
<td>$50,000</td>
</tr>
<tr>
<td>Request Total</td>
<td></td>
<td></td>
<td>$50,000</td>
</tr>
</tbody>
</table>

1a. Description of request:
Provide contracted professional coordination and facilitation services to support the WRIA 1 staff team and Planning Unit as they update the WRIA 1 Watershed Management Plan in accordance with ESSB 6091, adopted into law on January 19, 2018.

1b. Primary customers:
Citizens of Whatcom County

2. Problem to be solved:
The Washington State Supreme Court issued a ruling in October 2016 in Whatcom County v. Western Washington Growth Management Hearings Board that placed limits on the use of private domestic wells by development permit applicants as a potable water source. In response to that ruling, the Washington legislature adopted ESSB 6091, which provides a mechanism for residents to use exempt wells for domestic purposes. ESSB 6091 allows Whatcom County to issue building and land division permits for landowners relying on exempt wells for their potable water supply with restrictions. The new law requires that Watershed Management Plans be updated to include recommendations for projects and actions that will measure, protect, and enhance instream resources and improve watershed functions that support the recovery of threatened and endangered salmonids to offset the effects of the consumptive use of water from these new groundwater uses. The plan update must be completed by February 1, 2019. If not completed by that date, the Department of Ecology takes over the update. The WRIA Watershed Management Board (consisting of Whatcom County, Whatcom PUD, all cities in the county, Nooksack Tribe, Lummi Nation, and WDFW) has chosen to utilize the Watershed Staff Team as the technical team for the update process. This staff team needs contracted administrative support services to complete this task. Furthermore, the WRIA 1 Planning Unit needs to approve any update. The Planning Unit currently only has minimal administrative support from County staff. It is anticipated that the Planning Unit will also require administrative and possibly facilitation support to achieve this goal. The County intends to provide this contracted support to both of these groups.

3a. Options / Advantages:
The County could not provide the support; however, it is unlikely that the plan update would be accomplished by February 1, 2019 and therefore, the Department of Ecology would take over the update process without the input from our established local process.

3b. Cost savings:

4a. Outcomes:
An updated WRIA 1 Watershed Management Plan that meets the requirements of ESSB 6091 by February 1, 2019.

4b. Measures:

Monday, February 26, 2018

Rpt. Rpt Suppl Regular

135
The updated plan will be completed. Success will be measured by getting the Department of Ecology’s approval of the plan update.

5a. Other Departments/Agencies:

PDS staff will participate in the update process. The process will also include participation by Whatcom PUD, all cities in the county, both tribes in the county, WDFW, and the Department of Ecology.

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

Mark Personius for PDS. Kasey Cykler for the Department of Ecology. Representatives on the WRIA 1 Watershed Management Board for other agencies.

6. Funding Source:

Flood Control Zone District Fund. It is anticipated that all or a portion of these costs may be reimbursed by the Department of Ecology.
WHATCOM COUNTY COUNCIL AGENDA BILL

CLEARANCES | Initial | Date | Date Received in Council Office | Agenda Date | Assigned to: |
---|---|---|---|---|---|
Originator: | MDC | 3/2/18 | | 03/13/18 | Introduction |
Division Head: | | | | 03/27/18 | Finance, Council |
Dept. Head: | | | | |
Prosecutor: | | | | |
Purchasing/Budget: | | | | |
Executive: | TS | 3/5/18 | | |

TITLE OF DOCUMENT:
Amendment No. 1 to Ordinance No. 2014-078 Establishing the 2015 Lighthouse Marine Park Improvement Fund and Establishing a Project Based Budget for Lighthouse Marine Park Improvements

ATTACHMENTS:
1. Ordinance
2. Exhibit A
3. Memorandum
4. Supplemental Budget Request

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

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

Requesting Council approval for additional budget authority of $24,500 to be added to the project budget for Fund 362 – 2015 Lighthouse Marine Park Improvement Fund. Budget will be used to finish repairs to the boardwalk.

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.
ORDINANCE NO. __________

AMENDMENT NO. 1 TO ORDINANCE NO. 2014-078 ESTABLISHING THE 2015 LIGHTHOUSE MARINE PARK IMPROVEMENT FUND AND ESTABLISHING A PROJECT BASED BUDGET FOR LIGHTHOUSE MARINE PARK IMPROVEMENTS

WHEREAS, Ordinance No. 2014-078 established the project budget for the 2015 Lighthouse Marine Park Improvement Fund; and

WHEREAS, initial funding was used to replace a failing deck and install a new playground, and

WHEREAS, hidden structural deficiencies in the boardwalk framing were not apparent until the entire deck surface was removed; and

WHEREAS, additional funding is needed to complete the project, and

WHEREAS, continued funding for this project is available by transfer from Real Estate Excise Tax Fund II,

NOW, THEREFORE, BE IT ORDAINED by the Whatcom County Council that Ordinance 2014-078 is hereby amended by adding $24,500 of expenditure authority, as described in Exhibit A, to the original project budget of $250,000, for a total amended project budget of $274,500.

ADOPTED this ___ day of _________________, 2018.

ATTEST:

Dana Brown-Davis, Council Clerk

WHATCOM COUNTY COUNCIL
WHATCOM COUNTY, WASHINGTON

Rud Browne, Chair of the Council

( ) Approved      ( ) Denied

APPROVED AS TO FORM:

Civil Deputy Prosecutor

Jack Louws, County Executive
Date: _________________________
## EXHIBIT A

**LIGHTHOUSE MARINE PARK IMPROVEMENT FUND - 362**

<table>
<thead>
<tr>
<th>Account</th>
<th>Description</th>
<th>Original Project Budget</th>
<th>Amendment #1 to Ord. 2014-078</th>
<th>Total Amended Project Budget</th>
</tr>
</thead>
<tbody>
<tr>
<td>Expenditures</td>
<td>7380 Other Improvements</td>
<td>$250,000</td>
<td>$24,500</td>
<td>$274,500</td>
</tr>
<tr>
<td></td>
<td></td>
<td>$250,000</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Revenues</td>
<td>8301.324 Operating Transfer in - REET II</td>
<td>$250,000</td>
<td>$24,500</td>
<td>$274,500</td>
</tr>
<tr>
<td></td>
<td></td>
<td>$250,000</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
MEMORANDUM

TO: Executive Louws

FROM: Michael McFarlane, Director

DATE: February 27th, 2018

RE: Lighthouse Marine Park Boardwalk Improvement- Supplemental Request No. 2554

Enclosed is a budget supplemental request for additional funding for repairs and renovation to the Lighthouse Marine Park boardwalk and playground. Additional damage was discovered in the decks pier supports and fasteners once the decking was removed. These repairs are required before the decking can be replaced.

This supplemental requests $24,500 in additional REET II funding to complete the project.

Please contact me at 5855 if you have any questions or require additional information.
Supplemental Budget Request

Status: Pending

Parks & Recreation

Fund 362  Cost Center 362100  Originator: Rod Lamb

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

Name of Request: Lighthouse Marine Park Boardwalk Improvement Proj.

Department Head Signature (Required on Hard Copy Submission)  Date 2-28-18

<table>
<thead>
<tr>
<th>Costs:</th>
<th>Object</th>
<th>Object Description</th>
<th>Amount Requested</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>7380</td>
<td>Other Improvements</td>
<td>$24,500</td>
</tr>
<tr>
<td></td>
<td>8301.324</td>
<td>Operating Transfer In</td>
<td>($24,500)</td>
</tr>
<tr>
<td>Request Total</td>
<td></td>
<td></td>
<td>$0</td>
</tr>
</tbody>
</table>

1a. Description of request:

This project completes necessary repairs and improvements to the Lighthouse Marine Park boardwalk and playground. Council approved $250,000 in 2014 for the necessary repairs, but current project costs exceed available funding. This is largely due to hidden structural deficiencies in the boardwalk framing that were not apparent until the entire deck surface was removed. The structure is more than 45 years old, and has had a series of repairs over the years, but each one only addressed a small portion of the boardwalk structure. The current repairs are comprehensive and completely replace all of the boardwalk framing from the concrete pile foundations to the newly installed composite decking. This approach will increase the lifespan of the structure for several decades.

1b. Primary customers:

Whatcom County residents and park visitors are the primary customers who will benefit from this improvement project.

2. Problem to be solved:

The boardwalk was in dire need of repairs. The original structure was made exclusively of wood, and not all framing members were chemically treated to withstand the harsh coastal conditions. The condition of the structure also posed safety concerns with exposed nails and split deck boards. A large section of the boardwalk was removed in 2015 because of its deteriorating condition, and concerns for public safety. Part of the improvement project will also relocate and make improvements to the children's play structure. The current location is outside of the primary use area, and may pose some safety concerns. The existing equipment will be restored, and moved to be in close proximity to the renovated boardwalk.

