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


COMMITTEE ACTION:
4/10/2018: Held in SCOTW for two weeks

COUNCIL ACTION:
4/10/2018: Withdrawn from the agenda and held in Comm.
Memorandum

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

THROUGH: Mark Personius, Director

FROM: Cliff Strong, Senior Planner

DATE: April 13, 2018

SUBJECT: Proposed Whatcom County Comprehensive Plan and Development Regulation Amendments to Enact the Streamflow Restoration Act (ESSB 6091)

Background

The State Legislature recently passed, and the Governor signed into law, the Streamflow Restoration Act (ESSB 6091), which amends the state water and watershed management regulations, providing a resolution to the Washington Supreme Court’s Hirst Decision. Whatcom County must now amend its Comprehensive Plan and development regulations to incorporate the new state law into our code so as to be consistent with it and our Comprehensive Plan Policy 5R-1:

Building permit applicants, new subdivisions, short plats, and binding site plans will be required to provide evidence that adequate and legal (in consultation with the Department of Ecology) supplies of water are available prior to their approval by the County.

Mr. Almskaar’s Suggested Edits

At your 4/10/18 workshop, Mr. Almskaar provided suggested edits to 21.04.090. Below are staff’s recommendations on those suggestions:

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

(2) For residential short subdivisions and/or a boundary line adjustment, private water supplies may be used under the following circumstances:

<table>
<thead>
<tr>
<th>Staff Response: Adding a reference to BLAs here is not necessary, as this section deals with Short Subdivisions. Furthermore, while state subdivision code requires us to ensure water is available for new created parcels, BLAs do not create new parcels (they only rearrange existing parcel boundaries). Parcels involved in a BLA would fall under the rules for existing lots.</th>
</tr>
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<tbody>
<tr>
<td>(a) All lots served by the private water supplies are five acres or larger, unless smaller because of clustering, or are legal lots of record. If the lots are smaller because of clustering, the gross density of the short subdivision shall not exceed one dwelling per five acres; and</td>
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| Staff Response: The addition of “legal lots of record” is not necessary, as any lots involved in a short subdivision must be a legal lot of record. The addition would only be redundant. |

However, the clause “because of clustering” can be deleted, as it is redundant, having already been stated in the first sentence. Staff has updated Exhibit A to reflect this.
(b) The withdrawal is not from a defined portion of an aquifer of known regional groundwater contamination that exceeds state standards and that has been identified by the director of the Whatcom County Health Department and confirmed by the Health Board; and

(c) The water source is groundwater; and

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

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

**Staff Response:** This may be a little harder to track as the staff proposed language clarifying when private water supplies may be authorized by the Health Department, consistent with the CWSP, has changed from that shown in Mr. Almskaar’s comments (and here) (see attached Exhibit A for revised language).

There are three possibilities of a property’s location in relation to a public water service area:

1. Within the service area;
2. Outside the service area but within 1/2-mile of it; or
3. Outside the service area and not within 1/2-mile of it.

Each location has its own set of rules under the Council-adopted Coordinated Water System Plan (CWSP), Health Code (WCC 24.11), and state law.

If in location (1), which is covered by subsection (g), one must connect to the water system unless the purveyor says they cannot provide water or they don’t respond to an application for water service in a timely manner. Any disputes over the conditions of service are a civil matter between the applicant and water purveyor with the appeal venue being Superior Court.

If in location (2), which is covered by subsection (f), the Health Department requires that the applicant have a discussion about service with the purveyor but one is not required to connect to the water system (i.e., the applicant can install a well if s/he so desires). Thus, if any one of the 3 conditions is met (the purveyor says they cannot provide water, they don’t respond to an application for water service in a timely manner, or the purveyor and applicant are unable to achieve an agreement) then the Health Department can permit a well.

If in location (3), covered by subsection (e), one does not have to deal with the purveyor and can directly apply for a private well with the Health Department.

Staff recommends that the “one-half mile” designation be retained, but included in new section (f) to better clarify the three areas described above; otherwise it introduces a gap in the locational determination. (See revised proposed language in Exhibit A.)

(f) The short subdivision is located outside but within one-half mile of the designated retail water service area of a public water purveyor (as shown on the coordinated water system plan map) and, within 120 calendar days of submitting a written request and applicable fees to the purveyor:

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

(ii) The purveyor and applicant are unable to achieve an agreement on the schedule and terms of provision of service, including the total cost of shares and off-site construction, including design, permitting, etc., to the applicant; or
Staff Response: This proposed insertion is not necessary, as those concepts are already covered by the phrase “agreement on the schedule and terms of provision of service.” Furthermore, PDS does not need to know why they couldn’t reach agreement, only that they didn’t.

(iii) The water purveyor fails to respond with a letter of approval or denial.

(g) The short subdivision is located within the designated retail water service area of a public water purveyor (as shown on the coordinated water system plan map) and, within 120 calendar days of submitting a written request and applicable fees to the purveyor:

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

(ii) The water purveyor fails to respond with a letter of approval or denial.

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

Staff Recommendation

Staff recommends that the County Council review the proposed ordinance, introduce it for consideration on April 24, 2018, and on May 8, 2018, hold a public hearing and adopt these provisions consistent with ESSB 6091 and the Coordinated Water System Plan (CWSP).

Attachments:

- Draft Ordinance
- Exhibit A, showing the proposed amendment to the Whatcom County Comprehensive Plan and development regulations
- Staff Report
- ESSB 6091
ORDINANCE NO. 2018-00__

AN ORDINANCE REPEALING ORDINANCE NOS. 2018-001 AND 2018-005 AND ADOPTING AMENDMENTS TO THE WHATCOM COUNTY COMPREHENSIVE PLAN AND THE WHATCOM COUNTY CODE TITLE 15 BUILDINGS AND CONSTRUCTION, TITLE 20 ZONING, TITLE 21 LAND DIVISION REGULATIONS, AND TITLE 24 HEALTH CODE, RELATING TO WATER RESOURCES AND IMPLEMENTING ESSB 6091

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

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

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

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

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

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

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

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

WHEREAS, to protect rural character and regulate groundwater withdrawals, Whatcom County adopted Ordinance 2012-032, amending its Comprehensive Plan to adopt by reference existing development regulations, adding Policy 2DD-2.C.6 which adopts by reference WCC 21.04.090 and 21.05.080, Policy 2DD-2.C.7 which adopts by reference WCC 24.11.050, Policy 2DD-2.C.8 which adopts by reference WCC 24.11.060, and Policy 2DD-2.C.9 which adopts by reference WCC 24.11.090, .100, .110, .120, .130, .160, and .170, any amendments to these WCC provisions are also amendments to the Comprehensive Plan; and,
WHEREAS, the Growth Management Hearings Board (Board) found the amended Comprehensive Plan lacked the required measures to protect water resources (GMHB Case No. 12-2-0013); and,

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

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

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

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

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

WHEREAS, ESSB 6091, Section 101(5), also provides that “[a]ny permit-exempt groundwater withdrawal authorized under RCW 90.44.050 associated with a water well constructed in accordance with the provisions of chapter 18.104 RCW before the effective date of this section is deemed to be evidence of adequate water supply under this section”; and,
WHEREAS, the amendments proposed by this ordinance are consistent with the aforementioned requirements of ESSB 6091 and are therefore consistent with the GMA, as specifically addressed in Section 102 of ESSB 6091; and,

WHEREAS, adoption of this ordinance is necessary to complete the GMA compliance proceedings before the Western Washington Growth Management Hearings Board (GMHB Case No. 12-2-0013); and,

WHEREAS, a determination of non-significance (DNS) (SEPA 2018-00013) was issued under the State Environmental Policy Act (SEPA) on February 20, 2018; and,

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

WHEREAS, with the enactment of ESSB 6091 and this ordinance, Ordinance Nos. 2018-001 and 2018-005 are no longer necessary to ensure that Whatcom County is in compliance with state law; and,

WHEREAS, in accordance with RCW 36.70A.106, Whatcom County Planning and Development Services notified the Department of Commerce of the proposed amendments contained herein on February 14, 2018, and no comments were received from state agencies; and,

WHEREAS, The Planning Commission held a public hearing on this ordinance on March 8, 2018, notice of which was published in the Bellingham Herald on February 23, 2018; and,

WHEREAS, the County Council held a duly noticed public hearing on this ordinance on May 8, 2018; and,

WHEREAS, the proposed amendments to the Whatcom County Comprehensive Plan and development regulations would affirm the County’s intent to work cooperatively with the Department of Ecology, WRIA 1 Initiating Governments, and the Planning Unit to update the WRIA 1 Watershed Management Plan pursuant to the Streamflow Restoration Act (ESSB 6091), as well as implement the Act’s requirements for allowing the conditioned use of permit-exempt wells (RCW 90.44.050) as a legal source of water for domestic use, and are consistent with the Comprehensive Plan goals and policies listed in Section III of the staff report; and,

WHEREAS, the amendments are in the public interest; and,

WHEREAS, the amendments are consistent with the Whatcom County Comprehensive Plan.

NOW, THEREFORE, BE IT ORDAINED that the Whatcom County Council adopts the above “WHEREAS” recitals as findings of fact and conclusions in support of its action as required by RCW 36.70A.390.

BE IT FURTHER ORDAINED that Ordinance Nos. 2018-001 and 2018-005 are hereby repealed in their entirety upon the effective date of this ordinance.
BE IT FURTHER ORDAINED by the Whatcom County Council that the Whatcom County Comprehensive Plan and the Whatcom County Code are hereby amended as shown in Exhibit A.

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

ADOPTED this ______ day of ____________, 2018.

WHATCOM COUNTY COUNCIL
WHATCOM COUNTY, WASHINGTON

ATTEST:

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

APPROVED as to form:

_______________________________  ______________________________
Civil Deputy Prosecutor        Jack Louws, Executive

( ) Approved   ( ) Denied

Date: __________________________
EXHIBIT A
Whatcom County Code
AMENDMENTS
(Note: Planning Commission recommended changes shown in yellow highlight. Post Planning Commission changes recommended by staff are shown in gray highlight.)

TITLE 15 BUILDINGS AND CONSTRUCTION
CHAPTER 15.04 BUILDING CODES

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

5. Section 105.3, Application for Permit, is amended to include the following:
To obtain the permit, the applicant shall first file an application therefor in writing on a form furnished by the Department of Building Safety for that purpose. Such application shall:

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

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

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

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

5. State the valuation of the proposed work.

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

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

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

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

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

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15.04.030 Amendments to the International Residential Code.

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

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

1. Identify and describe the work to be covered by the permit for which application is made.
2. Describe the land on which the proposed work is to be done by legal description, street address or similar description that will readily identify and definitely locate the proposed building or work.
3. Indicate the use and occupancy for which the proposed work is intended.
4. Be accompanied by construction documents and other information as required in Section 107.
5. State the valuation of the proposed work.
6. Be signed by the applicant, or the applicant’s authorized agent.
7. Include signature by the applicant or the applicant’s authorized agent of a statement for guarantee of fee payment. The statement must be signed in the presence of County staff or staff will provide a statement which includes verification of signature by a licensed notary public.
8. Provide verification of approval to connect to a public sewer system or a septic system installation permit issued by the Whatcom County Environmental Health Department for any permit application that requires sewage disposal. The approval to connect or issued system permit shall be specific to the project application.
9. For buildings requiring potable water provide evidence of an adequate water supply (as defined in WCC 20.97.451) for the intended use of the building(s).
10. Provide additional data and information in the designated sequence, as required by the Building Official.
TITLE 20 ZONING
CHAPTER 20.84 VARIANCES, CONDITIONAL USES, ADMINISTRATIVE APPROVAL USES AND APPEALS

20.84.200 Conditional uses.

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

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

CHAPTER 20.97 DEFINITIONS

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

TITLE 21 LAND DIVISION REGULATIONS
CHAPTER 21.04 SHORT SUBDIVISIONS

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

(2) For a residential short subdivisions, private water supplies may be utilized under the following circumstances:

(a) All lots served by the private water supplies are five acres or larger, unless smaller because of clustering. If the lots are smaller because of clustering, the gross density of the short subdivision shall not exceed one dwelling per five acres; and
(b) The withdrawal is not from a defined portion of an aquifer of known regional groundwater contamination that exceeds state standards and that has been identified by the director of the Whatcom County Health Department and confirmed by the Health Board; and

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

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

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

(f) If the short subdivision is located outside but within or within one-half mile of the designated retail water service area of a public water purveyor, (that, as is shown on the coordinated water system plan map) or within one-half mile of an existing water purveyor's water lines and, within 120 calendar days of submitting a written request and applicable fees to the purveyor:

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

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

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

(iv) The water purveyor fails to respond with a letter of approval or denial.

(g) The short subdivision is located within the designated retail water service area of a public water purveyor (as shown on the coordinated water system plan map) and, within 120 calendar days of submitting a written request and applicable fees to the purveyor:

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

(ii) The water purveyor fails to respond with a letter of approval or denial.

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

CHAPTER 21.05 PRELIMINARY LONG SUBDIVISIONS

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

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

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

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

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

(d) The long subdivision is not located within nor within one-half mile of the designated retail water service area of a public water purveyor, (as shown on the coordinated water system plan map); or not within one-half mile of an existing water purveyor’s water lines; or

(e) The subdivision is located outside but within or within one-half mile of the designated retail water service area of a public water purveyor that is (as shown on the coordinated water system plan map) or within one-half mile of an existing water purveyor’s water lines and within 120 calendar days of submitting a written request and applicable fees to the purveyor:

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

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

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

(iv) The water purveyor fails to respond with a letter of approval or denial.

(f) The subdivision is located within the designated retail water service area of a public water purveyor (as shown on the coordinated water system plan map) and, within 120 calendar days of submitting a written request and applicable fees to the purveyor:

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

(v) The water purveyor fails to respond with a letter of approval or denial.