3a. Options / Advantages:

The current work on the boardwalk could be stopped, and the boardwalk could be reconfigured to reduce the size, and thereby reduce project costs. However, the project scope was already reduced to what is considered the smallest functional size. The current layout reduces on going maintenance while still providing ample picnic areas and access to the park restroom building.

3b. Cost savings:

In order to control project costs the total area of the boardwalk was reduced, and new playground equipment was eliminated from the project in favor of renovating the existing play structure. The renovated boardwalk also reduces potential liability, by eliminating several potential safety concerns.

4a. Outcomes:

The boardwalk and playground at Lighthouse Marine Park will be completed, and open to the public.

4b. Measures:

The project's success will be achieved once the needed repairs are completed and the boardwalk...
structure is again open to the public.

5a. Other Departments/Agencies:
Planning & Development Services is responsible for making the renovated structure is built to meet code requirements.

5b. Name the person in charge of implementation and what they are responsible for:
Gina Nicolaas, Public Service Inspector

6. Funding Source:
REET II
**CLEARANCES**

| Originator:  | MD  | 3/2/18 |
| Division Head: |    |        |
| Dept. Head:   | YAE | 3/2/18 |
| Prosecutor:   | MD  | 3/2/18 |
| Purchasing/Budget: | TJS | 3/5/18 |
| Executive:    |     |        |

**DATE RECEIVED IN COUNCIL OFFICE:**

<table>
<thead>
<tr>
<th>Agenda Date</th>
<th>Assigned to:</th>
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<tbody>
<tr>
<td>3/13/18</td>
<td>Intro</td>
</tr>
<tr>
<td>3/27/18</td>
<td>Finance Committee; Council</td>
</tr>
</tbody>
</table>

**TITLE OF DOCUMENT:** 2018 Supplemental Budget Request #5

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

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

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

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

**Requested Date:**

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

**Supplemental #5 requests funding from the General Fund:**

1. To appropriate $5,600 in Sheriff to fund traffic safety equipment from grant proceeds.
2. To re-appropriate $176,125 in Sheriff to fund Federal Fiscal Years 16 and 15 Operation Stonegarden programs from grant proceeds.
3. To appropriate $460,911 in Sheriff to fund 2018 Guild wage and benefit settlement.
4. To reduce appropriation by ($460,911) in Non Departmental to transfer wage reserve to Sheriff for Guild settlement.
5. To appropriate $77,420 in Non Departmental to add additional funding for Medical Examiner’s renewal contract.
From the Countywide Emergency Medical Services Fund:
6. To appropriate $100,000 to transfer funding in support of building alterations at the Whatcom Unified Emergency Coordination Center (WUECC).
From the Real Estate Excise Tax Fund I:
7. To appropriate $150,000 to fund building alterations at the WUECC to create space for the EMS manager.
From the Real Estate Excise Tax Fund II:
8. To re-appropriate $24,173 in Parks to fund Maple Creek Bridge project completion.
9. To appropriate $24,500 in Parks to fund the Lighthouse Marine Park Project Budget Amendment.

**COMMITTEE ACTION:**

**COUNCIL ACTION:**

**Related County Contract #:**

**Related File Numbers:**

**Ordinance or Resolution Number:** 143
ORDINANCE NO.
AMENDMENT NO. 5 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>Sheriff</td>
<td>642,636</td>
<td>(181,725)</td>
<td>460,911</td>
</tr>
<tr>
<td>Non Departmental</td>
<td>(383,491)</td>
<td>-</td>
<td>(383,491)</td>
</tr>
<tr>
<td>Total General Fund</td>
<td>259,145</td>
<td>(181,725)</td>
<td>77,420</td>
</tr>
<tr>
<td>Countywide Emergency Medical Services Fund</td>
<td>100,000</td>
<td>-</td>
<td>100,000</td>
</tr>
<tr>
<td>Real Estate Excise Tax Fund I</td>
<td>150,000</td>
<td>(100,000)</td>
<td>50,000</td>
</tr>
<tr>
<td>Real Estate Excise Tax Fund II</td>
<td>48,673</td>
<td>-</td>
<td>48,673</td>
</tr>
<tr>
<td>Total Supplemental</td>
<td>557,818</td>
<td>(281,725)</td>
<td>276,093</td>
</tr>
</tbody>
</table>

ADOPTED this ___ day of _________________, 2018.

ATTEST:

Dana Brown-Davis, Council Clerk

Rud Browne, Chair of the Council

APPROVED AS TO FORM:

Civil Deputy Prosecutor

Jack Louws, County Executive

Date: ____________________________

I:\BUDGET\SUPPLS\2018_Suppl\Supplemental #5-2018.docx
### WHATCOM COUNTY

#### Summary of the 2016 Supplemental Budget Ordinance No. 5

<table>
<thead>
<tr>
<th>Department/Fund</th>
<th>Description</th>
<th>Increased (Decreased) Expenditure</th>
<th>(Increased) Decreased Revenue</th>
<th>Net Effect to Fund Balance (Increase) Decrease</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>General Fund</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Sheriff</td>
<td>To fund traffic safety equipment from grant proceeds.</td>
<td>5,600</td>
<td>(5,600)</td>
<td>-</td>
</tr>
<tr>
<td>Sheriff</td>
<td>To re-appropriate funding for Federal Fiscal Year 16 Operation Stonegarden program from grant proceeds.</td>
<td>88,546</td>
<td>(88,546)</td>
<td>-</td>
</tr>
<tr>
<td>Sheriff</td>
<td>To re-appropriate funding for Federal Fiscal Year 15 Operation Stonegarden program from grant proceeds.</td>
<td>87,579</td>
<td>(87,579)</td>
<td>-</td>
</tr>
<tr>
<td>Sheriff</td>
<td>To fund 2018 Sheriff Guild wage &amp; benefit settlement.</td>
<td>460,911</td>
<td>-</td>
<td>460,911</td>
</tr>
<tr>
<td>Non Departmental</td>
<td>Transfer wage reserve for Sheriff Guild wage &amp; benefit settlement.</td>
<td></td>
<td></td>
<td>(460,911)</td>
</tr>
<tr>
<td>Non Departmental</td>
<td>To add additional funding for Medical Examiner's renewal contract.</td>
<td>77,420</td>
<td>-</td>
<td>77,420</td>
</tr>
<tr>
<td><strong>Total General Fund</strong></td>
<td></td>
<td>259,145</td>
<td>(181,725)</td>
<td>77,420</td>
</tr>
</tbody>
</table>

| **Countywide Emergency Medical Services Fund** | Transfer to partially fund building alterations at the Whatcom Unified Emergency Coordination Center (WUECC). | 100,000 | - | 100,000 |

| **Real Estate Excise Tax Fund I** | To fund building alterations at the WUECC to create space for the EMS manager. | 150,000 | (100,000) | 50,000 |

| **Real Estate Excise Tax Fund II** | To re-appropriate funding for Maple Creek Bridge project. | 24,173 | - | 24,173 |
| Parks                            | Transfer to fund Lighthouse Marine Park Project Budget Amendment. | 24,500 | - | 24,500 |
| **Total Real Estate Excise Tax Fund II** | | 48,673 | - | 48,673 |

| **Total Supplemental** | | 557,818 | (281,725) | 276,093 |
MEMORANDUM

TO: Jack Louws, County Executive
FROM: Sheriff Bill Elfo
DATE: February 23, 2018
SUBJECT: Supplemental Budget ID# 2547
        WASPC Traffic Safety Equipment Grant 2018

The attached supplemental budget requests revenue and expenditure authority to purchase traffic safety equipment with grant funds from Washington Association of Sheriffs & Police Chiefs.

Background and Purpose
The Washington Association of Sheriffs & Police Chiefs (WASPC) approved a Traffic Safety Equipment Grant of $5,600 to purchase traffic safety equipment: $4,000 for four radars and $1,600 for four rear antennas.

Equipment purchased will be used to support statewide traffic safety initiatives and will allow patrol units to increase their ability to enforce traffic violations.

Funding Amount and Source
Total estimated cost for purchase of this equipment is $6,769. The Washington Association of Sheriffs & Police Chiefs will provide federal Traffic Safety Equipment Grant funds of $5,600, and the additional $1,169 required for purchase of this equipment will come from existing Sheriff's Office budget.

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

Thank you.
Supplemental Budget Request

Sheriff Operations

Fund 1 Cost Center 1003512001 Originator: Dawn Pierce

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

Name of Request: WASPC Traffic Safety Equipment Grant 2018

Department Head Signature (Required on Hard Copy Submission) Date: 2/23/18

<table>
<thead>
<tr>
<th>Costs</th>
<th>Object</th>
<th>Object Description</th>
<th>Amount Requested</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>4333.2062</td>
<td>Traffic Safety</td>
<td>($5,600)</td>
</tr>
<tr>
<td></td>
<td>6510</td>
<td>Tools &amp; Equip</td>
<td>$5,600</td>
</tr>
<tr>
<td>Request Total</td>
<td></td>
<td></td>
<td>$0</td>
</tr>
</tbody>
</table>

1a. Description of request:

The Washington Association of Sheriffs & Police Chiefs (WASPC) approved a Traffic Safety Equipment Grant in the amount of $5,600 to purchase traffic safety equipment: $4,000 for radars and $1,600 for rear antennas.

1b. Primary customers:

The Sheriff's Office and citizens of Whatcom County

2. Problem to be solved:

Budget authority is needed to purchase traffic safety equipment authorized by WASPC with Traffic Safety Equipment Grant funds.

3a. Options / Advantages:

Grant was awarded to purchase the specific listed in the description of this request. Funds may not be used for any other purpose.

3b. Cost savings:

Cost savings of $5,600.

4a. Outcomes:

Equipment purchased will be used to support statewide traffic safety initiatives and will allow patrol units to increase their ability to enforce traffic violations.

4b. Measures:

Reports describing the use of the equipment and related enforcement activities will be submitted to WASPC by October 15, 2018.

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:

The Washington Association of Sheriffs & Police Chiefs will provide $5,600. These federal grant funds originate from the U.S. Department of Transportation, State and Community Highway Safety Program, CFDA No. 20.600.
February 5, 2018

Traffic Sergeant Kevin
Whatcom County Sheriff’s Office
311 Grand Avenue
Bellingham, WA 98225

Dear Traffic Sergeant Kevin,

Thank you for applying for a WASPC Traffic Safety Equipment Grant. We are pleased to inform you that your agency has been approved to receive $5600.00 to purchase the following equipment: (4) Radars $1000.00 ea.; (4) Rear Antennas $400.00 ea.

The Federal Identification number for this grant is **CFDA# 20.600**. Invoices must be submitted to WASPC no later than May 4, 2018. Any invoices not received by the deadline will not be reimbursed and the award money will be forfeited. **Please note: WASPC is responsible for the amount of your grant award only. Any expense in excess of the grant award must be paid by your agency.**

A report is required for the Traffic Safety Equipment Grant funds awarded to your department. The 2017-2018 Traffic Safety Equipment Grant reports are due by October 15, 2018. **Failure to report will result in denial of 2018 – 2019 grant funds.** Your agency is responsible for subscribing to the following commitments:

- Support statewide/national traffic safety initiatives, projects, and programs
- Report grant results to WASPC in a timely manner
- Subscribe and commit to aggressive traffic enforcement

Online report forms and A-19 reimbursement forms can be found at [www.waspc.org/traffic-safety](http://www.waspc.org/traffic-safety).

Thank you for your dedication to traffic safety in the State of Washington. If you have any questions, please contact Anastasia Raybon at (360) 486-2387 or araybon@waspc.org. If you would like more information regarding state or federal traffic safety grant funding, please contact the Washington Traffic Safety Commission at (360) 725-9896.

Sincerely,

Steve Strachan
Executive Director
MEMORANDUM

TO: Jack Louws, County Executive
FROM: Sheriff Bill Elfo
DATE: February 26, 2017
SUBJECT: Supplemental Budget ID# 2549
FY16 Operation Stonegarden – 2018


Background and Purpose
The U.S. Department of Homeland Security (DHS) Homeland Security Grant Program (HSGP) awarded FY2016 Operation Stonegarden funds of $340,418 to Whatcom County to enhance law enforcement’s preparedness and operational readiness along the international borders of the United States. Grant funds will be used by the Sheriff’s Office and area law enforcement agencies (sub-recipients) to conduct overtime patrols and purchase equipment in support of Operation Stonegarden.

Total OPSG FY16 award was $340,418. The Sheriff’s Office used $19,382 in 2016 and $54,659 in 2017. The Sheriff’s Office will use the remaining $266,377 in 2018 as follows: $88,546 for overtime, mileage, and equipment and $177,831 for sub-recipients. The allocation for sub-recipients was added to the 2018 budget through approved continuing appropriations.

Funding Amount and Source

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

Thank you.
Supplemental Budget Request

Sheriff

Operations

Status: Pending

SuppID # 2549 Fund 1 Cost Center 1003516005 Originator: Dawn Pierce

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

Name of Request: FY16 Operation Stonegarden - 2018

Department Head Signature (Required on Hard Copy Submission) Date

2/26/18

<table>
<thead>
<tr>
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<th>Object</th>
<th>Object Description</th>
<th>Amount Requested</th>
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</thead>
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<td>6140</td>
<td>Overtime</td>
<td>$21,920</td>
</tr>
<tr>
<td>6210</td>
<td>Social Security</td>
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<tr>
<td>6269</td>
<td>Unemployment-Interfund</td>
<td>$29</td>
<td></td>
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<tr>
<td>6510</td>
<td>Tools &amp; Equip</td>
<td>$59,206</td>
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<tr>
<td>6790</td>
<td>Travel-Other</td>
<td>$3,923</td>
<td></td>
</tr>
<tr>
<td>Request Total</td>
<td></td>
<td></td>
<td>$0</td>
</tr>
</tbody>
</table>

1a. Description of request:

The U.S. Department of Homeland Security (DHS) Federal Emergency Management Agency (FEMA) awarded $340,418 to Whatcom County for FY16 Operation Stonegarden Grant Program to enhance cooperation and coordination among local, tribal, territorial, state, and federal law enforcement agencies in a joint mission to secure the borders of the United States (W.C. Contract #201611036). The Sheriff's Office and other law enforcement agencies in the area will use OPSG funding to provide enhanced patrols to increase law enforcement presence in maritime and land based border areas targeting illicit activity in Whatcom County, specifically the cross-border smuggling of aliens, weapons, currency, and narcotics.

1b. Primary customers:

Area law enforcement agencies and citizens of Whatcom County through increased capability of law enforcement to secure the international border.

2. Problem to be solved:

Budget authority is needed to use remaining OPSG FY16 funds in 2018.

3a. Options / Advantages:

OPSG funds are awarded specifically for projects that improve border security.

3b. Cost savings:

Total OPSG FY16 award was $340,418. The Sheriff's Office used $19,382 in 2016 and $54,659 in 2017. The Sheriff's Office will use the remaining $266,377 in 2018 as follows: $88,546 for overtime, mileage, and equipment and $177,831 for sub-recipients.

4a. Outcomes:

Enhanced patrols will be conducted per contract specifications and timelines.

Daily Activity Reports will be completed and sent to U.S. Border Patrol Blaine Sector.

4b. Measures:

The Whatcom County Sheriff's Office and U.S. Border Patrol Blaine Sector will monitor projects and expenditures against contract deliverables.

Saturday, February 24, 2018
### Supplemental Budget Request

**Sheriff Operations**

<table>
<thead>
<tr>
<th>Suppl ID #</th>
<th>Fund</th>
<th>Cost Center</th>
<th>Originator</th>
</tr>
</thead>
<tbody>
<tr>
<td>2549</td>
<td>1</td>
<td>1003516005</td>
<td>Dawn Pierce</td>
</tr>
</tbody>
</table>

**Status:** Pending

---

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

Agencies participating in FY16 Operation Stonegarden in Whatcom County are: U.S. Border Patrol Blaine Sector, Whatcom County Sheriff's Office, Washington Department of Fish & Wildlife, and the Blaine, Everson, Ferndale, Lynden, and Sumas Police Departments.

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

**6. Funding Source:**

MEMORANDUM

TO: Jack Louws, County Executive
FROM: Sheriff Bill Elfo
DATE: February 26, 2017
SUBJECT: Supplemental Budget ID# 2550
FY15 Operation Stonegarden – 2018


Background and Purpose
The U.S. Department of Homeland Security (DHS) Homeland Security Grant Program (HSGP) awarded FY2016 Operation Stonegarden funds of $367,771 to Whatcom County to enhance law enforcement’s preparedness and operational readiness along the international borders of the United States. Grant funds will be used by the Sheriff’s Office and area law enforcement agencies (sub-recipients) to conduct overtime patrols and purchase equipment in support of Operation Stonegarden.