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

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

5. If a public water supply is required, all the requirements of Chapter 246-290 WAC, Group A Public Water Systems, or Chapter 246-291 WAC, Group B Public Water Systems, must be met prior to final plat approval.
TITLE 24 HEALTH CODE
CHAPTER 24.11 DRINKING WATER

24.11.050 General requirements.
A. Applicants must submit all required forms, letters, and documents to the director.
B. The director will consider applications for water availability proposing to use groundwater, spring water, surface water, sea water or rainwater.
C. The director shall evaluate the availability of a public water system prior to approving the use of a private water system. If it is determined that a public water system is available and willing to provide water, the applicant must connect to that public water system when:
   1. The applicant proposes to use surface water, spring water, rainwater, or contaminated groundwater; or
   2. The applicant proposes to build on a lot located in a short subdivision or long subdivision that Whatcom County approved based on the availability of public water; or
   3. The existing public water system has water lines adjacent to the property line of the applicant and connection is consistent with RCW 36.70A.110(4); or
   4. The existing public water system has defined a “service area boundary” in accordance with the Whatcom County Coordinated Water System Plan which includes the property of the applicant.
D. The director will only approve a private or Non-Group B two-party well for proposed short subdivisions or long subdivisions when analytical results of untreated water samples for primary inorganic or organic contaminants do not exceed a maximum contaminant level (MCL) adopted by Washington State Department of Health.
E. Purveyors of public water systems and private water system applicants must comply with Washington State Department of Ecology water right requirements and must demonstrate that they have an adequate water supply for their proposed service per WCC 24.11.060. Compliance will include at a minimum, possession of a water right permit or certificate for:
   1. All surface water sources excluding seawater.
   2. All groundwater sources using more than 5,000 gallons per day.
   3. Irrigating more than one-half acre of lawn or noncommercial garden.

24.11.060 Water availability required.
A. Prior to issuance of a building or other project permit, and unless exempt pursuant to subsection (C), the applicant must provide Whatcom County Planning and Development Services evidence of adequate water supply as documented by a water availability notification signed by the director the Whatcom County Health Department, to Whatcom County planning and development services (PDS) except when The water availability notification shall document a supply of potable water adequate to serve a land use associated with a project permit in terms of quality, quantity, and legal availability.
B. The applicant must provide evidence of legal availability in the form of:
   1. A water right permit from the Department of Ecology; or,
2. A letter from an approved public water purveyor with sufficient water rights, stating the ability to provide water; or,
3. Evidence that a permit-exempt groundwater withdrawal (authorized under RCW 90.44.050) is associated with a well constructed (in accordance with the provisions of RCW Chapter 18.104) prior to January 19, 2018; or,
4. Documentation that water can be supplied by a rainwater catchment system approved by the Whatcom County Health Department, per Department of Ecology Policy 1017; or,
5. If the well site is located in WRIA 3 (Lower Skagit-Samish) or in Point Roberts, Eliza Island, or Lummi Island, as shown in Figure 24.11.060, documentation that water for domestic use will be supplied by a new withdrawal exempt from permitting under RCW 90.44.050.
6. If the well site is located in those Limited Coastal Areas (that may or may not be in hydraulic continuity with regulated surface waterbodies) as shown on Figure 24.11.060, documentation that water for domestic use will be supplied by a new withdrawal exempt from permitting under RCW 90.44.050 and:
   a. A study prepared by a qualified hydrogeologist licensed in the State of Washington demonstrating a proposed groundwater withdrawal would not impair a senior water right, including instream flows established in Chapter 173-501 WAC where applicable, in accordance with current statutes and case law. Such documentation must be verified by the County either through consultation with the Department of Ecology, or a qualified technical review team appointed by the County. The County may require a third party review by an independent qualified hydrogeologist if the County determines additional technical expertise is needed. The cost of the third party review shall be borne by the County; or,
   b. A mitigation plan prepared by a qualified hydrogeologist licensed in the State of Washington, and approved by Whatcom County. The plan shall include:
      i. Evidence that the proposed withdrawal with mitigation in place will not impair a senior water right, including instream flows established in Chapter 173-501 WAC where applicable, in accordance with current statutes and case law. Such documentation must be verified by the County either through consultation with the Department of Ecology, or a qualified technical review team appointed by the County. The County may require a third party review by an independent qualified hydrogeologist if the County determines additional technical expertise is needed. The cost of the third party review shall be borne by the County.
      ii. A monitoring and reporting plan, including a quality assurance/quality control plan.
      iii. Documentation adequate to demonstrate that the mitigation will remain in place for the duration of the impact, including, for example, financial assurances or documentation of permanent dedication of water for mitigation purposes.
7. Except in Point Roberts, Eliza Island, or Lummi Island, for new permit-exempt groundwater withdrawals for domestic use per RCW 90.44.050 within WRIA 1 (Nooksack) or within those Limited Coastal Areas where the applicant chooses not to use subsection (B)(6), the applicant may obtain approval for a withdrawal exempt from permitting pursuant to RCW 90.44.050 under the following conditions:
   a. Water shall be for domestic uses only shall be subject to, with a maximum annual average withdrawal of 3,000 gallons per day per connection.
b. The applicant shall record with the property title any relevant restrictions or limitations associated with water supply; and

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

C. A water availability notification is not required for:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

24.11.110 Determining adequacy of water supply for building permit applications proposing to use a spring to serve one single-family dwelling unit or one single-family living unit.

A. Prior to director approval of evidence of an adequate water supply where the applicant proposes to use a spring source, the applicant must:

1. Notify the director of the intent to use a spring.
2. Provide information to the director showing that they cannot drill an adequate well on their property.
3. Request that the director conduct a site inspection and approve the proposed location of the spring.
B. Upon request from the applicant, the director will conduct a site inspection for the purpose of approving the location. If the director does not approve the location the director will deny the application and give the reason for denial.

C. If the director approves the location of the spring the applicant must submit a completed Water Availability Notification Private – 1 Home Spring form (as amended) and all required documents for approval by the director.

D. The director will review the completed form and required documents for approval. The director will approve the application if:
   1. The applicant met all the criteria listed on the form.
   2. The applicant submitted all of the required documents.
   3. The applicant has provided evidence of legal availability of water for the proposed project per WCC 24.11.060. The spring site proposed by the applicant does not fall within the boundaries of an area where DOE has determined by rule that water for development does not exist.

24.11.120 Determining adequacy of water supply for building permit applications proposing to use a spring to serve two single-family dwelling units or two single-family living units.

A. Prior to director approval of evidence of an adequate water supply where the applicant proposes to use a spring source, the applicant must:
   1. Notify the director of the intent to use a spring.
   2. Provide information to the director showing that an adequate well cannot be drilled on their property.
   3. Request that the director conduct a site inspection and approve the proposed location of the spring.

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

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

D. The director will review the completed form and required documents for approval. The director will approve the application if:
   1. The applicant met all the criteria listed on the form.
   2. The applicant submitted all of the required documents.
   3. The applicant has provided evidence of legal availability of water for the proposed project per WCC 24.11.060. The spring or spring sites proposed by the applicant does not fall within the boundaries of an area where DOE has determined by rule that water for development does not exist.
24.11.130 Determining adequacy of water supply for building permit applications proposing to use surface water, sea water, or rainwater for one or two single-family dwelling units or two single-family living units.

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

1. Cannot obtain water from an existing public water supply.

2. Cannot use an approved source of groundwater from a well.

3. Could only use contaminated groundwater.

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

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

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

3. Meet all other state and local regulations.

4. Sign and have recorded with the Whatcom County auditor’s office the following documents:

   a. A document stating which contaminate the untreated source water exceeded.

   b. A document stating that the applicant has had a water treatment system designed that meets Whatcom County health and human services Water Availability Approval for a Surface Water Source (as amended), and secures a potable water supply for the building.

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

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

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

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

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

A. Prior to director approval of availability of an adequate water supply where the applicant proposes to obtain water from an existing public water supply to service lots of a short subdivision, long subdivision, or a binding site plan the applicant must:
1. Provide to the director an Availability Notification for Public Water (as amended) form or a letter signed by an authorized representative of the water system proposing to serve water to each lot. The authorized representative of the public water system:
   a. Must indicate that the water system will provide water to each proposed lot.
   b. Must sign a statement that they have reviewed the system records and ensures that the water system is in compliance with Chapters 246-290 and 246-291 WAC and department requirements.

B. The director will review the completed form or letter to determine the availability of adequate water. The director will make a determination of adequate water when:
   1. The applicant and the authorized representative meet all the criteria listed on the form.
   2. The purveyor of the water system has the approval from Department of Health or the department to provide water to the short subdivision, long subdivision, or binding site plan, except for Group A water systems the following conditions also apply:
      a. DOH has issued a green operating permit to the purveyor; or
      b. DOH has determined that the purveyor significantly complies with Chapter 246-290 WAC
   3. The applicant has provided evidence of legal availability of water for the proposed project per WCC 24.11.060.

24.11.150 Determining adequacy of water supply for short subdivisions, long subdivisions or binding site plans proposing to use a new public water system.
Prior to director approval of availability of an adequate water supply where the applicant proposes to create a new public water supply to service lots of a short subdivision, long subdivision, or a binding site plan the applicant must comply with:
A. Provisions of the Whatcom County Coordinated Water System Plan.
B. Chapters 246-290 and 246-291 WAC, and all other applicable local and state regulations for public water supplies.
C. The applicable sections of this chapter pertaining to public water supplies and water availability.

24.11.160 Determining adequacy of water supply for short subdivisions or long subdivisions proposing to use a private well or private wells to serve one single-family dwelling or one single-family living unit.
A. Prior to director approval of availability of an adequate water supply where the applicant proposes to use a private well or private wells to service lots of a short subdivision or long subdivision the applicant must:
   1. Notify the director of the intent to use a private well or wells.
   2. Request that the director conduct a site inspection and approve the proposed well sites.
B. Upon request from the applicant, the director will conduct a site inspection for the purpose of approving the location. If the director cannot approve a well location the director will deny the application and give the reasons for denial.
C. If the director approves the well locations the applicant shall submit a completed Subdivision Water Availability form (as amended) and all required documents for each well to the director for approval.
D. The director will review each completed form and required documents for approval. The director will approve the availability of adequate water when:

1. The applicant met all the criteria listed on the form.
2. The applicant submitted all of the required documents.

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

24.11.170 Determining adequacy of water supply for short subdivisions or long subdivisions proposing to use a well to serve two single-family dwellings or two single-family living units.

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

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

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

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

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

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

1. The applicant met all the criteria listed on each of the forms.
2. The applicant submitted all of the required documents.

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

Chapter 10, Environment

So as to explain changes to the WRIA 1 management structure and processes that have occurred since the last update to the Comprehensive Plan, amend the section “WRIA 1 Watershed Management Project” as follows:

WRIA 1 Watershed Management Project

The WRIA 1 Watershed Management Project is the result of the 1998 Washington State Watershed Management Act, which required all participating local governments to address water quantity, with the option of addressing water quality, instream flows, and fish habitat. The WRIA 1 Watershed Management Project has brought together citizens, local governments, tribes, and state and federal agencies to address these issues.

The framework for watershed management in the state is based on geographic areas known as Water Resource Inventory Areas (WRIAs). WRIA 1 includes the Nooksack River basin and several adjoining smaller watersheds, such as the coastal drainages of Dakota and California Creeks, as well as Lake Whatcom.

Watershed planning in WRIA 1 started in 1998 with the signing of a Memorandum of Agreement (MOA) between the Initiating Governments. In WRIA 1 the Initiating Governments are Whatcom County, City of Bellingham, Public Utility District No. 1, Lummi Nation, and Nooksack Tribe (the latter joining slightly later through a Letter of Agreement). The role of the Initiating Governments was to review a recommended Watershed Plan and take it to their governments’ councils for adoption.

Historical Organization (1999-2016)

WRIA 1 Joint Board

In 1999, an Interlocal Agreement further formalized the government-to-government relationship essential to the tribes’ participation in the process by creating a Joint Board. The Joint Board is comprised of the Initiating Governments, including the mayor of the City of Bellingham, executive for Whatcom County, manager of Public Utility District No. 1, and designated policy representatives of Lummi Nation and Nooksack Tribe. The Board manages the project’s administrative functions such as contracts and budgets. Members of the Joint Board also sit on the Joint Policy Boards.

WRIA 1 Joint Policy Boards

The WRIA 1 Joint Policy Boards are comprised of members of the WRIA 1 Joint Board and Salmon Recovery Board. This organizational level interacts with federal, state, and regional organizations at a policy-level to coordinate the implementation and management of the WRIA 1 Watershed Management Plan – Phase 1, the WRIA 1 Salmonid Recovery Plan and other related activities.

Local Integrating Organization (LIO)

The Whatcom Local Integrating Organization (LIO) is a function of the WRIA 1 Watershed Joint Board and WRIA 1 Salmon Recovery Board (Joint Policy Boards). Local integrating organizations are designated
by the Puget Sound Partnership. The two WRIA 1 Boards accepted the function of the Whatcom LIO in October 2010 under the integrated program structure, and was officially recognized by the Puget Sound Partnership's Leadership Council in November 2010. The purpose of the Whatcom LIO is to coordinate implementation of Puget Sound Action Agenda priorities that are consistent with or complement local priorities. One of its functions is to provide a local update to the Action Agenda for Puget Sound. Local updates are intended to identify local priorities in the form of near-term actions (NTAs), which are priority actions with measurable outcomes that can be implemented in the next two years and that align with strategies in the Action Agenda for Puget Sound.

WRIA 1 Planning Unit
The Initiating Governments established the Planning Unit to ensure representation of a broad range of water resource interests. The Planning Unit's role is to recommend actions for a Watershed Plan and to contribute knowledge, interests, technical expertise, and other resources to its development. The Planning Unit is made up of representatives from the Initiating Governments, other governments, and various caucuses. There are 16 total caucuses on the WRIA 1 Planning Unit.

Organizational Update (2016)
Through an interlocal agreement entered into in 2016, the Watershed Management Project Joint Board and the WRIA 1 Salmon Recovery Board were dissolved and the duties and functions of those boards were assumed by the new WRIA 1 Watershed Management Board, consisting of one representative from the Lummi Nation, the Nooksack Tribe, the Washington State Department of Fish and Wildlife, Whatcom County, Whatcom County PUD No. 1, and the cities of Bellingham, Blaine, Everson, Ferndale, Lynden, Nooksack, and Sumas.