Total OPSG FY15 award was $367,771. The Sheriff’s Office used $14,306 in 2015; $161,327 in 2016; and $104,559 in 2017. The Sheriff’s Office will use the remaining $87,579 in 2018 as follows: $27,042 for overtime, mileage, and equipment and $60,537 for sub-recipients.

Funding Amount and Source

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

Thank you.
Supplemental Budget Request

Sheriff

Operations

Status: Pending

Suppl ID # 2550

<table>
<thead>
<tr>
<th>Fund</th>
<th>Cost Center</th>
<th>Originator:</th>
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<tbody>
<tr>
<td>1</td>
<td>1003515005</td>
<td>Dawn Pierce</td>
</tr>
</tbody>
</table>

Expenditure Type: One-Time

Year 2018

Add'l FTE ☐ Add'l Space ☐ Priority 1

Name of Request: FY15 Operation Stonegarden - 2018

X

Department Head Signature (Required on Hard Copy Submission)

Date 2/26/18

Costs:

<table>
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<th>Object</th>
<th>Object Description</th>
<th>Amount Requested</th>
</tr>
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<tr>
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<td>St Homeland Sec Grt Prg</td>
<td>($87,579)</td>
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<tr>
<td>6140</td>
<td>Overtime</td>
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<tr>
<td>6210</td>
<td>Retirement</td>
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<td>6230</td>
<td>Social Security</td>
<td>$662</td>
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<tr>
<td>6259</td>
<td>Worker's Comp-Interfund</td>
<td>$237</td>
</tr>
<tr>
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<td>Tools &amp; Equip</td>
<td>$16,000</td>
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<tr>
<td>6790</td>
<td>Travel-Other</td>
<td>$1,013</td>
</tr>
<tr>
<td>7220</td>
<td>Intergov Subsidies</td>
<td>$60,537</td>
</tr>
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</table>

Request Total $0

1a. Description of request:

The U.S. Department of Homeland Security (DHS) Federal Emergency Management Agency (FEMA) awarded $367,771 to Whatcom County for FY15 Operation Stonegarden Grant Program to enhance cooperation and coordination among local, tribal, territorial, state, and federal law enforcement agencies in a joint mission to secure the borders of the United States (W.C. Contract #201603004). The Sheriff's Office and other law enforcement agencies in the area will use OPSG funding to provide enhanced patrols to increase law enforcement presence in maritime and land based border areas targeting illicit activity in Whatcom County, specifically the cross-border smuggling of aliens, weapons, currency, and narcotics.

1b. Primary customers:

Area law enforcement agencies and citizens of Whatcom County through increased capability of law enforcement to secure the international border.

2. Problem to be solved:

Budget authority is needed to use remaining OPSG FY15 funds in 2018.

3a. Options / Advantages:

OPSG funds are awarded specifically for projects that improve border security.

3b. Cost savings:

Total OPSG FY15 award was $367,771. The Sheriff's Office used $14,306 in 2015; $161,327 in 2016; and $104,559 in 2017. The Sheriff's Office will use the remaining $87,579 in 2018 as follows: $27,042 for overtime, mileage, and equipment and $60,537 for sub-recipients.

4a. Outcomes:

Enhanced patrols will be conducted per contract specifications and timelines. Daily Activity Reports will be completed and sent to U.S. Border Patrol Blaine Sector.

4b. Measures:

The Whatcom County Sheriff's Office and U.S. Border Patrol Blaine Sector will monitor projects and

Sunday, February 25, 2018
**Supplemental Budget Request**

**Status:** Pending

<table>
<thead>
<tr>
<th>Sheriff</th>
<th>Operations</th>
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<tbody>
<tr>
<td>1</td>
<td>1003515005</td>
<td>Dawn Pierce</td>
</tr>
</tbody>
</table>

expenditures against contract deliverables.

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

Agencies participating in FY15 Operation Stonegarden in Whatcom County are: U.S. Border Patrol Blaine Sector, Whatcom County Sheriff’s Office, Washington Department of Fish & Wildlife, and the Blaine, Everson, Ferndale, Lynden, and Sumas Police Departments.

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

6. **Funding Source:**

1a. Description of request:
Add additional budget authority to the Sheriff’s Office as a result of the 2018 Deputy Sheriff Guild Settlement. $196,710 for medical insurance was added during the mid-biennium adjustments. This supplemental adds an additional $164,694 for medical and $284,051 for wages and other benefits. It also includes an additional $12,166 to cover the effect of the Guild Settlement on Sheriff’s Binding Arbitration unrepresented employees.

1b. Primary customers:
Deputy Guild members and Sheriff’s Binding Arbitration Unrep employees

2. Problem to be solved:
Adequate budget authority is needed to fulfill the County’s contractual obligations to its employees.

3a. Options / Advantages:
N/A - the contract has already been adopted

3b. Cost savings:
None

4a. Outcomes:
The outcomes are paid wages and benefits which occur 26 times per year.

4b. Measures:
Adequate budget will exist for all payroll and benefit costs as contracted for.

5a. Other Departments/Agencies:
AS- Finance - Payroll

5b. Name the person in charge of implementation and what they are responsible for:
Brad Bennett - Finance Manager ensures payroll and benefits are correctly paid and accounted for.

6. Funding Source:
General Fund - Non Departmental wage reserve

---

### Costs:

<table>
<thead>
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<th>Object Description</th>
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<td>6245</td>
<td>Medical Insurance</td>
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<td>6269</td>
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**Request Total**: $460,911
Supplemental Budget Request

Status: Pending

Non-Departmental

Suppl ID # 2553  Fund 1  Cost Center 4075  Originator: M Caldwell

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

Name of Request: Trf Reserve to Sheriff's Office-Guild Settlement

X

Department Head Signature (Required on Hard Copy Submission)  Date

<table>
<thead>
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<th>Costs:</th>
<th>Object</th>
<th>Object Description</th>
<th>Amount Requested</th>
</tr>
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<tbody>
<tr>
<td>6110</td>
<td>Regular Salaries &amp; Wages</td>
<td>($460,911)</td>
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</table>

Request Total ($460,911)

1a. Description of request:
Companion supplemental to Suppl ID 2552 to transfer budget authority from Non Departmental wage reserve to the Sheriff's Office for the 2018 Guild Settlement. Guild Settlement occurred after the mid biennium budget process.

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: February 28, 2018
FROM: Tawni Helms, Administrative Coordinator
RE: Bayside Pathology, Inc. – Medical Examiner Services

Background and Purpose:

The Whatcom County Executive Office has contracted with the Bayside Pathology for Medical Examiner Services since 1992. Over the years, the contract has typically increased by 1-3% annually.

Upon negotiating this new agreement the Medical Examiner requested a 20% increase in compensation. Whatcom County reviewed the compensation amounts for Medical Examiner and/or Coroner services provided other comparable counties and determined an increased could be justified. After further negotiation, the Parties agreed to a 15% increase with an annual CPI-U increase. Additionally, either party may terminate the Agreement at any time by giving 90 days' written notice to the other party of the intent to terminate.

Funding Amount and Source:

The funding increase is in the amount of $77,420. Fund source is the General Fund.
Supplemental Budget Request

Non-Departmental

Status: Pending

Supp1 ID # 2530  Fund 1  Cost Center 2100  Originator: T. Helms

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

Name of Request: Medical Examiner Services

X

Department Head Signature (Required on Hard Copy Submission)  Date

<table>
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<tr>
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<td>Request Total</td>
<td></td>
<td>$77,420</td>
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</table>

1a. Description of request:

Dr. Goldfogel was appointed Medical Examiner (ME) 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.

The Medical Examiner 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.

1b. Primary customers:

Whatcom County and its citizens.

2. Problem to be solved:

The Medical Examiner has requested increased compensation for the provision of ME services. After a long negotiation and research into other comparable counties for compensation of Medical Examiner and/or Coroner services the parties agreed to a 15% increase in compensation with an annual CPI increase. Also included is an increase of $4,500 for lab x-rays and phones.

3a. Options / Advantages:

Whatcom County researched comparable counties to determine cost comparisons. The increased compensation places the Whatcom County Medical Examiner compensation in the middle of the comparable counties.

3b. Cost savings:

N/A

4a. Outcomes:

This budget supplemental supports a three year agreement between Whatcom County and the Medical Examiner. Either party may terminate this Agreement at any time by giving 90 days' written notice to the other party of the intent to terminate.

4b. Measures:

Whatcom County will fulfill its obligation to provide ME services.

5a. Other Departments/Agencies:

N/A

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

Wednesday, February 28, 2018

Rpt: Rpt Suppl Regular
<table>
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<td>2100</td>
<td>T. Helms</td>
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N/A

6. **Funding Source:**

General Fund
Supplemental Budget Request

Non-Departmental

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

Name of Request: Transfer to fund bldg improvements at WUECC

Department Head Signature (Required on Hard Copy Submission)  Date

Costs: Object  |  Object Description  |  Amount Requested
--- | --- | ---
8351  |  Operating Transfer Out  |  $100,000

Request Total  |  $100,000

1a. Description of request:
Companion supplemental to provide funding for Supplemental ID #2556 Bldg. alterations to creat space for EMS Manager

1b. Primary customers:

2. Problem to be solved:
See Supplemental #2556

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:
EMS Fund
MEMO:

TO: Whatcom County Council

DATE: February 28, 2018

FROM: Tyler Schroeder, Deputy Executive

RE: Whatcom Unified Emergency Coordination Center (WUECC)
Space improvements for new office

Background and Purpose:
On March 5th a new EMS Manager begins work with Whatcom County. This position will administer and oversee the countywide EMS system and be the Executive and legislative point of contact as outlined in the EMS Funding Work Group Recommendations. The Recommendations also included $250K/annually beginning in 2017 for EMS Administration.

The wage savings will offset the cost to create office space for the new position in the Whatcom Unified Emergency Coordination Center WUECC. The WUECC provides a synergistic opportunity for Emergency Response agencies to be co-located. To accommodate new personnel, space alterations are necessary. In addition, electrical upgrades are also necessary to bring the building up to code.

Funding Amount and Source:
The Fund Source is the EMS Fund I the amount of $100,000 and REET I in the amount of $50,000 for a total of $150,000.
Supplemental Budget Request

Non-Departmental

Supp'ID # 2556  Fund 326  Cost Center  Originator: T. Schroeder

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

Name of Request: Bldg. improvements to create space for EMS Manager

X

Department Head Signature (Required on Hard Copy Submission)  Date 3/1/18

<table>
<thead>
<tr>
<th>Costs:</th>
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<td>8301</td>
<td>Operating Transfer In</td>
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<td>Request Total</td>
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<td></td>
<td>$50,000</td>
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</tbody>
</table>

1a. Description of request:
Funding for Tenant Improvement work at the WUECC. Tenant Improvements include new/remodeled office and storage area on the mezzanine level of the building, new reception area counters and casework for the main floor, demolition to accomplish the new tenant improvement work, and rewire a substantial portion of the existing electrical.

1b. Primary customers:
Whatcom County and citizens of Whatcom County that utilize the services of Emergency Management, Emergency Medical and EMS Service providers. EMS

2. Problem to be solved:
Creating an office and support areas for the new EMS Manager. At the same time the remodel of WUECC building will correct code issues, and make the space efficient for future users of the building.

3a. Options / Advantages:
This is an economical option to locate the new EMS Manager that will create necessary space in an underutilized building while also encouraging synergy between emergency management agencies.

3b. Cost savings:
This is the most cost effective option to solve space planning for the new position. The location is also beneficial as it will provide many efficiencies between emergency management and EMS services.

4a. Outcomes:
Necessary office space/work area will be created in a currently underutilized County facility.

4b. Measures:
New office space will be available and used to house the new EMS Manager. Additionally, existing building code issues will be addressed and resolved improving the space for current and future users.

5a. Other Departments/Agencies:
Executive Office

5b. Name the person in charge of implementation and what they are responsible for:
The EMS Manager begins work on Monday, March 5th and will be temporarily housed in the Executive Office.

6. Funding Source:
EMS Fund

Thursday, March 01, 2018

Rpt: Rpt Suppl Regular
MEMORANDUM

TO: Executive Louws
FROM: Michael McFarlane, Director
DATE: February 27th, 2018
RE: Maple Creek Bridge Supplemental Request No. 2548

Enclosed is a budget supplemental request for installation of a pedestrian bridge over Maple Creek on the Maple Falls to Warnick trail segment. This project could not be fully completed in the 2017 season.

This supplemental requests the remaining balance of $24,173 to complete the project as approved and does not exceed the $115,000 total budget approved for the project.

Please contact me at 5855 if you have any questions or require additional information.
Supplemental Budget Request

Parks & Recreation

Status: Pending

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

Name of Request: Maple Creek Park Bridge Replacement

X

Department Head Signature (Required on Hard Copy Submission)  Date

3 - 2 - 18

Costs:  Object  Object Description  Amount Requested

7380  Other Improvements  $24,173

Request Total  $24,173

1a. Description of request:

This project involves the installation of a new 61 foot pedestrian and bicycle over Maple Creek at Maple Creek Park. This bridge replaces a log stringer bridge that was destroyed in 2015 when a tree fell on it.

1b. Primary customers:

This bridge will serve Whatcom County residents and visitors to Whatcom County.

2. Problem to be solved:

The Whatcom County Council approved $115,000 for this project in 2017. Due to design and permitting delays, the project was not completed within the 2017 calendar year. However, significant progress has been made. Parks has contracted with a bridge manufacturer to fabricate and deliver the bridge in May 2018, permit approvals are nearly complete, and Parks is prepared to complete the bridge installation in the spring of 2018. Completing the installation will require construction of concrete abutments, minor trail realignment and other site work is required. Reauthorization of these funds will not result in an increase of the original council approved budget authority.

3a. Options / Advantages:

Parks could opt not to install the new pedestrian bridge, but that option would severely limit access to the recreational trail system at Maple Creek Park, and may cause a safety concern as visitors may attempt wading Maple Creek to access the trail system.

3b. Cost savings:

Installing the bridge this spring will likely save the county money as construction costs have been steadily rising each year.

4a. Outcomes:

Maple Creek Bridge will be installed and available for public use following installation scheduled for May 2018.

4b. Measures:

A completed bridge provide recreational access to trail system at Maple Creek Park will be the measure of success.

5a. Other Departments/Agencies:

Planning & Development Services (currently completing permit review)
Washington Department of Fish & Wildlife (currently completing permit review)

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

Kyla Walters, Shoreline Planner (Planning & Development Services)
Joel Ingram, Area Habitat Biologist (WDFW)

6. Funding Source:
## Supplemental Budget Request

**Status:** Pending

**Parks & Recreation**

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<td>2546</td>
<td>324</td>
<td>17002</td>
<td>Rod Lamb</td>
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REET II Fund Balance

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*Friday, March 02, 2018*
Supplemental Budget Request

Non-Departmental

Suppl ID # 2558  Fund 324  Cost Center 32400  Originator: M Caldwell

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

Name of Request: Transfer to fund Lighthouse Marine Park Project

X

Department Head Signature (Required on Hard Copy Submission)  Date

<table>
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<tr>
<th>Costs</th>
<th>Object</th>
<th>Object Description</th>
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<tr>
<td>Request Total</td>
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</table>

1a. Description of request:
Companion supplemental to provide funding for Parks Suppl ID #2554 Lighthouse Marine Park Boardwalk Improvement Project

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:
REET II
**TITLE OF DOCUMENT:** Ordinance Amendment for Whatcom County Code Chapter 2.130

**ATTACHMENTS:** Memorandum, Ordinance Amendment

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

County Executive Jack Louws requests the adoption of an Ordinance Amendment for Whatcom County Code Chapter 2.130
MEMORANDUM

TO: Whatcom County Council members
FROM: Jack Louws, County Executive
RE: Whatcom County Code amendment to revise membership of Economic Development Investment (EDI) Board
DATE: March 1, 2018

Please find attached an Ordinance amendment regarding Whatcom County Code Chapter 2.130. This amendment is being proposed as a basic housekeeping matter to correct the wording in Whatcom County Code Chapter 2.130, revising the EDI Board membership roster.

Membership of this board originally included a member representing "Bellingham/Whatcom County economic development council." Since that group no longer exists, we are proposing a text amendment to reflect an equivalent position (Associate Development Organization (ADO)). Please refer to the redlined text in Exhibit A to the Ordinance amendment.

If you should have any questions, please feel free to contact me at 778-5200.
ORDINANCE NO. ________

Amending Whatcom County Code Chapter 2.130
To Revise Economic Development Investment Board Membership

WHEREAS, Whatcom County Code Section 2.130 sets forth the establishment, purpose, function and membership of the Whatcom County Economic Development Investment Board; and

WHEREAS, an amendment to the Whatcom County Code Section 2.130.040 is necessary to clarify membership of the board due to a change in one of the designated positions; and

NOW, THEREFORE, BE IT ORDAINED by the Whatcom County Council that Whatcom County Code Section 2.130.040 is hereby amended as indicated in Exhibit A to this Ordinance.