The primary functions of the WRIA 1 Watershed Management Board are to:

- Facilitate implementation and adaptive management of the WRIA 1 Watershed Management Plan-Phase 1 as currently constituted or subsequently amended;
- Coordinate the implementation and adaptive management of the WRIA 1 Salmonid Recovery Plan and associated implementation documents,
- Serve as the Lead Entity for WRIA 1,
- Coordinate participation in Puget Sound salmon recovery efforts,
- Coordinate the development, implementation and adaptive management of WRIA 1 watershed chapters of recovery plans for ESA listed salmonids and other salmonid species as warranted;
- Coordinate planning, implementation, monitoring and adaptive management of ecosystem recovery actions in WRIA 1 consistent with agreed local goals and objectives,
- Serve as the WRIA 1 Local Integrating Organization and a partner in the Puget Sound Partnership in representing WRIA 1 goals and priorities; and
- Participate in other related activities as agreed to by the Board.

The roles of the Local Integrating Organization and Planning Unit did not change.
2005 WRIA 1 Watershed Management Plan – Phase 1

The 2005 WRIA 1 Watershed Management Plan was approved in 2005 by the Joint Administrative Board, Planning Unit (by consensus), and the County Council. Pursuant to subsequent state requirements, a WRIA 1 Watershed Detailed Implementation Plan was approved by the Joint Administrative Board, Planning Unit, and County Council in 2007. It provides a roadmap for addressing water quantity, water quality, instream flow, and fish habitat challenges. The goals of the WRIA 1 Watershed Management Project are: water of sufficient quantity and quality to meet the needs of current and future human generations; restoration of salmon, steelhead, and trout populations to healthy harvestable levels; and the improvement of habitats on which fish and shellfish rely. These goals are addressed more specifically below:

- **Water Quantity** – To assess water supply and use, and develop strategies to meet current and future needs. The strategies should retain or provide adequate amounts of water to protect and restore fish habitat, provide water for future out-of-stream-uses, and ensure adequate water supplies are available for agriculture, energy production, and population and economic growth under the requirements of the state’s Growth Management Act.

- **Water Quality** – To ensure the quality of our water is sufficient for current and future uses, including restoring and protecting water quality to meet the needs of salmon and shellfish, recreational uses, cultural uses, protection of wildlife, providing affordable and safe domestic water supplies, and other beneficial uses. The initial objectives of the water quality management strategy will be to meet the water quality standards.

- **Instream Flow** – To supply water in sufficient quantities to restore salmon, steelhead, and trout populations to healthy and harvestable levels and improve habitats on which fish rely.

- **Fish Habitat** – To protect or enhance fish habitat in the management area and to restore salmon, steelhead, and trout populations to healthy and harvestable levels and improve habitats on which fish rely.

In 2010, the WRIA 1 Joint Board adopted a work plan, budget, and financing strategy, called the Lower Nooksack Strategy, to advance a negotiated settlement of Tribal and state instream flow water rights on the mainstem of the Nooksack River, while maximizing the economic and environmental benefits of out-of-stream water use in the Lower Nooksack sub-basin. The Joint Board adopted the Lower Nooksack Strategy consistent with WRIA 1 Watershed Management Plan priorities.

Lower Nooksack Strategy Objectives:

- Develop and implement a process for negotiating settlement of water rights on the Mainstem Nooksack River.

- Update and verify the Lower Nooksack River sub-basin water budget and develop a groundwater model.

- Determine out-of-stream water user needs:
  - Public water system needs determined by updated the Whatcom County Coordinated Water System Plan (CWSP).
  - Other out-of-stream user needs (e.g., agriculture, private domestic wells, industrial, etc.) determined through a regional water supply planning process.
• Continue and, if appropriate, enhance targeted streamflow and water quality sampling.
• Advance work on tools that foster water resource allocations consistent with long-term economic and environmental land-use goals for implementation in five years.

Streamflow Restoration Act (ESSB 6091)

The Streamflow Restoration Act (ESSB 6091), enacted by the Washington State Legislature on January 18, 2018 and effective on January 19, 2018, directs the Department of Ecology to work with the initiative governments (i.e., the WRIA 1 Watershed Management Board), in collaboration with the planning unit established pursuant to chapter 90.82 RCW, on updating the WRIA 1 Watershed Management Plan for approval by the Whatcom County Council by February 1, 2019.

The Act requires that the updated plan 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. Such recommendations may include, but are not limited to, acquiring senior water rights, water conservation, water reuse, stream gaging, groundwater monitoring, and developing natural and constructed infrastructure, which includes, but is not limited to, such projects as floodplain restoration, off-channel storage, and aquifer recharge. Qualifying projects must be specifically designed to enhance streamflows and not result in negative impacts to ecological functions or critical habitat.

At a minimum, the watershed plan must include those actions determined to be necessary to offset potential impacts to instream flows associated with permit-exempt domestic water use. The highest priority recommendations must include replacing the quantity of consumptive water use during the same time as the impact and in the same basin or tributary. Lower priority projects include projects not in the same basin or tributary and projects that replace consumptive water supply impacts only during critical flow periods. The watershed plan may include projects that protect or improve instream resources without replacing the consumptive quantity of water where such projects are in addition to those actions determined to be necessary to offset potential consumptive impacts to instream flows associated with permit-exempt domestic water use.

Until the updated watershed plan is approved and rules are adopted by the Department of Ecology, the County, in issuing building permits under RCW 19.27.097(1)(c) or approving subdivisions under chapter 58.17 RCW in WRIA 1, will comply with all of the specific requirements of ESSB 6091.

So as to indicate Whatcom County’s commitment to working with the Watershed Management Board on updating the Watershed Management Plan pursuant to ESSB 6091, add the following policy:

Policy 10F-11 Pursuant to ESSB 6091, Whatcom County will work through the WRIA 1 Watershed Management Board and its established processes to update the WRIA 1 Watershed Management Plan, consistent with ESSB 6091, for approval by the Whatcom County Council by February 1, 2019. The updated plan shall 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.

At a minimum, the watershed plan must include those actions determined to be necessary to offset potential impacts to instream flows associated with permit-exempt domestic water use. The highest priority recommendations must include replacing the quantity of consumptive water use during the same time as the impact and in the same basin or tributary. Lower priority projects include projects not in the same basin or tributary and projects that replace consumptive water supply impacts only during critical flow periods. The watershed plan may include projects that protect or improve instream resources without replacing the consumptive quantity of water where such projects are in addition to those actions determined to be necessary to offset potential consumptive impacts to instream flows associated with permit-exempt domestic water use.

Watershed plan recommendations may include, but are not limited to, acquiring senior water rights, water conservation, water reuse, stream gaging, groundwater monitoring, and developing natural and constructed infrastructure, which includes, but is not limited to, such projects as floodplain restoration, off-channel storage, and aquifer recharge. Qualifying projects must be specifically designed to enhance streamflows and not result in negative impacts to ecological functions or critical habitat.

Until the updated watershed plan is approved and rules are adopted, the County, in issuing building permits under RCW 19.27.097(1)(c) or approving subdivisions under chapter 58.17 RCW in WRIA 1 will comply with all of the specific requirements of ESSB 6091.
Staff Report to the County Council

Whatcom County Comprehensive Plan and Development Regulation Amendments to Enact the Streamflow Restoration Act (ESSB 6091)

Date: April 13, 2018

File # PLN2016-00013

File Name: Whatcom County Comprehensive Plan and Development Regulation Amendments to Enact the Streamflow Restoration Act (ESSB 6091)

Applicants: Whatcom County Planning and Development Services (PDS)

Summary of Request: An ordinance amending (a) the Whatcom County Comprehensive Plan, adding text and policies to indicate the County’s intention to work through the WRIA 1 Watershed Management Board and it’s agreed upon process to update the Watershed Management Plan; and (b) WCC Titles 15, 20, 21, and 24, adopting procedures and standards for permit exempt groundwater withdrawals in WRIA 1, consistent with the Washington State Streamflow Restoration Act (ESSB 6091).

Location: Countywide.

Staff Recommendation: Staff recommends that the County Council review the proposed ordinance, introduce it for consideration on April 24, 2018, and on May 8, 2018, hold a public hearing and adopt these provisions consistent with ESSB 6091 and the Coordinated Water System Plan (CWSP).

I. BACKGROUND

The State Legislature recently passed, and the Governor signed into law, ESSB 6091, which amends the state water and watershed management regulations, providing a resolution to the Washington Supreme Court’s Hirst Decision. Whatcom County must now amend its regulations to incorporate the new state law into our code so as to be consistent with it and our Comprehensive Plan Policy 5R-1:

Building permit applicants, new subdivisions, short plats, and binding site plans will be required to provide evidence that adequate and legal (in consultation with the Department of Ecology) supplies of water are available prior to their approval by the County.

The use of exempt wells for residential development was put on hold, statewide, for the last year due to a Growth Management Hearings Board decision, which was subsequently upheld by the State Supreme Court (known as the “Hirst Decision”).

In it, “The Board found that [county policies] result in water withdrawals from closed basins and senior instream flows – flows that the record indicated drop below the minimum levels 100 days out of the year. The Board properly held that this conflicts with the requirement placed on counties to protect water availability under the GMA…”

In defending our policies and procedures, the County, with support from the Department of Ecology, argued those restrictions did not apply to wells that are exempt from water rights permitting rules (RCW 90.44.050). However, though we (and many if not all other counties) relied on Ecology’s regulations, the
Court found that, “The fact that the County’s provisions are wholly consistent with Ecology’s regulations does not, by itself, render them consistent with the GMA’s requirements,” stating that, “The GMA places an independent responsibility to ensure water availability on counties, not on Ecology. To the extent that there is a conflict between the GMA and the Nooksack Rule,1 the later-enacted GMA controls.” “The GMA places the burden on counties to protect groundwater resources, and requires counties to assure that water is both factually and legally available before issuing permits.” Thus, the Court found that, “The County’s comprehensive plan does not protect water availability because it allows permit-exempt appropriations to impede minimum flows.” “In order to comply with the GMA, counties must receive sufficient evidence of an adequate water supply from applicants for building permits and subdivisions before the county can authorize development.”

Interim Solution
This decision put counties in a bind as we could no longer rely on the exempt well rule to allow new groundwater withdrawals in all but a few areas of the County2 without proof that the withdrawals wouldn’t affect senior water rights (including instream flows). Therefore, the County Council enacted a series of interim ordinances that allowed someone proposing a new well to either: (a) prepare a hydrological report proving that the withdrawal would not impinge on an adopted instream flow, or (b) propose mitigation that would basically put the same amount of water used back into the ground.3

State’s Response (ESSB 6091)
Though the Hirst Decision was specific to Whatcom County, it had statewide ramifications as it dealt with a process and rule used statewide to allow rural development using private water supplies. So counties turned to their state legislators to develop a statewide fix by amending the RCW. Several bills were proposed over the year, but it wasn’t until January 19, 2018, that one finally got passed and signed into law. This was ESSB 6091 (attached).

It requires the Department of Ecology to work with the initiating governments and the planning unit, including the Tribes (§202(3)), to review existing watershed plans to identify the potential impacts of exempt well use, identify evidence-based conservation measures, and identify projects to improve watershed health (§202(2)). We must then update the watershed plan 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. Such plan recommendations may include, but are not limited to:

- acquiring senior water rights,
- water conservation,
- water reuse, stream gaging,
- groundwater monitoring, and
- developing natural and constructed infrastructure, which includes, but is not limited to, such projects as: floodplain restoration, off-channel storage, and aquifer recharge.

Qualifying projects must be specifically designed to enhance streamflows and not result in negative impacts to ecological functions or critical habitat. (§202(4a))

At a minimum, the watershed plan must include those actions determined to be necessary to offset potential impacts to instream flows associated with permit-exempt domestic water use. The highest priority recommendations must include replacing the quantity of consumptive water use during the same time as the impact and in the same basin or tributary. Lower priority projects include projects not in the same basin or tributary and projects that replace consumptive water supply impacts only during

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1 Ecology’s 1985 “Nooksack Rule” (173-501 WAC) establishes closures and instream flows in WRIA 1 restricting new water right permits
2 Those known not to be in hydrologic continuity with the Nooksack.
3 For example, using septic water, rainwater collected in cisterns, or water trucked in and allowed to infiltrate.
critical flow periods. The watershed plan may include projects that protect or improve instream resources without replacing the consumptive quantity of water where such projects are in addition to those actions that are determined to be necessary to offset potential consumptive impacts to instream flows associated with permit-exempt domestic water use. (§202(4b))

The watershed plan may also include:

- Standards for water use quantities that are less than authorized under RCW 90.44.050 or more or less than 3,000 gpd (see below);
- Recommendations for modification to fees established (see below);
- Specific conservation requirements for new water users to be adopted by local or state permitting authorities; or
- Other approaches to manage water resources. (§202 (4d))

Prior to adoption of the updated watershed plan, Ecology must determine that the actions identified in the plan—after accounting for new projected uses of water over the subsequent twenty years—will result in a net ecological benefit to instream resources within the water resource inventory area. (Section 202 (4c)) If a plan that meets these requirements is not adopted by February 1, 2019, Ecology must adopt rules for WRIA 1 that meet the bill’s requirements by August 1, 2020. (§202 (7a))

Until the watershed plan is updated, ESSB 6091 does allow jurisdictions to once again rely on Ecology rules regarding permit-exempt wells to comply with GMA requirements for protecting surface and ground water resources, as long as certain conditions are met. These conditions include:

- Withdrawals can be for domestic use only, with a maximum annual average withdrawal of three thousand gallons per day per connection.
- Applicants must pay a fee of $500 dollars ($350 of which the County must forward to the Department of Ecology).
- Applicants must record any relevant restrictions or limitations associated with water supply with their property’s title.

**What is Legal Availability?**

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

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

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

The ways of showing the legal water availability in Whatcom County for development purposes (where Whatcom County has to issue a permit for a use requiring water) are listed in proposed WCC 24.11.060(B). Staff has created the attached Table 1 to help the public better understand under what conditions water is considered legally available to use pursuant to ESSB 6091 and the proposed ordinance.