ADOPTED this ____ day of __________, 2018.

ATTEST:

Dana Brown-Davis, Clerk of the Council

Rud Browne, Council Chair

APPROVED AS TO FORM:

Daniel L. Gibson

Civil Deputy Prosecutor

Jack Louws, County Executive

( ) Approved    ( ) Denied

Date Signed: ____________________
EXHIBIT A

2.130.040 Membership — Term of office.

A. The EDI board will consist of 14 members, which include:

1. The county executive;
2. The mayor of Bellingham;
3. Two mayors of small cities, designated by the Small Cities Caucus;
4. Chair of the county council;
5. County department head or official appointed by the County Executive;
6. One member at large, appointed by the county executive;
7. One member of the agricultural community, appointed by the county executive;
8. One member of the timber community, appointed by the county executive;
9. One member of the fishing community, appointed by the county executive;
10. One member representing each of the following:
   a. Bellingham/Whatcom County Chamber of Commerce;
   b. Bellingham/Whatcom County economic development council/Associate Development Organization (ADO);
   c. Port of Bellingham;
   d. Public utility district.

B. The chairperson of the board shall be the Whatcom County executive.

C. Due to the composition of this board, it is not subject to Charter Section 3.23. (Ord. 2003-046 Exh. A; Ord. 2000-022).
WHATCOM COUNTY COUNCIL AGENDA BILL

CLEARANCES

<table>
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<tr>
<th>Originator:</th>
<th>Initial</th>
<th>Date</th>
<th>Date Received in Council Office</th>
<th>Agenda Date</th>
<th>Assigned to:</th>
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<td>2/12/18</td>
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<td>3/13/18</td>
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<td>Brad Bennett</td>
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<tr>
<td>Jack Louws</td>
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TITLe OF DOCUMENT:
Ordinance regarding the temporary installation of stop signs on Mosquito Lake Road until road repairs from erosion are completed.

ATTACHMENTS:
1. Cover Memo
2. Agenda Bill
3. Ordinance

SEPA review required? ( ) Yes ( x ) NO
SEPA review completed? ( ) Yes ( x ) NO
Should Clerk schedule a hearing? ( ) Yes ( x ) NO
Requested Date: 3·27·18

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

To comply with RCW 36.32.120 and 46.61.200, it is found necessary and expedient to install temporary traffic control signs on Mosquito Lake Road in the vicinity of the erosion area.

COMMITTEE ACTION:  

COUNCIL ACTION:

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

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

To: 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

Date: February 27, 2018

Re: Ordinance Regarding Temporary Installation of Stop Signs on Mosquito Lake Road until the repair work is completed at the erosion area, approximately 2.4 miles east of SR 9.

Requested Action
Public Works respectfully requests that the County Council adopt the proposed ordinance to install temporary stop signs on Mosquito Lake Road until the road repairs from erosion are completed.

Background and Purpose
Due to recent severe weather, the roadway on Mosquito Lake Road, approximately 2.4 miles east of SR 9 had severe erosion requiring a one road roadway with stop control at each end. The expected repair time is approximately one month. These temporary stop signs will be removed at the completion of the repair work.

Information
This ordinance will allow for the temporary installation of stop signs and is necessary to comply with RCW 36.32.120 and 46.61.200 to install traffic control signs.

Please contact Joe Rutan at extension 6219 with any questions regarding this ordinance.
PROPOSED BY: Public Works - Engineering

INTRODUCTION DATE: ________________

ORDINANCE NO._______

REGARDING TEMPORARY INSTALLATION OF STOP SIGNS
ON MOSQUITO LAKE ROAD

WHEREAS, in compliance with RCW 36.32.120 and 46.61.200, it is found
necessary and expedient to install traffic control signs on certain County Roads; and

WHEREAS, due to recent severe weather, erosion immediately next to Mosquito
Lake Road occurred, and it was determined that a one-way road is needed with stop
control at each end; and

NOW, THEREFORE, BE IT ORDAINED by the Whatcom County Council that
stop signs be installed on Mosquito Lake Road at both ends of the erosion area, as
shown upon attached Exhibit A, Traffic Control Plan, upon start of project construction.

BE IT FURTHER ORDAINED that when the repairs to the erosion area on
Mosquito Lake Road are complete, the stop signs will be removed; and

BE IT FURTHER ORDAINED that the County Engineer is hereby directed to
install the appropriate signs and that the Whatcom County Sheriff be notified by a copy
of this ordinance.

ADOPTED this ____ day of ____________, 2018.

ATTEST:

Dana Brown-Davis, Council Clerk

WHATCOM COUNTY COUNCIL
WHATCOM COUNTY, WASHINGTON

Rud Browne, Council Chair

APPROVED AS TO FORM:

( ) Approved ( ) Denied

Jack Louws, Executive

Date: ___________________________
**WHATCOM COUNTY COUNCIL AGENDA BILL**

**Clearances**

<table>
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<tr>
<th>Originator:</th>
<th>Initial</th>
<th>Date</th>
<th>Date Received in Council Office</th>
<th>Agenda Date</th>
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<tr>
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<td>Jon Hutchings</td>
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<td>Prosecutor:</td>
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<td>Daniel L. Gibson</td>
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<td>3/5/18</td>
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**Title of Document:**
Ordinance regarding the temporary installation of stop signs on Mosquito Lake Road during the Mosquito Lake Road/North Fork Nooksack River Bridge No. 332 Cap Repair Project.

**Attachments:**
1. Cover Memo
2. Agenda Bill
3. Ordinance

**SEPA Review Required?**

<table>
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<tr>
<th>Yes</th>
<th>No</th>
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</table>

**SEPA Review Completed?**

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<th>Yes</th>
<th>No</th>
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**Should Clerk Schedule a Hearing?**

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<th>Yes</th>
<th>No</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.)

To comply with RCW 36.32.120 and 46.61.200, it is found necessary and expedient to install temporary traffic control signs on Mosquito Lake Road during the Mosquito Lake Road/North Fork Nooksack River Bridge No. 332 Cap Repair Project.

**Committee Action:**

**Council Action:**

**Related County Contract #:**

**Related File Numbers:**

**Ordinance or Resolution Number:**

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

To: The Honorable Jack Louws, Whatcom County Executive and
The Honorable Members of the Whatcom County Council
Through: Jon Hutchings, Director
From: Joseph P. Rutan, P.E., County Engineer/Assistant Director
        James E. Lee, P.E., Engineering Manager
Date: February 27, 2018
Re: Ordinance Regarding Temporary Installation of Stop Signs on Mosquito
    Lake Road during the Mosquito Lake Road/North Fork Nooksack River
    Bridge No. 332 Cap Repair Project

Requested Action
Public Works respectfully requests that the County Council adopt the proposed ordinance to install temporary stop signs on Mosquito Lake Road during the Mosquito Lake Road/North Fork Nooksack River Bridge #332 Cap Repair Project.

Background and Purpose
The Mosquito Lake Road/North Fork Nooksack River Bridge No. 332 was originally constructed in 1965 and consists of a 150-foot steel girder main span with 30-foot reinforced concrete approach spans including timber piles and caps. The existing timber cap on the east approach of this bridge is experiencing crushing and is in need of repair.

Work will include the use of timber shoring and hydraulic jacks to support the east end of the bridge while the existing timber cap is replaced with a steel beam. The nature of the work will require a stop-controlled, single-lane traffic configuration through the project site for the duration of the repair work which will be completed this spring and will take approximately four weeks to complete. These temporary stop signs will be removed as soon as the repair work is complete.

Information
This ordinance will allow for the temporary installation of stop signs and is necessary to comply with RCW 36.32.120 and 46.61.200 to install traffic control signs.