II. PROPOSED AMENDMENTS

On January 30th, 2018, Council adopted Emergency Interim Ordinance 2018-001 effecting ESSB 6091. As emergency ordinances can only last for 60 days, they also introduced an interim ordinance reading the same as 2018-001, for which a public hearing was held and adopted by Council on February 13th. An interim ordinance can last for six months. However, to make the amendments enduring, a permanent (standard, non-interim, non-emergency) ordinance is necessary and is required to go through our standard public review process. The passing of ESSB 6091 and our incorporation of its provisions into our Comprehensive Plan and development regulations is necessary to complete our GMA compliance proceedings before the Growth Management Hearings Board.

Thus, staff is requesting that the County Council review the proposed ordinance, introduce it for consideration on April 24, 2018, and on May 8, 2018, hold a public hearing and adopt these provisions consistent with ESSB 6091.

This ordinance would amend both the Whatcom County Code (building, zoning, land division, and health regulations) and the Comprehensive Plan in the following ways:

A. Proposed Code Amendments (see attached Exhibit A to the draft ordinance for exact language)

- Building Code – Amend 15.04.020 (Amendments to the International Building Code) and 15.04.030 (Amendments to the International Residential Code) to require that evidence of an adequate water supply be provided by the applicant.

- Zoning Code –
  - Amend 20.84.220 (approval criteria for issuing conditional use permits) to ensure that such a use will have an adequate water supply.

- Land Division Regulations – Amend 21.04.090 (Short Subdivisions, Water Supply) and 21.05.080 (Long Subdivisions, Water Supply) clarifying when private water supplies (wells) may be used to supply water to a subdivision or short plat.

- Health Regulations –
  - Amend 24.11.050 (Drinking Water, General requirements), adding that applicants for water systems “must demonstrate that they have an adequate water supply for their proposed service.”
  - Amend 24.11.060 (Water availability required) to list the various forms of “evidence of legal availability” the County can accept as valid. (Note: These changes are the most noteworthy, and are further explained below.)
  - Amend 24.11.070, .080, .090, .100, .110, .120, .130, .140, .150, .160, and .170 (all having to do with determining adequacy of water supply for various uses) to state that the applicant
must provide evidence of an adequate water supply and for Single Family Residences, request an inspection of the well location prior to obtaining Health Department approval.

**Evidence of Legal Availability**

As mentioned above, amendments to WCC 24.11.060 (Water availability required) comprise the bulk of the substantive changes to enact ESSB 6091 (the rest of the amendments basically just saying you have to show you have water prior to obtaining a permit). Explanations for the various forms are provided in the following table:

<table>
<thead>
<tr>
<th>Section</th>
<th>Explanation</th>
</tr>
</thead>
<tbody>
<tr>
<td>24.11.060 Water availability required.</td>
<td>Water availability must be ascertained and certified by the Whatcom County Health Department Director, who provides a “water availability notification” to the applicant and provides a copy to PDS for their permit application.</td>
</tr>
<tr>
<td>A. Prior to issuance of a building or other project permit, and unless exempt pursuant to subsection (C), the applicant must provide Whatcom County Planning and Development Services evidence of adequate water supply as documented by a water availability notification signed by the director. The water availability notification shall document a supply of potable water adequate to serve a land use associated with a project permit in terms of quality, quantity, and legal availability.</td>
<td>If one has a certified water right from Ecology no other evidence is required (though there are still rules about how wells are constructed and maintained). One can put to beneficial use an amount of water up to the amount the right is for.</td>
</tr>
<tr>
<td>B. The applicant must provide evidence of legal availability in the form of:</td>
<td></td>
</tr>
<tr>
<td>1. A water right permit from the Department of Ecology; or,</td>
<td></td>
</tr>
<tr>
<td>2. A letter from an approved public water purveyor with sufficient water rights, stating the ability to provide water; or,</td>
<td></td>
</tr>
<tr>
<td>3. Evidence that a permit-exempt groundwater withdrawal (authorized under RCW 90.44.050) is associated with a well constructed (in accordance with the provisions of RCW Chapter 18.104) prior to January 19, 2018; or,</td>
<td></td>
</tr>
<tr>
<td>4. Documentation that water can be supplied by a rainwater catchment system approved by the Whatcom County Health Department, per Department of Ecology Policy 1017; or,</td>
<td>One can still propose to obtain water via a rainwater catchment system.</td>
</tr>
<tr>
<td>5. Documentation that water will be supplied by a new withdrawal exempt from permitting under RCW 90.44.050 and the well site is located in WRIA 3 (Lower Skagit-Samish) or in Point Roberts, Eliza Island, or Lummi Island, as shown in Figure 24.11.060.</td>
<td>ESSB 6091 does not apply to areas that are not in hydraulic continuity to the Nooksack. Thus, wells in WRIA 3 or in Point Roberts, Eliza Island, or Lummi Island can still use exempt wells under the rules of RCW 90.44.050 with a limit of 5,000 gal/day.</td>
</tr>
</tbody>
</table>
6. Documentation that water will be supplied by a new withdrawal exempt from permitting under RCW 90.44.050 and the well site is located in those Limited Coastal Areas that may not be in hydraulic continuity with regulated surface waterbodies, as shown on Figure 24.11.060, and:
   a. A study prepared by a qualified hydrogeologist licensed in the State of Washington demonstrating a proposed groundwater withdrawal would not impair a senior water right, including instream flows established in Chapter 173-501 WAC where applicable, in accordance with current statutes and case law. Such documentation must be verified by the county either through consultation with the Department of Ecology, or a qualified technical review team appointed by the county. The county may require a third party review by an independent qualified hydrogeologist if the county determines additional technical expertise is needed. The cost of the third party review shall be borne by the County; or,
   b. A mitigation plan prepared by a qualified hydrogeologist licensed in the State of Washington, and approved by Whatcom County. The plan shall include:
      i. Evidence that the proposed withdrawal with mitigation in place will not impair a senior water right, including instream flows established in Chapter 173-501 WAC where applicable, in accordance with current statutes and case law. Such documentation must be verified by the county either through consultation with the Department of Ecology, or a qualified technical review team appointed by the county. The county may require a third party review by an independent qualified hydrogeologist if the county determines additional technical expertise is needed. The cost of the third party review shall be borne by the County.
      ii. A monitoring and reporting plan, including a quality assurance/quality control plan.
      iii. Documentation adequate to demonstrate that the mitigation will remain in place for the duration of the impact, including, for example, financial assurances or documentation of permanent dedication of water for mitigation purposes.

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

Similarly, there are certain Limited Coastal Areas (see Figure 24.11.60 in Exhibit A to the draft ordinance) wherein groundwater may or may not be in hydraulic continuity to the Nooksack. If one can prove that their water source is not, or if they proposed mitigation, then they can still use an exempt well under the rules of RCW 90.44.050 with a limit of 5,000 gal/day.

In all other areas of the County, one can now get a permit-exempt well approved provided they meet conditions a, b, and c. Applicants requiring water availability in the Limited Coastal
<table>
<thead>
<tr>
<th>Section</th>
<th>Explanation</th>
</tr>
</thead>
<tbody>
<tr>
<td>90.44.050 under the following conditions:</td>
<td>Areas also have the option of choosing to use a permit-exempt well under subsection (B)(7), subject to the 3,000 gallon/day condition.</td>
</tr>
<tr>
<td>a. Water shall be for domestic use only, with a maximum annual average withdrawal of 3,000 gallons per day per connection.</td>
<td>ESSB 6091 requires the County to collect a $500 fee, $350 of which must be forwarded to Ecology to be used for mitigation projects, and $150 of which the County can use to cover administrative costs of implementing this bill.</td>
</tr>
<tr>
<td>b. The applicant shall record with the property title any relevant restrictions or limitations associated with water supply; and</td>
<td></td>
</tr>
<tr>
<td>c. The applicant shall pay to the permitting authority any applicable fees for each project permit.</td>
<td></td>
</tr>
<tr>
<td>C. A water availability notification is not required for:</td>
<td>Conditions under which a water availability notification is not required.</td>
</tr>
<tr>
<td>1. A project permit that does not require potable water.</td>
<td></td>
</tr>
<tr>
<td>2. A project permit relying on either a permit-exempt groundwater withdrawal per RCW 90.44.050 or a surface water withdrawal for potable water for (a) a remodel of an existing building or (b) replacement of a demolished or removed building but not proposing a change of use, either of which would increase the floor area by no more than 50 percent over that of the existing building; however, such permits shall require documentation of current water quality and quantity, as approved by the director.</td>
<td></td>
</tr>
</tbody>
</table>

**B. Proposed Comprehensive Plan Amendments**

Due to a previous Growth Management Hearings Board decision regarding the lack of measures in our Comprehensive Plan to protect rural character, the County adopted into it by reference specific sections of the Whatcom County Code, found in Policy 2DD-2. Germaine to the matter at hand:

- Policy 2DD-2.C.6 adopts by reference WCC 21.04.090 and 21.05.080
- Policy 2DD-2.C.7 adopts by reference WCC 24.11.050
- Policy 2DD-2.C.8 adopts by reference WCC 24.11.060
- Policy 2DD-2.C.9 adopts by reference WCC 24.11.090, .100, .110, .120, .130, .160, and .170
**CompPlan Policy 2DD-2:** Protect the character of the rural area through the County's development regulations. In addition to the policies of this plan that provide measures governing rural development, the following County's key development regulations are incorporated into this plan by reference to assure that the plan contains measures to protect rural character:

...  

C. Measures to protect critical areas and surface and groundwater resources:

...  

6. Limit water withdrawals resulting from land division through the standards in the following Whatcom County Land Division regulations, adopted herein by reference:
   a. WCC 21.04.090 Water supply, Short Subdivisions.
   b. WCC 21.05.080 Water supply, Preliminary Long Subdivisions.

7. Regulate groundwater withdrawals by requiring purveyors of public water systems and private water system applicants to comply with Washington State Department of Ecology water right requirements per WCC 24.11.050, adopted herein by reference.

8. Require evidence of an adequate water supply prior to issuance of any building permit, per WCC 24.11.060, adopted herein by reference.

9. Determine adequacy of water supply for building permit applications proposing to use a well, spring, or surface water, per WCC 24.11.090, .100, .110, .120, .130, .160, and .170, adopted herein by reference.

...  

Because of this, each time we amend any of these referenced code sections we are also amending the Comprehensive Plan, and have to advertise as such. No further action is required on this portion.

However, in the Comprehensive Plan, Chapter 10 (Environment), under the heading “WRIA 1 Watershed Management Project,” staff recommends that we insert new text explaining the 2016 reorganization of the WRIA 1 structure, as well as a new policy 10F-11 indicating our intention to participate in updating the WRIA 1 Watershed Management Plan pursuant to ESSB 6091. These amendments are shown in Exhibit A, beginning on page 16.

### III. COMPREHENSIVE PLAN EVALUATION

Below are listed all the pertinent Comprehensive Plan goals and policies regarding domestic water supply, protection of instream flows, water quantity, and watershed planning:

**Chapter 2, Land Use**

**Goal 2A:** Ensure designation of sufficient land and densities, with consideration of water availability, to accommodate the growth needs of Whatcom County and protect the local economy, rural lifestyle, habitat, fish, and wildlife, which are the cornerstone qualities that make the county a desirable place to live.

**Policy 2A-15:** Strive to improve predictability to property owners regarding the connection between legal water use, and land use and development by:

- Supporting completion of groundwater studies that provide a better understanding of water quantities available and the connection between groundwater use and instream flow levels.
- Supporting the efforts of water purveyors to develop new legal water sources and the infrastructure and systems necessary to transport that water to existing water users that lack safe potable water or sufficient water rights.
- Encouraging a negotiated water rights quantification and settlement between the Lummi Nation, Nooksack Indian Tribe and other water users in the Nooksack River basin.
- Encouraging the Department of Ecology to protect instream flows, particularly in times of extremely low summer flows.
- Coordinating with the Department of Ecology to find solutions to provide adequate water for out-of-stream users while protecting instream flows. Potential solutions may include consideration of recycling, conservation, water banking, public water system interties, stream recharge augmentation, change in place of use, desalinization and other alternative water supply measures.
- Requesting the Department of Ecology to create a water management plan for exempt wells in closed water basins that better aligns instream flows with current water rights and legal decisions on hydraulic continuity.

**Goal 2DD:** Retain the character and lifestyle of rural Whatcom County.

**Policy 2DD-2:** Protect the character of the rural area through the County’s development regulations. In addition to the policies of this plan that provide measures governing rural development, the following County’s key development regulations are incorporated into this plan by reference to assure that the plan contains measures to protect rural character:

... 

C. Measures to protect critical areas and surface and groundwater resources:

... 

6. Limit water withdrawals resulting from land division through the standards in the following Whatcom County Land Division regulations, adopted herein by reference:

   a. WCC 21.04.090 Water supply, Short Subdivisions.
   b. WCC 21.05.080 Water supply, Preliminary Long Subdivisions.

7. Regulate groundwater withdrawals by requiring purveyors of public water systems and private water system applicants to comply with Washington State Department of Ecology water right requirements per WCC 24.11.050, adopted herein by reference.

8. Require evidence of an adequate water supply prior to issuance of any building permit, per WCC 24.11.060, adopted herein by reference.

9. Determine adequacy of water supply for building permit applications proposing to use a well, spring, or surface water, per WCC 24.11.090, .100, .110, .120, .130, .160, and .170, adopted herein by reference.

... 

**Goal 2M:** Protect and encourage restoration of habitat for fish and wildlife populations including adequate instream flows.

**Policy 2M-7** Engage in efforts to better define groundwater resources and connection to surface water, current water usage, water rights, adequate instream flows, and policy barriers that create conflicts between these things.

Chapter 5, Utilities
Goal 5R: Ensure that potable water supplies required to serve development are available at the time the development is available for occupancy and use.

Policy 5R-1: Building permit applicants, new subdivisions, short plats, and binding site plans will be required to provide evidence that adequate and legal (in consultation with the Department of Ecology) supplies of water are available prior to their approval by the County.

Chapter 10, Environment

Goal 10F: Protect and enhance water quantity and quality and promote sustainable and efficient use of water resources.

Policy 10F-3: Work cooperatively with Federal, State, and local jurisdictions, Tribal governments, municipal corporations, and the public to implement the goals and policies of the Comprehensive Plan as well as state water resources and water quality laws.

Policy 10F-4: Participate in the coordination of all local water and land management efforts, plans, and data to ensure adequate oversight of water quantity and quality issues.

Policy 10F-5: Manage water resources for multiple instream and out-of-stream beneficial uses, including instream flows set by the State Department of Ecology.

Policy 10F-9: In conjunction with all jurisdictions, develop and adopt programs to protect water quality and quantity within watersheds, aquifers, and marine waterbodies that cross jurisdictional boundaries.

Goal 10G: Protect and enhance Whatcom County’s surface water and groundwater quality and quantity for current and future generations.

Policy 10G-3: In conjunction with the public and appropriate local, state, Tribal, and federal jurisdictions, define, identify, and develop management strategies for watershed basins and subbasins that may require special protection. These areas may include aquifers, critical aquifer recharge areas as defined under the Growth Management Act, Groundwater Management Areas, wellhead protection areas, and high priority watersheds such as those specified under WAC 400 (Local Planning and Management of Non-point Source Pollution), WRIA Watershed Management Planning, and under legislative policy direction (e.g. Nooksack Basin, Lake Whatcom, Lake Samish and Drayton Harbor).

Policy 10G-4: Management efforts should consider both water quality and quantity. Water quality efforts should help reduce the likelihood that potential contaminant sources will pollute water supplies. Water quantity efforts should include consideration and protection of recharge areas and potential effects on stream flow.

Policy 10G-5: Support the implementation of local and state Watershed Management Plans, the Lower Nooksack Strategy, the Lake Whatcom Management Program, NPDES Phase II Permitting, and the WRIA Watershed Management Projects.

Policy 10G-6: Pursue the adoption and implementation of ground and/or surface water management plans and their integration into local comprehensive plans. Designate the Lake Whatcom and Lake Samish Watersheds as high priorities in this effort.

Goal 10I: Support water conservation, reclamation, reuse measures, and education as a means to ensure sufficient water supplies in the future.

Policy 10I-2: Support efforts to establish and protect sustainable water supplies to meet existing and future demands for water in the county.
Policy 10I-3: Develop and implement plans to comply with the Department of Ecology’s instream flow and water management rules and water resources management programs.

Policy 10I-4: Coordinate local water and land management efforts, plans, and data to ensure adequate oversight of water quality and quantity issues.

**Conclusion:** The proposed amendments to the Whatcom County Comprehensive Plan and development regulations would affirm the County’s intent to work cooperatively with the Department of Ecology, WRIA 1 Initiating Governments, and the Planning Unit to update the WRIA 1 Watershed Management Plan pursuant to the Streamflow Restoration Act (ESSB 6091), as well as implement the Act’s requirements for allowing the conditioned use of permit-exempt wells (RCW 90.44.050) as a legal source of water for domestic use, and are consistent with the above listed Comprehensive Plan goals and policies.

IV. **PROPOSED FINDINGS OF FACT AND REASONS FOR ACTION**

Staff recommends the County Council adopt the following findings of fact and reasons for action:

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

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

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

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

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

6. WCC Chapter 20.97 provides definitions of terms used in the code; and

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

8. WCC Chapter 24.11 contains requirements for potable water; and,

9. To protect rural character and regulate groundwater withdrawals, Whatcom County adopted Ordinance 2012-032, amending its Comprehensive Plan to adopt by reference existing development regulations, adding Policy 2DD-2.C.6 which adopts by reference WCC 21.04.090 and 21.05.080, Policy 2DD-2.C.7 which adopts by reference WCC 24.11.050, Policy 2DD-2.C.8 which adopts by reference WCC 24.11.060, and Policy 2DD-2.C.9 which adopts by reference WCC 24.11.090, .100, .110, .120, .130, .160, and .170, any amendments to these WCC provisions are also amendments to the Comprehensive Plan; and,

10. The Growth Management Hearings Board (Board) found the amended Comprehensive Plan lacked the required measures to protect water resources (GMHB Case No. 12-2-0013); and,

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

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

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

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

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

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

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

18. Adoption of this ordinance is necessary to complete the GMA compliance proceedings before the Western Washington Growth Management Hearings Board (GMHB Case No. 12-2-0013); and,

19. A determination of non-significance (DNS) was issued under the State Environmental Policy Act (SEPA) on February 20, 2018; and,

20. ESSB 6091 was signed by Governor Inslee on January 19, 2018, and, pursuant to the emergency clause in Section 307, it became effective immediately as the Legislature declared that it was “necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing institutions...”; and,
21. In accordance with RCW 36.70A.106, Whatcom County Planning and Development Services notified the Department of Commerce of the proposed amendments contained herein on February 14, 2018, and no comments were received from state agencies; and,  

22. The Planning Commission held a public hearing on this ordinance on March 8, 2018, notice of which was published in the Bellingham Herald on February 23, 2018;  

23. The County Council held a duly noticed public hearing on this ordinance on May 8, 2018;  

V. PROPOSED CONCLUSIONS  

1. The proposed amendments to the Whatcom County Comprehensive Plan and development regulations would affirm the County’s intent to work cooperatively with the Department of Ecology, WRIA 1 Initiating Governments, and the Planning Unit to update the WRIA 1 Watershed Management Plan pursuant to the Streamflow Restoration Act (ESSB 6091), as well as implement the Act’s requirements for allowing the conditioned use of permit-exempt wells (RCW 90.44.050) as a legal source of water for domestic use, and are consistent with the Comprehensive Plan goals and policies listed in Section III of this staff report.  

2. The amendments are in the public interest.  

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

VI. PLANNING COMMISSION ACTION  

The Planning Commission held a workshop on this ordinance on February 22, 2018, and a public hearing on March 8, 2018, after which they voted to recommend approval of the ordinance with the following recommendations:  

1. The Planning Commission wishes to clarify that this ordinance is related to permit-exempt withdrawals for domestic uses only, and does not affect other uses that are allowed under the permit-exempt rules of RCW 90.44.050.  

   Explanation: The Commission wanted it to be clear that these provisions should only apply only to domestic (household) uses that require potable water, and not to commercial, industrial, or other non-residential uses that do not require potable water.  

2. The Planning Commission recommends adding to 21.04.090(2)(f) and 21.05.080(2)(e) – “(iii) The water purveyor fails to respond with a letter of approval or denial.”  

   Explanation: A member of the public testified that he could not get a certain water purveyor to provide a letter either denying or agreeing to provide service within 120 days. The Planning Commission felt that if this were the case, an applicant should be able to use an exempt well. Regardless of the veracity or details of the testimony, staff agrees it is reasonable to expect a response within a certain period. Thus we have added language to this effect in both 21.04.090(2)(f)(iii) and 21.05.080(2)(e)(iii).  

VII. POST-PLANNING COMMISSION STAFF EDITS  

In reviewing the Planning Commission recommendation after their action, staff is proposing some additional amendments.  

- In 21.04.090(2)(e), (f), and (g) and 21.05.080(2)(d), (e), and (f), change the language from “within one-half mile of a purveyor’s water lines” to “one-half mile of a purveyor’s service area.”  

   Explanation: After further consideration, staff believes this language is more consistent with the adopted Coordinated Water System Plan.
• Add new subsections 21.04.090(2)(g) and 21.05.080(2)(e) to split apart subsections 21.04.090(2)(f) and 21.05.080(2)(f).

Explanation: This would separate the concepts of “within a service area” and “within one-half mile of a service area.” Staff recommends this change as it came to our attention that, per the Coordinated Water System Plan, if an applicant is within a purveyor’s service area, condition (ii) (applicant and purveyor are unable to achieve agreement) cannot not apply. Per the CWSP one would need to go to Superior Court to remedy this.

• In sections 21.04.090(2)(f) and 21.05.080(2)(e), delete “and applicable fees.”

Explanation: Based on a concern from CM Brenner, staff recommends deleting this clause since if an applicant is outside a water purveyor’s service area, but within ½-mile of it, we only require that the two get together to see whether service is an option; we don’t require someone to hook up. There should be no fee for asking such a question. Though if it turns out that it if the applicant wants that service then they can work out the details with the purveyor (who might have to update their service area and delivery system plans).

VIII. STAFF RECOMMENDATION

Staff recommends that the County Council review the proposed ordinance, introduce it for consideration on April 24, 2018, and on May 8, 2018, hold a public hearing and adopt these provisions consistent with ESSB 6091 and the Coordinated Water System Plan (CWSP).

IX. ATTACHMENTS

1) Draft Ordinance 2018-——
2) Exhibit A, showing the proposed amendment to the Whatcom County Comprehensive Plan and development regulations
3) ESSB 6091
Table 1. Conditions Under Which Water is Considered Legally Available for Purposes of Development in Whatcom County Pursuant to ESSB 6091 and Ordinance 2018-__

<table>
<thead>
<tr>
<th>Situation/Location</th>
<th>WRIA 1 (Nooksack)</th>
<th>WRIA 3 (Lower Skagit-Samish)</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Legally Available?</td>
<td>Limit/Conditions</td>
</tr>
<tr>
<td>1. A water right permit from the Department of Ecology</td>
<td>Yes</td>
<td>Up to whatever amount the DOE approves the water right for</td>
</tr>
<tr>
<td>2. A letter from an approved public water purveyor with sufficient water rights, stating the ability to provide water</td>
<td>Yes</td>
<td>Up to whatever amount the purveyor has adequate water rights for (as approved by the DOE) and is willing to sell, plus whatever service conditions/costs they impose</td>
</tr>
<tr>
<td>3. Water supplied by a rainwater catchment system</td>
<td>Yes</td>
<td>System must be approved by the Whatcom County Health Department, per Dept. of Ecology Policy 1017</td>
</tr>
<tr>
<td>4. Groundwater withdrawals (wells) exempt from permitting pursuant to RCW 90.44.050 for development requiring both potable water and approval from Whatcom County, and:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>a. Associated with a well legally constructed prior to January 19, 2018</td>
<td>Yes</td>
<td>Up to 5,000 gallons per day</td>
</tr>
<tr>
<td>b. Located in Point Roberts, Eliza Island, or Lummi Island</td>
<td>Yes</td>
<td>Up to 5,000 gallons per day. Wells on Lummi island area also subject to WCC 16.16.540.</td>
</tr>
<tr>
<td>c. Located within certain Limited Coastal Areas, as shown on Figure 24.11.060, and o Are not in hydraulic continuity with regulated surface waterbodies (as determined by a property specific hydraulic study), or o Is mitigated for</td>
<td>Yes</td>
<td>Up to 5,000 gallons per day</td>
</tr>
<tr>
<td>d. Any other well not meeting conditions a, b, or c</td>
<td>Yes</td>
<td>• Water shall be for domestic use only, with a maximum annual average withdrawal of 3,000 gallons per day per connection,  • The applicant shall record with the property title any relevant restrictions or limitations associated with water supply; and,  • The applicant shall pay any applicable fees for each project permit.</td>
</tr>
</tbody>
</table>
CERTIFICATION OF ENROLLMENT

ENGROSSED SUBSTITUTE SENATE BILL 6091

65th Legislature
2018 Regular Session

Passed by the Senate January 18, 2018
Yea 35  Nays 14

President of the Senate

Passed by the House January 18, 2018
Yea 66  Nays 30

Speaker of the House of Representatives
Approved

CERTIFICATE

I, Brad Hendrickson, Secretary of the Senate of the State of Washington, do hereby certify that the attached is ENGROSSED SUBSTITUTE SENATE BILL 6091 as passed by Senate and the House of Representatives on the dates hereon set forth.

Secretary

FILED

Governor of the State of Washington

Secretary of State
State of Washington
ENGROSSED SUBSTITUTE SENATE BILL 6091

Passed Legislature - 2018 Regular Session

State of Washington 65th Legislature 2018 Regular Session

By Senate Agriculture, Water, Natural Resources & Parks (originally sponsored by Senators Van De Wege, Rolfes, and Frockt)

READ FIRST TIME 01/12/18.

1 AN ACT Relating to ensuring that water is available to support
development; amending RCW 19.27.097, 58.17.110, 90.03.247, and
90.03.290; adding a new section to chapter 36.70A RCW; adding a new
section to chapter 36.70 RCW; adding a new chapter to Title 90 RCW;
creating a new section; providing an expiration date; and declaring
an emergency.

7 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

PART 1

9 Sec. 101. RCW 19.27.097 and 2015 c 225 s 17 are each amended to
10 read as follows:
11 (1)(a) Each applicant for a building permit of a building
12 necessitating potable water shall provide evidence of an adequate
13 water supply for the intended use of the building. Evidence may be in
14 the form of a water right permit from the department of ecology, a
15 letter from an approved water purveyor stating the ability to provide
16 water, or another form sufficient to verify the existence of an
17 adequate water supply. (In addition to other authorities, the county
18 or city may impose conditions on building permits requiring
19 connection to an existing public water system where the existing
20 system is willing and able to provide safe and reliable potable water
to the applicant with reasonable economy and efficiency.) An
application for a water right shall not be sufficient proof of an
adequate water supply.

(b) In a water resource inventory area with rules adopted by the
department of ecology pursuant to section 202 or 203 of this act and
the following water resource inventory areas with instream flow rules
adopted by the department of ecology under chapters 90.22 and 90.54
RCW that explicitly regulate permit-exempt groundwater withdrawals,
evidence of an adequate water supply must be consistent with the
specific applicable rule requirements: 5 (Stillaguamish); 17
(Quilcene-Snow); 18 (Elwha-Dungeness); 27 (Lewis); 28 (Salmon-
Washougal); 32 (Walla Walla); 45 ( Wenatchee); 46 (Entiat); 48
(Methow); and 57 (Middle Spokane).

(c) In the following water resource inventory areas with instream
flow rules adopted by the department of ecology under chapters 90.22
and 90.54 RCW that do not explicitly regulate permit-exempt
groundwater withdrawals, evidence of an adequate water supply must be
consistent with section 202 of this act, unless the applicant
provides other evidence of an adequate water supply that complies
with chapters 90.03 and 90.44 RCW: 1 (Nooksack); 11 (Nisqually); 22
(Lower Chehalis); 23 (Upper Chehalis); 49 (Okanogan); 55 (Little
Spokane); and 59 (Colville).