Please contact James Lee at extension 6264 with any questions regarding this ordinance.
ORDINANCE NO.______

REGARDING TEMPORARY INSTALLATION OF STOP SIGNS ON MOSQUITO LAKE ROAD DURING THE MOSQUITO LAKE ROAD/NORTH FORK NOOKSACK RIVER BRIDGE NO. 332 CAP REPAIR PROJECT

WHEREAS, in compliance with RCW 36.32.120 and 46.61.200, it is found necessary and expedient to install traffic control signs on certain County Roads; and

WHEREAS, the existing Bridge No. 332 on Mosquito Lake Road at the North Fork Nooksack River is in need of a cap repair project; and

WHEREAS, design and permitting on the project is now complete and construction of this project is expected to start in the spring of 2018 and last approximately 4 weeks; and

WHEREAS, during construction of this project traffic on a certain portion of Mosquito Lake Road needs to be reduced to one lane; and

WHEREAS, Public Works proposes installing temporary stop signs on Mosquito Lake Road as part of a stop-controlled one-lane traffic configuration during the repair project;

NOW, THEREFORE, BE IT ORDAINED by the Whatcom County Council that temporary stop signs be installed on Mosquito Lake Road as shown upon attached Exhibit A, Traffic Control Plan, upon the start of project construction; and

BE IT FURTHER ORDAINED that upon completion of the project the temporary stop signs will be removed; and

BE IT FURTHER ORDAINED that the County Engineer is hereby directed to install the appropriate signs and that the Whatcom County Sheriff be notified by a copy of this ordinance.

ADOPTED this ___ day of ____________, 2018.

WHATCOM COUNTY COUNCIL
WHATCOM COUNTY, WASHINGTON

ATTEST:

______________________________
Dana Brown-Davis, Council Clerk

______________________________
Rud Browne, Council Chair

APPROVED AS TO FORM:

( ) Approved ( ) Denied

______________________________
Civil Deputy Prosecutor

______________________________
Jack Louws, Executive

Date: _________________________
**WHATCOM COUNTY COUNCIL AGENDA BILL**

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<tr>
<th>CLEARANCES</th>
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<td>3/5/18</td>
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**TITLE OF DOCUMENT:**
Ordinance regarding the temporary installation of stop signs on Noon Road at Ten Mile Road and Central Road to facilitate the Hannegan Road Ten Mile Bridge #236 Replacement Project construction detour.

**ATTACHMENTS:**
1. Cover Memo
2. Agenda Bill
3. Ordinance

**SEPA review required?**
- ( ) Yes
- (x) NO

**SEPA review completed?**
- ( ) Yes
- (x) NO

**Should Clerk schedule a hearing?**
- ( ) Yes
- (x) NO

**Requested Date:** 3-2-18

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

To comply with RCW 36.32.120 and 46.61.200, it is found necessary and expedient to install temporary traffic control signs on Noon Road at Ten Mile Road and Central Road to facilitate the Hannegan Road Ten Mile Bridge #236 Replacement Project construction detour.

**COMMITTEE ACTION:**

**COUNCIL ACTION:**

**Related County Contract #:**

**Related File Numbers:**

**Ordinance or Resolution Number:**

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

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

Through: Jon Hutchings, Director

From: Joseph P. Rutan, P.E., County Engineer/Assistant Director
       James E. Lee, P.E., Engineering Manager

Date: February 27, 2018

Re: Ordinance Regarding Temporary Installation of Stop Signs on Noon Road at Ten Mile Road and Central Road during Construction of the Hannegan Road/Ten Mile Creek Bridge #236 Replacement Project

Requested Action
Public Works respectfully requests that the County Council adopt the proposed ordinance to install temporary stop signs on Noon Road at Ten Mile Road and Central Road during construction of the Hannegan Road/Ten Mile Creek Bridge #236 Replacement project.

Background and Purpose
The existing Hannegan Road Bridge #236 at Ten Mile Creek is scheduled to be replaced this summer with construction activities expected to begin on August 20th, 2018 and continuing into late 2018. This project is listed as #19 on the 2018 Annual Construction Program.

During the construction of this project, local traffic will be detoured around the project site via Ten Mile Road, Noon Road and Central Road. Public Works proposes to install temporary stop signs on Noon Road at the intersections of Ten Mile Road and Central Road to improve safety and help manage the increased traffic these intersections will experience during the use of this detour. These temporary stop signs will be removed as soon as construction of the project is complete.

Information
This ordinance will allow for the temporary installation of stop signs and is necessary to comply with RCW 36.32.120 and 46.61.200 to install traffic control signs.

Please contact James Lee at extension 6264 with any questions regarding this ordinance.
PROPOSED BY: Public Works - Engineering

INTRODUCTION DATE: ________________

ORDINANCE NO._______

REGARDING TEMPORARY INSTALLATION OF STOP SIGNS
ON NOON ROAD AT TEN MILE ROAD AND CENTRAL ROAD DURING CONSTRUCTION OF
THE HANNEGAN ROAD TEN MILE CREEK BRIDGE #236 REPLACEMENT PROJECT

WHEREAS, in compliance with RCW 36.32.120 and 46.61.200, it is found necessary
and expedient to install traffic control signs on certain County Roads; and

WHEREAS, the existing Bridge #236 on Hannegan Road at Ten Mile Creek is
scheduled to be replaced; and

WHEREAS, design and permitting on the project is now complete and construction of
this project is expected to start in the summer of 2018 with completion anticipated in late 2018;
and

WHEREAS, during construction of this project Hannegan Road will be closed at the
project site and local traffic will be detoured to Ten Mile Road, Noon Road and Central Road;
and

WHEREAS, Public Works proposes installing temporary stop signs on Noon Road at
Ten Mile Road and Central Road to improve the safety of these intersections during use of this
detour;

NOW, THEREFORE, BE IT ORDAINED by the Whatcom County Council that
temporary stop signs be installed on Noon Road at Ten Mile Road and Central Road as shown
on page 1 of attached Exhibit A, the detour plan for the above-cited project, upon the start of
project construction; and

BE IT FURTHER ORDAINED that upon completion of the project the temporary stop
signs will be removed; and

BE IT FURTHER ORDAINED that the County Engineer is hereby directed to install the
appropriate signs and that the Whatcom County Sheriff be notified by a copy of this ordinance.

ADOPTED this ___ day of __________, 2018.

WHATCOM COUNTY COUNCIL
WHATCOM COUNTY, WASHINGTON

ATTEST:

Dana Brown-Davis, Council Clerk
Rud Browne, Council Chair

APPROVED AS TO FORM:

Daniel L. Gibson
Civil Deputy Prosecutor

( ) Approved ( ) Denied

________________________
Jack Louws, Executive

Date: _____________________
**WHATCOM COUNTY COUNCIL AGENDA BILL**

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**TITLE OF DOCUMENT:** Resolution and Public Hearing regarding Community Development Block Grant funding application.

**ATTACHMENTS:** Memo from County Executive; CDBG Public Hearing handout; Public Services Project Scope and Budget; Resolution and Certification of Compliance.

| SEPA review required? | ( ) Yes | ( X ) NO | SEPA review completed? | ( ) Yes | ( X ) NO | Should Clerk schedule a hearing? | ( X ) Yes | ( ) NO | Requested Date: March 27, 2018 |

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

The Opportunity Council (OC) is on the state Community Development Block Grant (CDBG) list of 2018 Public Services Grant recipients, which is a State formula grant in the amount of $127,726 for distribution to the tri-county area of Whatcom, Skagit and Island Counties. In order to apply for the funding, OC is required to submit the application through their local jurisdiction, Whatcom County. The public services grant funding is intended to fund new or expanded direct services for persons with low- and moderate-income in Island, San Juan and Whatcom Counties. OC will act as Subrecipient of the funding, and Whatcom County will be the lead agency in the grant application process.

**Public Hearing Notice language:**

NOTICE IS HEREBY GIVEN that a public hearing will be held by the Whatcom County Council in the Council Chambers, Whatcom County Courthouse, 311 Grand Avenue, Bellingham, on Tuesday, March 27, 2018 at 7:00 p.m. The purpose of the public hearing is to review community development and housing needs, inform citizens of the availability of funds and eligible uses of the state Community Development Block Grant (CDBG), and receive comments on proposed activities, particularly from lower income persons residing in Whatcom County. $127,726 is proposed to be available annually to Whatcom, Skagit and Island Counties, through the Opportunity Council, to fund public services that principally benefit low- and moderate-income persons. Comments on the county’s and Opportunity Council’s past performance and use of their 2017 CDBG Public Services Grant will also be received. A Resolution will be reviewed, which would authorize the County Executive to submit an application to the State of Washington for this funding. The draft grant application, including an overview of the proposed public services, will be available for review at the Whatcom County Executive’s office, Suite 108, 311 Grand Avenue, Bellingham, after April 9, 2018. Comments may also be submitted in writing to the Whatcom County Council until the public hearing has been closed.