(d) In the following water resource inventory areas with instream
flow rules adopted by the department of ecology under chapters 90.22
and 90.54 RCW that do not explicitly regulate permit-exempt
groundwater withdrawals, evidence of an adequate water supply must be
consistent with section 203 of this act, unless the applicant
provides other evidence of an adequate water supply that complies
with chapters 90.03 and 90.44 RCW: 7 (Snohomish); 8 (Cedar-
Sammamish); 9 (Duwamish-Green); 10 (Puyallup-White); 12 (Chambers-
Clover); 13 (Deschutes); 14 (Kennedy-Goldsborough); and 15 (Kitsap).

(e) In water resource inventory areas 37 (Lower Yakima), 38
(Naches), and 39 (Upper Yakima), the department of ecology may impose
requirements to satisfy adjudicated water rights.

(f) Additional requirements apply in areas within water resource
inventory area 3 (Lower Skagit-Samish) and 4 (Upper Skagit) regulated
by chapter 173-503 WAC, as a result of Swinomish Indian Tribal

(g) In other areas of the state, physical and legal evidence of
an adequate water supply may be demonstrated by the submission of a
water well report consistent with the requirements of chapter 18.104
RCW.

(h) For the purposes of this subsection (1), "water resource
inventory areas" means those areas described in chapter 173-500 WAC
as of the effective date of this section.

(2) In addition to other authorities, the county or city may
impose additional requirements, including conditions on building
permits requiring connection to an existing public water system where
the existing system is willing and able to provide safe and reliable
potable water to the applicant with reasonable economy and
efficiency.

(3) Within counties not required or not choosing to plan pursuant
to RCW 36.70A.040, the county and the state may mutually determine
those areas in the county in which the requirements of subsection (1)
of this section shall not apply. The departments of health and
ecology shall coordinate on the implementation of this section.
Should the county and the state fail to mutually determine those
areas to be designated pursuant to this subsection, the county may
petition the department of enterprise services to mediate or, if
necessary, make the determination.

((3+)) (4) Buildings that do not need potable water facilities
are exempt from the provisions of this section. The department of
ecology, after consultation with local governments, may adopt rules
to implement this section, which may recognize differences between
high-growth and low-growth counties.

(5) Any permit-exempt groundwater withdrawal authorized under RCW
90.44.050 associated with a water well constructed in accordance with
the provisions of chapter 18.104 RCW before the effective date of
this section is deemed to be evidence of adequate water supply under
this section.

NEW SECTION. Sec. 102. A new section is added to chapter 36.70A
RCW to read as follows:

For the purposes of complying with the requirements of this
chapter relating to surface and groundwater resources, a county or
city may rely on or refer to applicable minimum instream flow rules
adopted by the department of ecology under chapters 90.22 and 90.54
RCW. Development regulations must ensure that proposed water uses are
consistent with RCW 90.44.050 and with applicable rules adopted
pursuant to chapters 90.22 and 90.54 RCW when making decisions under
RCW 19.27.097 and 58.17.110.

NEW SECTION. Sec. 103. A new section is added to chapter 36.70
RCW to read as follows:
For the purposes of complying with the requirements of this
chapter, county development regulations must ensure that proposed
water uses are consistent with RCW 90.44.050 and with applicable
rules adopted pursuant to chapters 90.22 and 90.54 RCW when making
decisions under RCW 19.27.097 and 58.17.110.

Sec. 104. RCW 58.17.110 and 1995 c 32 s 3 are each amended to
read as follows:
(1) The city, town, or county legislative body shall inquire into
the public use and interest proposed to be served by the
establishment of the subdivision and dedication. It shall determine:
(a) If appropriate provisions are made for, but not limited to, the
public health, safety, and general welfare, for open spaces, drainage
ways, streets or roads, alleys, other public ways, transit stops,
potable water supplies, sanitary wastes, parks and recreation,
playgrounds, schools and schoolgrounds, and shall consider all other
relevant facts, including sidewalks and other planning features that
assure safe walking conditions for students who only walk to and from
school; and (b) whether the public interest will be served by the
subdivision and dedication.
(2) A proposed subdivision and dedication shall not be approved
unless the city, town, or county legislative body makes written
findings that: (a) Appropriate provisions are made for the public
health, safety, and general welfare and for such open spaces,
drainage ways, streets or roads, alleys, other public ways, transit
stops, potable water supplies, sanitary wastes, parks and recreation,
playgrounds, schools and schoolgrounds and all other relevant facts,
including sidewalks and other planning features that assure safe
walking conditions for students who only walk to and from school; and
(b) the public use and interest will be served by the platting of
such subdivision and dedication. If it finds that the proposed
subdivision and dedication make such appropriate provisions and that
the public use and interest will be served, then the legislative body
shall approve the proposed subdivision and dedication. Dedication of
land to any public body, provision of public improvements to serve
the subdivision, and/or impact fees imposed under RCW 82.02.050
through 82.02.090 may be required as a condition of subdivision
approval. Dedications shall be clearly shown on the final plat. No
dedication, provision of public improvements, or impact fees imposed
under RCW 82.02.050 through 82.02.090 shall be allowed that
constitutes an unconstitutional taking of private property. The
legislative body shall not as a condition to the approval of any
subdivision require a release from damages to be procured from other
property owners.

(3) If the preliminary plat includes a dedication of a public
park with an area of less than two acres and the donor has designated
that the park be named in honor of a deceased individual of good
character, the city, town, or county legislative body must adopt the
designated name.

(4) If water supply is to be provided by a groundwater withdrawal
exempt from permitting under RCW 90.44.050, the applicant's
compliance with RCW 90.44.050 and with applicable rules adopted
pursuant to chapters 90.22 and 90.54 RCW is sufficient in determining
appropriate provisions for water supply for a subdivision, 
dedication, or short subdivision under this chapter.

PART 2

NEW SECTION. Sec. 201. The definitions in this section apply
throughout this chapter unless the context clearly requires
otherwise.

(1) "Department" means the department of ecology.

(2) "Lead agency" has the same meaning as defined in RCW 90.82.060.

(3) "Water resource inventory area" or "WRIA" means a water
resource inventory area established in chapter 173-500 WAC as it
existed on the effective date of this section.

NEW SECTION. Sec. 202. (1) Unless requirements are otherwise
specified in the applicable rules adopted under this chapter or under
chapter 90.22 or 90.54 RCW, potential impacts on a closed water body
and potential impairment to an instream flow are authorized for new
domestic groundwater withdrawals exempt from permitting under RCW
90.44.050 through compliance with the requirements established in
this section.

p. 5
(2) In the following water resource inventory areas with instream flow rules adopted by the department under chapters 90.22 and 90.54 RCW that do not explicitly regulate permit-exempt groundwater withdrawals and that have completed a watershed plan adopted under chapter 90.82 RCW, the department shall work with the initiating governments and the planning units described in chapter 90.82 RCW to review existing watershed plans to identify the potential impacts of exempt well use, identify evidence-based conservation measures, and identify projects to improve watershed health: 1 (Nooksack); 11 (Nisqually); 22 (Lower Chehalis); 23 (Upper Chehalis); 49 (Okanogan); 55 (Little Spokane); and 59 (Colville).

(3) In the water resource inventory areas listed in subsection (2) of this section, the lead agency shall invite a representative from each federally recognized Indian tribe that has a usual and accustomed harvest area within the water resource inventory area to participate as part of the planning unit.

(4)(a) In collaboration with the planning unit, the initiating governments must update the watershed plan 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. Watershed plan recommendations may include, but are not limited to, acquiring senior water rights, water conservation, water reuse, stream gaging, groundwater monitoring, and developing natural and constructed infrastructure, which includes, but is not limited to, such projects as floodplain restoration, off-channel storage, and aquifer recharge. Qualifying projects must be specifically designed to enhance streamflows and not result in negative impacts to ecological functions or critical habitat.

(b) At a minimum, the watershed plan must include those actions that the planning units determine to be necessary to offset potential impacts to instream flows associated with permit-exempt domestic water use. The highest priority recommendations must include replacing the quantity of consumptive water use during the same time as the impact and in the same basin or tributary. Lower priority projects include projects not in the same basin or tributary and projects that replace consumptive water supply impacts only during critical flow periods. The watershed plan may include projects that protect or improve instream resources without replacing the consumptive quantity of water where such projects are in addition to
those actions that the planning unit determines to be necessary to
offset potential consumptive impacts to instream flows associated
with permit-exempt domestic water use.

(c) Prior to adoption of the updated watershed plan, the
department must determine that actions identified in the watershed
plan, after accounting for new projected uses of water over the
subsequent twenty years, will result in a net ecological benefit to
instream resources within the water resource inventory area.

(d) The watershed plan may include:

(i) Recommendations for modification to fees established under
this subsection;

(ii) Standards for water use quantities that are less than
authorized under RCW 90.44.050 or more or less than authorized under
subsection (5) of this section for withdrawals exempt from
permitting;

(iii) Specific conservation requirements for new water users to
be adopted by local or state permitting authorities; or

(iv) Other approaches to manage water resources for a water
resource inventory area or a portion thereof.

(e) Any modification to fees collected under subsection (5) of
this section or standards for water use quantities that are less than
authorized under RCW 90.44.050 or more or less than authorized under
subsection (5) of this section for withdrawals exempt from permitting
may not be applied unless authorized by rules adopted under this
chapter or under chapter 90.54 RCW.

(5) Until an updated watershed plan is approved and rules are
adopted under this chapter or chapter 90.54 RCW, a city or county
issuing a building permit under RCW 19.27.097(1)(c), or approving a
subdivision under chapter 58.17 RCW in a watershed listed in
subsection (2) of this section must:

(a) Record relevant restrictions or limitations associated with
water supply with the property title;

(b) Collect applicable fees, as described under this section;

(c) Record the number of building permits issued under chapter
19.27 RCW or subdivision approvals issued under chapter 58.17 RCW
subject to the provisions of this section;

(d) Annually transmit to the department three hundred fifty
dollars of each fee collected under this subsection;
(e) Annually transmit an accounting of building permits and subdivision approvals subject to the provisions of this section to the department;

(f) Until rules have been adopted that specify otherwise, require the following measures for each new domestic use that relies on a withdrawal exempt from permitting under RCW 90.44.050:

(i) An applicant shall pay a fee of five hundred dollars to the permitting authority;

(ii) An applicant may obtain approval for a withdrawal exempt from permitting under RCW 90.44.050 for domestic use only, with a maximum annual average withdrawal of three thousand gallons per day per connection.

(6) Rules adopted under this chapter or under chapter 90.54 RCW may:

(a) Rely on watershed plan recommendations and procedures established in this section to authorize new withdrawals exempt from permitting under RCW 90.44.050 that would potentially impact a closed waterbody or a minimum flow or level;

(b) Rely on projects identified in the watershed plan to offset consumptive water use; and

(c) Include updates to fees based on the planning unit's determination of the costs for offsetting consumptive water use.

(7) (a) If a watershed plan that meets the requirements of this section is not adopted in water resource inventory area 1 (Nooksack) by February 1, 2019, the department must adopt rules for that water resource inventory area that meet the requirements of this section by August 1, 2020.

(b) If a watershed plan that meets the requirements of this section is not adopted in water resource inventory area 11 (Nisqually) by February 1, 2019, the department must adopt rules for that water resource inventory area that meet the requirements of this section by August 1, 2020.

(c) The department must adopt rules that meet the requirements of this section for any of the following water resource inventory areas that do not adopt a watershed plan that meets the requirements of this section by February 1, 2021: 22 (Lower Chehalis); 23 (Upper Chehalis); 49 (Okanogan); 55 (Little Spokane); and 59 (Colville).

(8) This section only applies to new domestic groundwater withdrawals exempt from permitting under RCW 90.44.050 in the following water resource inventory areas with instream flow rules
adopted under chapters 90.22 and 90.54 RCW that do not explicitly
regulate permit-exempt groundwater withdrawals: 1 (Nooksack); 11
(Nisqually); 22 (Lower Chehalis); 23 (Upper Chehalis); 49 (Okanogan);
55 (Little Spokane); and 59 (Colville) and does not restrict the
withdrawal of groundwater for other uses that are exempt from
permitting under RCW 90.44.050.

NEW SECTION. Sec. 203. (1) Unless requirements are otherwise
specified in the applicable rules adopted under this chapter or
chapter 90.22 or 90.54 RCW, potential impacts on a closed water body
and potential impairment to an instream flow are authorized for new
domestic groundwater withdrawals exempt from permitting under RCW
90.44.050 through compliance with the requirements established in
this section.

(2)(a) In the following water resource inventory areas with
instream flow rules adopted by the department under chapters 90.22
and 90.54 RCW that do not explicitly regulate permit-exempt
groundwater withdrawals and that have either not adopted a watershed
plan, or adopted a partial watershed plan, under chapter 90.82 RCW,
the department shall establish watershed restoration and enhancement
committees in the following water resource inventory areas: 7
(Snohomish); 8 (Cedar-Sammamish); 9 (Duwamish-Green); 10 (Puyallup-
White); 12 (Chambers-Clover); 13 (Deschutes); 14 (Kennedy-
Goldsborough); and 15 (Kitsap).

(b) The department shall chair the watershed restoration and
enhancement committee and invite the following entities to
participate:

(i) A representative from each federally recognized Indian tribe
that has reservation land within the water resource inventory area;

(ii) A representative from each federally recognized Indian tribe
that has a usual and accustomed harvest area within the water
resource inventory area;

(iii) A representative from the department of fish and wildlife,
appointed by the director of the department of fish and wildlife;

(iv) A representative designated by each county within the water
resource inventory area;

(v) A representative designated by each city within the water
resource inventory area;

(vi) A representative designated by the largest irrigation
district within the water resource inventory area;
(vii) A representative designated by the largest publicly owned water purveyor providing water within the water resource inventory area that is not a municipality;

(viii) A representative designated by a local organization representing the residential construction industry within the water resource inventory area;

(ix) A representative designated by a local organization representing environmental interests within the water resource inventory area; and

(x) A representative designated by a local organization representing agricultural interests within the water resource inventory area.

(3) By June 30, 2021, the department shall prepare and adopt a watershed restoration and enhancement plan for each watershed listed under subsection (2)(a) of this section, in collaboration with the watershed restoration and enhancement committee. Except as described in (h) of this subsection, all members of a watershed restoration and enhancement committee must approve the plan prior to adoption.

(a) The watershed restoration and enhancement plan should 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. Plan recommendations may include, but are not limited to, acquiring senior water rights, water conservation, water reuse, stream gaging, groundwater monitoring, and developing natural and constructed infrastructure, which includes but is not limited to such projects as floodplain restoration, off-channel storage, and aquifer recharge. Qualifying projects must be specifically designed to enhance stream flows and not result in negative impacts to ecological functions or critical habitat.

(b) At a minimum, the plan must include those actions that the committee determines to be necessary to offset potential impacts to instream flows associated with permit-exempt domestic water use. The highest priority recommendations must include replacing the quantity of consumptive water use during the same time as the impact and in the same basin or tributary. Lower priority projects include projects not in the same basin or tributary and projects that replace consumptive water supply impacts only during critical flow periods. The plan may include projects that protect or improve instream resources without replacing the consumptive quantity of water where
such projects are in addition to those actions that the committee
determines to be necessary to offset potential consumptive impacts to
instream flows associated with permit-exempt domestic water use.
(c) Prior to adoption of the watershed restoration and
enhancement plan, the department must determine that actions
identified in the plan, after accounting for new projected uses of
water over the subsequent twenty years, will result in a net
ecological benefit to instream resources within the water resource
inventory area.
(d) The watershed restoration and enhancement plan must include
an evaluation or estimation of the cost of offsetting new domestic
water uses over the subsequent twenty years, including withdrawals
exempt from permitting under RCW 90.44.050.
(e) The watershed restoration and enhancement plan must include
estimates of the cumulative consumptive water use impacts over the
subsequent twenty years, including withdrawals exempt from permitting
under RCW 90.44.050.
(f) The watershed restoration and enhancement plan may include:
(i) Recommendations for modification to fees established under
this subsection;
(ii) Standards for water use quantities that are less than
authorized under RCW 90.44.050 or more or less than authorized under
subsection (4) of this section for withdrawals exempt from
permitting;
(iii) Specific conservation requirements for new water users to
be adopted by local or state permitting authorities; or
(iv) Other approaches to manage water resources for a water
resource inventory area or a portion thereof.
(g) After adoption of a watershed restoration and enhancement
plan, the department shall evaluate the plan recommendations and
initiate rule making, if necessary, to incorporate recommendations
into rules adopted under this chapter or under chapter 90.22 or 90.54
RCW. Any modification to fees collected under subsection (4) of this
section or standards for water use quantities that are less than
authorized under RCW 90.44.050 or more or less than authorized under
subsection (4) of this section for withdrawals exempt from permitting
may not be applied unless authorized by rules adopted under this
chapter or under chapter 90.54 RCW.
(h) If the watershed restoration and enhancement committee fails
to approve a plan by June 30, 2021, the director of the department
shall submit the final draft plan to the salmon recovery funding
board established under RCW 77.85.110 and request that the salmon
recovery funding board provide a technical review and provide
recommendations to the director to amend the final draft plan, if
necessary, so that actions identified in the plan, after accounting
for new projected uses of water over the subsequent twenty years,
will result in a net ecological benefit to instream resources within
the water resource inventory area. The director of the department
shall consider the recommendations and may amend the plan without
committee approval prior to adoption. After plan adoption, the
director of the department shall initiate rule making within six
months to incorporate recommendations into rules adopted under this
chapter or under chapter 90.22 or 90.54 RCW, and shall adopt amended
rules within two years of initiation of rule making.

(4)(a) Until a watershed restoration and enhancement plan is
approved and rules are adopted under subsection (3) of this section,
a city or county issuing a building permit under RCW 19.27.097(1)(d),
or approving a subdivision under chapter 58.17 RCW in a watershed
listed in subsection (2)(a) of this section must:

(i) Record relevant restrictions or limitations associated with
water supply with the property title;

(ii) Collect applicable fees, as described under this section;

(iii) Record the number of building permits issued under chapter
19.27 RCW or subdivision approvals issued under chapter 58.17 RCW
subject to the provisions of this section;

(iv) Annually transmit to the department three hundred fifty
dollars of each fee collected under this subsection;

(v) Annually transmit an accounting of building permits and
subdivision approvals subject to the provisions of this section to
the department;

(vi) Until rules have been adopted that specify otherwise,
require the following measures for each new domestic use that relies
on a withdrawal exempt from permitting under RCW 90.44.050:

(A) An applicant shall pay a fee of five hundred dollars to the
permitting authority;

(B) Except as provided in (b) of this subsection, an applicant
may obtain approval for a withdrawal exempt from permitting under RCW
90.44.050 for domestic use only, with a maximum annual average
withdrawal of nine hundred fifty gallons per day per connection; and
(C) An applicant shall manage stormwater runoff on-site to the extent practicable by maximizing infiltration, including using low-impact development techniques, or pursuant to stormwater management requirements adopted by the local permitting authority, if locally adopted requirements are more stringent.

(b) Upon the issuance of a drought emergency order under RCW 43.83B.405, the department may curtail withdrawal of groundwater exempt from permitting under RCW 90.44.050 and approved under this subsection (4) to no more than three hundred fifty gallons per day per connection for indoor use only. Notwithstanding the limitation to no more than three hundred fifty gallons per day per connection for indoor use only, an applicant may use groundwater exempt from permitting to maintain a fire control buffer during a drought emergency order.

(5) Rules adopted under this chapter or chapter 90.54 RCW may:
(a) Rely on watershed restoration and enhancement plan recommendations and procedures established in this section to authorize new withdrawals exempt from permitting under RCW 90.44.050 that would potentially impact a closed waterbody or a minimum flow or level;
(b) Rely on projects identified in the watershed restoration and enhancement plan to offset consumptive water use; and
(c) Include updates to fees based on the watershed restoration and enhancement committee's determination of the costs for offsetting consumptive water use.

(6) This section only applies to new domestic groundwater withdrawals exempt from permitting under RCW 90.44.050 in the following water resource inventory areas with instream flow rules adopted under chapters 90.22 and 90.54 RCW that do not explicitly regulate permit-exempt groundwater withdrawals: 7 (Snohomish); 8 (Cedar-Sammamish); 9 (Duwamish-Green); 10 (Puyallup-White); 12 (Chambers-Clover); 13 (Deschutes); 14 (Kennedy-Goldsborough); and 15 (Kitsap) and does not restrict the withdrawal of groundwater for other uses that are exempt from permitting under RCW 90.44.050.

NEW SECTION. Sec. 204. (1) The department shall initiate two pilot projects to measure water use from all new groundwater withdrawals for domestic purposes exempt from permitting under RCW 90.44.050 in the areas described in this section. The pilot projects must be conducted to determine the overall feasibility of measuring...
water use for all new groundwater withdrawals. The department must
purchase and provide meters to be used in the pilot projects. The
pilot projects must be conducted in the area under the Dungeness
water rule, chapter 173-518 WAC, within water resource inventory area
18 and the area in which the Kittitas county water bank program
operates within water resource inventory area 39.
(2) At a minimum, the pilot project must address the following:
(a) Initial and on-going costs, including costs to local
government and the department;
(b) Technical, practical, and legal considerations that must be
addressed;
(c) The costs and benefits of a water use measurement program
relating on individual meters versus a water management program that
estimates permit-exempt groundwater withdrawals; and
(d) Measures to protect the privacy of individual property owners
and ensure accurate data collection.
(3) The department shall report on the pilot project results in
the report to the legislature submitted under section 205 of this
act. The department shall include recommendations to the legislature,
including estimated program costs for expanding the pilot projects to
other basins.

NEW SECTION. Sec. 205. The department shall submit a report to
the legislature by December 31, 2020, and December 31, 2027, in
compliance with RCW 43.01.036, that includes the following elements:
(1) Progress in completing and adopting watershed plans under
section 202 of this act and watershed restoration and enhancement
plans under section 203 of this act;
(2) A description of program projects and expenditures;
(3) An assessment of the streamflow restoration and enhancement
benefits from program projects;
(4) A listing of other efforts or actions taken associated with
streamflow restoration and enhancement, projects to benefit instream
resources, and other directly related watershed improvements
conducted in coordination with the restoration and enhancement
planning process;
(5) The total number of new withdrawals exempt from permitting
under RCW 90.44.050 authorized in each water resource inventory area
under provisions of sections 202 and 203 of this act, and estimates
of consumptive water use impacts associated with the new withdrawals; and

(6) A description of potential or planned projects, including projected costs and anticipated streamflow, water supply, and watershed health benefits.

NEW SECTION. Sec. 206. (1) The watershed restoration and enhancement account is created in the custody of the state treasurer. All receipts from fees paid pursuant to sections 202 and 203 of this act must be deposited into the account. The account may also receive those moneys as may be appropriated by the legislature for the purpose of funding restoration and enhancement projects as identified in sections 202 and 203 of this act. Expenditures from the account may be used only for the costs of administering this act, including implementing watershed planning projects under section 202 of this act and watershed restoration and enhancement projects under section 203 of this act, and collecting data and completing studies necessary to develop, implement, and evaluate watershed restoration and enhancement projects under this act. Only the director or the director's designee may authorize expenditures from the account. The account is subject to allotment procedures under chapter 43.88 RCW, but an appropriation is not required for expenditures.

(2) Fee revenues collected under sections 202 and 203 of this act must be used exclusively within the water resource inventory area in which the fee originated. The restriction in this subsection does not apply to moneys in the watershed restoration and enhancement account that do not originate from fees collected under sections 202 and 203 of this act.

NEW SECTION. Sec. 207. (1) The watershed restoration and enhancement taxable bond account is created in the custody of the state treasurer. All receipts from direct appropriations from the legislature or moneys directed to the account from any other source must be deposited in the account. The account is intended to fund projects using taxable bonds. Expenditures from the account may be used only as provided for in this section. Only the director or the director's designee may authorize expenditures from the account. The account is subject to allotment procedures under chapter 43.88 RCW, but an appropriation is not required for expenditures.
(2) Expenditures from the watershed restoration and enhancement taxable bond account may be used to assess, plan, and develop projects that include acquiring senior water rights, water conservation, water reuse, stream gaging, groundwater monitoring, and developing natural and constructed infrastructure, which includes, but is not limited to, projects such as floodplain restoration, off-channel storage, and aquifer recharge, or other actions designed to provide access to new water supplies with priority given to projects in watersheds developing plans as directed by sections 202 and 203 of this act and watersheds participating in the pilot project in section 204 of this act.

NEW SECTION.  Sec. 208.  (1) The watershed restoration and enhancement bond account is created in the custody of the state treasurer. All receipts from direct appropriations from the legislature or moneys directed to the account from any other source must be deposited in the account. The account is intended to fund projects using tax exempt bonds. Expenditures from the account may be used only as provided for in this section. Only the director or the director's designee may authorize expenditures from the account. The account is subject to allotment procedures under chapter 43.88 RCW, but an appropriation is not required for expenditures.

(2) Expenditures from the watershed restoration and enhancement bond account may be used to assess, plan, and develop projects that include acquiring senior water rights, water conservation, water reuse, stream gaging, groundwater monitoring, and developing natural and constructed infrastructure, which includes, but is not limited to, projects such as floodplain restoration, off-channel storage, and aquifer recharge, or other actions designed to provide access to new water supplies with priority given to projects in watersheds developing plans as directed by sections 202 and 203 of this act and watersheds participating in the pilot project in section 204 of this act.

PART 3

NEW SECTION.  Sec. 301.  (1) A joint legislative task force on water resource mitigation is established to review the treatment of surface water and groundwater appropriations as they relate to instream flows and fish habitat, to develop and recommend a
mitigation sequencing process and scoring system to address such appropriations, and to review the Washington supreme court decision in *Foster v. Department of Ecology*, 184 Wn.2d 465, 362 P.3d 959 (2015).

(2) The task force must consist of the following members:
(a) Two members from each of the two largest caucuses of the senate, appointed by the president of the senate;
(b) Two members from each of the two largest caucuses of the house of representatives, appointed by the speaker of the house of representatives;
(c) A representative from the department, appointed by the director of the department;
(d) A representative from the department of fish and wildlife, appointed by the director of the department of fish and wildlife;
(e) A representative from the department of agriculture, appointed by the director of the department of agriculture;
(f) One representative from each of the following groups, appointed by the consensus of the cochairs of the task force:
   (i) An organization representing the farming industry in Washington;
   (ii) An organization representing Washington cities;
   (iii) Two representatives from an environmental advocacy organization or organizations;
   (iv) An organization representing municipal water purveyors;
   (v) An organization representing business interests;
   (vi) Representatives of two federally recognized Indian tribes, one invited by recommendation of the Northwest Indian fisheries commission, and one invited by recommendation of the Columbia river intertribal fish commission.
(3) One cochair of the task force must be a member of the majority caucus of one chamber of the legislature, and one cochair must be a member of the minority caucus of the other chamber of the legislature, as those caucuses existed as of the effective date of this section.
(4) The first meeting of the task force must occur by June 30, 2018.
(5) Staff support for the task force must be provided by the office of program research and senate committee services. The department and the department of fish and wildlife shall cooperate
with the task force and provide information as the cochairs reasonably request.

(6) Within existing appropriations, the expenses of the operations of the task force, including the expenses associated with the task force's meetings, must be paid jointly and in equal amounts by the senate and the house of representatives. Task force expenditures are subject to approval by the house executive rules committee and the senate facility and operations committee. Legislative members of the task force are reimbursed for travel expenses in accordance with RCW 44.04.120. Nonlegislative members are not entitled to be reimbursed for travel expenses if they are elected officials or are participating on behalf of an employer, governmental entity, or other organization. Any reimbursement for other nonlegislative members is subject to chapter 43.03 RCW.

(7)(a) By November 15, 2019, the joint legislative task force must make recommendations to the legislature in compliance with RCW 43.01.036.

(b) Recommendations of the joint legislative task force must be made by a sixty percent majority of the members of the task force. The representatives of the departments of fish and wildlife, ecology, and agriculture are not eligible to vote on the recommendations. Minority recommendations that achieve the support of at least five of the named voting members of the task force may also be submitted to the legislature.