**COMMITTEE ACTION:**

**COUNCIL ACTION:**

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

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

To: Whatcom County Council Members
From: Jack Louws, County Executive
Subject: CDBG Grant Application for 2018 Public Services Grant
Date: March 2, 2018

We have been contacted by the Opportunity Council (OC) regarding acting as the lead agency to apply for a grant from Washington State Department of Commerce. The 2018 Public Services (Formula) Grant supports new or expanded direct services for persons with low and moderate incomes in the Whatcom, Skagit and Island County area.

Through a subrecipient agreement with the County, OC will administer this grant and oversee the distribution of services. The public services grant amount allocated to the tri-county area is $127,726.

I am supporting this application and recommending to the Council that it be submitted to Washington State Department of Commerce. As part of the application process, we are required to conduct a public hearing in order to receive public input on the use of CDBG funds and to inform the public on the nature of this and other CDBG funding opportunities. As lead agency for this pass-through grant, the County Council is required to sign a Resolution in support of the application. We have drafted the Resolution per CDBG guidelines and it is attached.

Thank you for your consideration of this matter. If you have any questions, please don't hesitate to contact me.

/Enclosures
GENERAL PURPOSE GRANTS $9,000,000
For planning or construction of public infrastructure, community facilities, affordable housing, and economic development projects.
Competitive. Maximum grant up to $750,000 based on project type. Application materials available in March and due in June.

ECONOMIC OPPORTUNITY GRANTS $1,000,000
For state and local priority projects resulting in economic resilience and development in rural communities.
Competitive. Application materials available in July and accepted after the state Capital Budget is approved.

HOUSING ENHANCEMENT GRANTS $200,000
For off-site infrastructure or the community facility component of a state Housing Trust Fund project.
Competitive. Maximum grant generally $200,000. Application materials available in July and accepted with a HTF Stage 2 application.

PUBLIC SERVICES GRANTS $1,500,000
For 17 counties and community action agencies to fund new or expanded services for lower income persons.
Allocated by formula based on population and poverty. Application materials available in February and due in April.

HUD NATIONAL OBJECTIVES
CDBG project activities must meet one of three HUD National Objectives:
- Principally benefits low- and moderate-income (LMI) persons
- Aids in the prevention or elimination of slums or blight
- Addresses imminent threat to public health or safety

OUR CORE PURPOSE
Grow and improve jobs in Washington State by championing thriving communities, a prosperous thriving economy, and suitable infrastructure.

PROGRAM CONTACT
Kaaren Roe
Section Manager
Local Government Division
360.725.3018
kaaren.roe@commerce.wa.gov

ELIGIBILITY GUIDELINES:
Eligible applicants are Washington State cities/towns with less than 50,000 in population and not participating in a CDBG entitlement urban county consortium; and counties with less than 200,000 in population. Eligible cities/towns and counties are listed on the CDBG website.
Special purpose districts, public housing authorities, community action agencies, economic development councils, other non-profit organizations, and Indian tribes are not eligible to apply directly to the state CDBG Program for funding, but may be a partner in projects and subrecipient of funding with an eligible city/town or county applicant.

1011 Plum Street SE, Olympia, WA 98504
http://www.commerce.wa.gov/cdbg
Attachment #1 – Scope of Work & Budget

SCOPE OF WORK

A. Service Programs

NOTE: List the specific public service activities from the CDBG application's Project Description & Low- and Moderate-Income Benefit Table, or reference the CDBG application’s Project Description & Low- and Moderate-Income Benefit Table.

CDBG Whatcom Narrative:
In Whatcom County, CDBG funds will support services and activities in East Whatcom County, a region of Whatcom County that includes many low-income residents in a geographically remote and underserved rural community. Services will be provided and coordinated by Opportunity Council information and referral specialist at the East Whatcom Regional Resource Center. The primary activities will be connecting low to moderate income community members with services including early childhood education, food resources, and energy assistance programs.

CDBG Island County Narrative:
In Island County, CDBG funds will increase capacity to serve low-income households including housing support services. This funding supports current homeless housing and prevention screening, qualifying and enrolling clients in services such as Basic Food and other supportive programs. This service center, located in Oak Harbor, will also engage and refer to other local service providers to serve homeless, veterans and those with mental health and chemical dependency issues.

CDBG San Juan Narrative:
CDBG Public Services grant will provide support to the three Community Resource Centers on San Juan, Orcas and Lopez Islands in San Juan County. The geography and limited transportation systems in San Juan County create a significant challenge in providing services to low-income households. The Community Resource Centers are the conduit that connects people to services on each of the islands and the mainland as well. Opportunity Council will contract for information and referral services with each Community Resource Center so residents can access housing, food, energy assistance, and employment opportunities.
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<th>COST CATEGORIES</th>
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<th>COUNTY ADMINISTRATION</th>
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<td>Staffing</td>
<td>$ 100,391</td>
<td>Staffing to provide resource information and referral services to LMI individuals. The Whatcom County staffing will include resource and referral specialist at the East Whatcom Regional Resource Center. Island county staffing will include a homeless housing specialist. This budget item includes both salary and fringe benefits.</td>
<td>$</td>
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<tr>
<td>Goods and services</td>
<td>$ 11,871</td>
<td>Goods and services include office supplies, office space costs for Island county staff, and recruitment/training expenses for the East Whatcom Regional Resource Center. In San Juan County, three Community Resource Centers will provide information and referral services.</td>
<td>$</td>
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<tr>
<td>Travel</td>
<td>$ 1,779</td>
<td>Mileage and vehicle costs for travel to rural communities</td>
<td>$</td>
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<td>Indirect Costs</td>
<td>$ 13,685</td>
<td>Federally approved indirect rate</td>
<td>$</td>
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<td><strong>TOTAL</strong></td>
<td>$ 127,726</td>
<td>Cannot exceed the total grant amount minus the county administration budget.</td>
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Up to $3,500 per year can be allocated from the total grant amount for county administration costs.
SPONSORED BY: Consent
PROPOSED BY: Executive
INTRODUCTION DATE: 3/13/18

RESOLUTION NO.________
APPLICATION FOR A COMMUNITY DEVELOPMENT BLOCK Grant (CDBG)

WHEREAS, Whatcom County is authorized to apply to the state Department of Commerce for a Community Development Block Grant (CDBG); and

WHEREAS, Whatcom County has identified a community development and housing priority need for which to seek CDBG funding and is preparing to submit an application to the State Department of Commerce for funding assistance; and

WHEREAS, it is necessary that certain conditions be met to receive CDBG funds;

NOW, THEREFORE, be it resolved that Whatcom County authorizes submission of the following application to the state Department of Commerce: a request for up to $127,726 and any amended amounts to fund public service activities in coordination with the Opportunity Council, and certifies that, if funded, it:

Will comply with applicable provisions of Title I of the Housing and Community Development Act of 1974, as amended, and other applicable state and federal laws;

Has provided and will provide opportunities for citizen participation that satisfy the CDBG requirements of 24 CFR 570.486;

Will not use assessments against properties owned and occupied by low- and moderate-income persons or charge user fees to recover the capital costs of CDBG-funded public improvements from low- and moderate-income owner-occupants;

Has established or will establish a plan to minimize displacement as a result of activities assisted with CDBG funds; and assist persons actually displaced as a result of such activities, as provided in the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended;

Has provided technical assistance to citizens and groups representative of low- and moderate-income persons that request assistance in developing proposals;

Will provide opportunities for citizens to review and comment on proposed changes in the funded project and program performance;
Will conduct and administer its program in conformance with Title VI of the Civil Rights Act of 1964 and the Fair Housing Act, will affirmatively further fair housing (Title VIII of the Civil Rights Act of 1968); and

Has adopted and enforces a policy prohibiting the use of excessive force by law enforcement agencies within its jurisdiction against any individuals engaged in nonviolent civil rights demonstrations; and has adopted (or will adopt) and implement a policy of enforcing applicable state and local laws against physically barring entrance to or exit from a facility or location which is the subject of such nonviolent civil rights demonstration within its jurisdiction, in accordance with Section 104(1) of the Title I of the Housing and Community Development Act or 1974, as amended;

Certifies to meeting the National Environmental Policy Act (NEPA) through a determination the CDBG-funded public services will not have a physical impact or result in any physical changes and are exempt under 24 CFR 58.34(a), and are not applicable to the other requirements under 24 CFR 58.6; and are categorically exempt under the State Environmental Policy Act (SEPA) per WAC 197-11-305 (2); and

Whatcom County designates Jack Louws, County Executive, as the authorized Chief Administrative Official and authorized representative to act in all official matters in connection with this application and Whatcom County’s participation in the Washington State CDBG Program.

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: 

Daniel Z. Gibson
Civil Deputy Prosecutor