(8) The department shall issue permit decisions for up to five water resource mitigation pilot projects. It is the intent of the legislature to use the pilot projects to inform the legislative task force process while also enabling the processing of water right applications that address water supply needs. The department is authorized to issue permits in reliance upon water resource mitigation of impacts to instream flows and closed surface water bodies under the following mitigation sequence:

(a) Avoiding impacts by: (i) Complying with mitigation required by adopted rules that set forth minimum flows, levels, or closures; or (ii) making the water diversion or withdrawal subject to the applicable minimum flows or levels; or

(b) Where avoidance of impacts is not reasonably attainable, minimizing impacts by providing permanent new or existing trust water rights or through other types of replacement water supply resulting in no net annual increase in the quantity of water diverted or

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ESSB 6091.PL
withdrawn from the stream or surface water body and no net
detrimental impacts to fish and related aquatic resources; or
(c) Where avoidance and minimization are not reasonably
attainable, compensating for impacts by providing net ecological
benefits to fish and related aquatic resources in the water resource
inventory area through in-kind or out-of-kind mitigation or a
combination thereof, that improves the function and productivity of
affected fish populations and related aquatic habitat. Out-of-kind
mitigation may include instream or out-of-stream measures that
improve or enhance existing water quality, riparian habitat, or other
instream functions and values for which minimum instream flows or
closures were established in that watershed.
(9) The department must monitor the implementation of the pilot
projects, including all mitigation associated with each pilot
project, approved under this section at least annually through
December 31, 2028.
(10) The pilot projects eligible for processing under this
section, based on criteria as of the effective date of this section,
include:
(a) A city operating a group A water system in Kitsap county and
water resource inventory area 15, with a population between 13,000
and 14,000;
(b) A city operating a group A water system in Pierce county and
water resource inventory area 10, with a population between 9,500 and
10,500;
(c) A city operating a group A water system in Thurston county
and water resource inventory area 11, with a population between 8,500
and 9,500;
(d) A nonprofit mutual water system operating a group A water
system in Pierce county and water resource inventory area 12, with
between 10,500 and 11,500 service connections; and
(e) An irrigation district located in Whatcom county and water
resource inventory area 1, solely for the purpose of processing
changes of water rights from surface water to groundwater, and
implementing flow augmentation to benefit instream flows.
(11) Water right applicants eligible to be processed under this
pilot project authority must elect to be included in the pilot
project review by notifying the department by July 1, 2018. Once an
applicant notifies the department of its intent to be processed under
this pilot project authority, subsection (8) of this section applies
ESSB 6091.PL
to final decisions issued by the department, even if such a final
decision is issued after the expiration of this section.

(12) By November 15, 2018, the department must furnish the task
force with information on conceptual mitigation plans for each water
resource mitigation pilot project application.

(13) To ensure that the processing of pilot project applications
can inform the task force process in a timely manner, the department
must expedite processing of applications for water resource
mitigation pilot projects. The applicant for each pilot project must
reimburse the department for the department's costs of processing the
applicant's application.

(14) The water resource mitigation pilot project authority
granted to the department does not affect or modify any other
procedural requirements of chapter 90.03, 90.44, or 90.54 RCW that
apply to the processing of such applications.


(16) This section expires January 1, 2029.

Sec. 302. RCW 90.03.247 and 2003 c 39 s 48 are each amended to
read as follows:

(1) Whenever an application for a permit to make beneficial use
of public waters is approved relating to a stream or other water body
for which minimum flows or levels have been adopted and are in effect
at the time of approval, the permit shall be conditioned to: (a)
Protect the levels or flows; or (b) require water resource mitigation
of impacts to instream flows and closed surface water bodies for
water resource mitigation pilot projects authorized under section 301
of this act.

(2) No agency may establish minimum flows and levels or similar
water flow or level restrictions for any stream or lake of the state
other than the department of ecology whose authority to establish is
exclusive, as provided in chapter 90.03 RCW and RCW 90.22.010 and
90.54.040. The provisions of other statutes, including but not
limited to ((RCW 77.55.100 and)) chapter 43.21C RCW, may not be
interpreted in a manner that is inconsistent with this section. In
establishing such minimum flows, levels, or similar restrictions, the
department shall, during all stages of development by the department
of ecology of minimum flow proposals, consult with, and carefully
consider the recommendations of, the department of fish and wildlife,
the department of ((community, trade, and economic development))
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commerce, the department of agriculture, and representatives of the
affected Indian tribes. Nothing herein shall preclude the department
of fish and wildlife, the department of (community, trade, and
economic development) commerce, or the department of agriculture
from presenting its views on minimum flow needs at any public hearing
or to any person or agency, and the department of fish and wildlife,
the department of (community, trade, and economic development)
commerce, and the department of agriculture are each empowered to
participate in proceedings of the federal energy regulatory
commission and other agencies to present its views on minimum flow
needs.

Sec. 303. RCW 90.03.290 and 2001 c 239 s 1 are each amended to
read as follows:
(1) When an application complying with the provisions of this
chapter and with the rules of the department has been filed, the same
shall be placed on record with the department, and it shall be its
duty to investigate the application, and determine what water, if
any, is available for appropriation, and find and determine to what
beneficial use or uses it can be applied. If it is proposed to
appropriate water for irrigation purposes, the department shall
investigate, determine and find what lands are capable of irrigation
by means of water found available for appropriation. If it is proposed to
appropriate water for the purpose of power development,
the department shall investigate, determine and find whether the
proposed development is likely to prove detrimental to the public
interest, having in mind the highest feasible use of the waters
belonging to the public.
(2)(a) If the application does not contain, and the applicant
does not promptly furnish sufficient information on which to base
such findings, the department may issue a preliminary permit, for a
period of not to exceed three years, requiring the applicant to make
such surveys, investigations, studies, and progress reports, as in
the opinion of the department may be necessary. If the applicant
fails to comply with the conditions of the preliminary permit, it and
the application or applications on which it is based shall be
automatically canceled and the applicant so notified. If the holder
of a preliminary permit shall, before its expiration, file with the
department a verified report of expenditures made and work done under
the preliminary permit, which, in the opinion of the department,
establishes the good faith, intent, and ability of the applicant to
carry on the proposed development, the preliminary permit may, with
the approval of the governor, be extended, but not to exceed a
maximum period of five years from the date of the issuance of the
preliminary permit.

(b) For any application for which a preliminary permit was issued
and for which the availability of water was directly affected by a
moratorium on further diversions from the Columbia river during the
years from 1990 to 1998, the preliminary permit is extended through
June 30, 2002. If such an application and preliminary permit were
canceled during the moratorium, the application and preliminary
permit shall be reinstated until June 30, 2002, if the application
and permit: (i) Are for providing regional water supplies in more
than one urban growth area designated under chapter 36.70A RCW and in
one or more areas near such urban growth areas, or the application
and permit are modified for providing such supplies, and (ii) provide
or are modified to provide such regional supplies through the use of
existing intake or diversion structures. The authority to modify such
a canceled application and permit to accomplish the objectives of
(b)(i) and (ii) of this subsection is hereby granted.

(3) The department shall make and file as part of the record in
the matter, written findings of fact concerning all things
investigated, and if it shall find that there is water available for
appropriation for a beneficial use, and the appropriation thereof as
proposed in the application will not impair existing rights or be
detrimental to the public welfare, it shall issue a permit stating
the amount of water to which the applicant shall be entitled and the
beneficial use or uses to which it may be applied: PROVIDED, That
where the water applied for is to be used for irrigation purposes, it
shall become appurtenant only to such land as may be reclaimed
thereby to the full extent of the soil for agricultural purposes. But
where there is no unappropriated water in the proposed source of
supply, or where the proposed use conflicts with existing rights, or
threatens to prove detrimental to the public interest, having due
regard to the highest feasible development of the use of the waters
belonging to the public, it shall be duty of the department to reject
such application and to refuse to issue the permit asked for.

(4) If the permit is refused because of conflict with existing
rights and such applicant shall acquire same by purchase or
condemnation under RCW 90.03.040, the department may thereupon grant
such permit. Any application may be approved for a less amount of
water than that applied for, if there exists substantial reason
therefor, and in any event shall not be approved for more water than
can be applied to beneficial use for the purposes named in the
application. In determining whether or not a permit shall issue upon
any application, it shall be the duty of the department to
investigate all facts relevant and material to the application. After
the department approves said application in whole or in part and
before any permit shall be issued thereon to the applicant, such
applicant shall pay the fee provided in RCW 90.03.470: PROVIDED
FURTHER, That in the event a permit is issued by the department upon
any application, it shall be its duty to notify the director of fish
and wildlife of such issuance.

(5) The requirements of subsections (1) and (3) of this section
do not apply to water resource mitigation pilot projects for which
permits are issued in reliance upon water resource mitigation of
impacts to instream flows and closed surface water bodies under
section 301 of this act.

NEW SECTION. Sec. 304. The legislature intends to appropriate
three hundred million dollars for projects to achieve the goals of
this act until June 30, 2033. The department of ecology is directed
to implement a program to restore and enhance stream flows by
fulfilling obligations under this act to develop and implement plans
to restore stream flows to levels necessary to support robust,
healthy, and sustainable salmon populations.

NEW SECTION. Sec. 305. Sections 201 through 208 and 301 of this
act constitute a new chapter in Title 90 RCW.

NEW SECTION. Sec. 306. If any provision of this act or its
application to any person or circumstance is held invalid, the
remainder of the act or the application of the provision to other
persons or circumstances is not affected.

NEW SECTION. Sec. 307. This act is necessary for the immediate
preservation of the public peace, health, or safety, or support of
the state government and its existing public institutions, and takes effect immediately.

--- END ---
TITLE OF DOCUMENT:
Resolution re: roles of water resource planning under RCW 90.82 & ESSB 6091

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.)
Resolution recognizing the roles and duties of Whatcom County, the WRIA 1 Planning Unit, and the WRIA 1 initiating governments regarding water resources planning under RCW 90.82 and ESSB 6091

COMMITTEE ACTION:
4/10/2018: Held in SCOTW for two weeks

COUNCIL ACTION:
3/27/2018: Introduced 5-1, Browne opposed and Sidhu absent
4/10/2018: Held in Committee

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

Please Note: Once adopted and signed, ordinances and resolutions are available for viewing and printing on the County’s website at: www.co.whatcom.wa.us/council.
RESOLUTION NO. 2018-____

RECOGNIZING THE ROLES AND DUTIES OF WHATCOM COUNTY, THE WRIA 1 PLANNING UNIT, AND THE WRIA 1 INITIATING GOVERNMENTS REGARDING WATER RESOURCES PLANNING UNDER RCW 90.82 AND ESSB 6091

WHEREAS, in 1998, the Washington State Legislature adopted ESHB 2514, 90.82 RCW, the Watershed Planning Act (WPA); and

WHEREAS, RCW 90.82.005 states, "The purpose of this chapter is to develop a more thorough and cooperative method of determining what the current water resource situation is in each water resource inventory area of the state and to provide local citizens with the maximum possible input concerning their goals and objectives for water resource management and development"; and

WHEREAS, RCW 90.82.005 states, "The legislature finds that the local development of watershed plans for managing water resources and for protecting existing water rights is vital to both state and local interests. The local development of these plans serves vital local interests by placing it in the hands of people: Who have the greatest knowledge of both the resources and the aspirations of those who live and work in the watershed; and who have the greatest stake in the proper, long-term management of the resources. The development of such plans serves the state's vital interests by ensuring that the state's water resources are used wisely, by protecting existing water rights, by protecting instream flows for fish, and by providing for the economic well-being of the state's citizenry and communities. Therefore, the legislature believes it necessary for units of local government throughout the state to engage in the orderly development of these watershed plans"; and

WHEREAS, RCW 90.82.060 called out the "initiating governments" as the entities responsible for developing a scope of work for watershed planning and organizing a Planning Unit to oversee and approve watershed planning activities under the WPA; and

WHEREAS, the WRIA 1 Initiating Governments consist of Whatcom County, the Lummi Nation, the Nooksack Tribe, the City of Bellingham and PUD No. 1 of Whatcom County; and

WHEREAS, on May 5, 1998, Whatcom County Council unanimously adopted Resolution 1998-024 whereby Whatcom County affirmed its duty under RCW 90.82 to serve as "watershed planning lead agency" among the Initiating Governments; and

WHEREAS, on October 26, 1999, Whatcom County Council unanimously adopted Resolution 1999-050 whereby Whatcom County affirmed that it is the duty of the Whatcom County Councilmembers to represent their constituents in watershed issues, and resolved that regular monthly meetings would be scheduled with the County Administration to provide ongoing opportunities for the County Council to review and approve policy and budget matters prior to joint review and agreement among the Initiating Governments; and

WHEREAS, RCW 90.82.030 (1) states, "All WRIA planning units established under this chapter shall develop a process to assure that water resource user interests and directly involved interest groups at the local level have the opportunity, in a fair and equitable manner, to give input and direction to the process"; and

1
WHEREAS, on December 22, 1999, the WRIA 1 Planning Unit ("Planning Unit") was formed through adoption of the Watershed Management Project Planning Unit Process and Procedural Agreement; and

WHEREAS, the Planning Unit included a broad range of water resource user interests and directly involved interest groups in two categories: governmental participants included Whatcom County, PUD No. 1 of Whatcom County, the City of Bellingham, the State Department of Ecology, the Small Cities Caucus, the Water Districts Caucus, the Diking and Drainage Districts Caucus and the Port of Bellingham and non-governmental participants included caucuses representing agriculture, fishers, forestry, land development, environmental, private well owners, and non-municipal water systems; and

WHEREAS, the Lummi Nation and Nooksack Tribe were invited to join the Planning Unit but declined, choosing instead to participate through a Memorandum of Understanding with the three other Initiating Governments; and

WHEREAS, in March of 2000 the Planning Unit approved a scope of work that called for development of a watershed management plan that addressed water quantity, water quality, instream flow, and fish habitat; and

WHEREAS, in 2005 the Planning Unit approved and Whatcom County adopted the WRIA 1 Watershed Management Plan (WMP); and

WHEREAS, the Lummi Indian Business Council and Nooksack Tribal Council also approved the WRIA 1 Watershed Management Plan; and

WHEREAS, in 2007 the Planning Unit approved and Whatcom County adopted the WRIA 1 Detailed Implementation Plan (DIP), which was required pursuant to RCW 90.82.043; and

WHEREAS, both the WMP and DIP called for the Planning Unit to continue functioning to address instream flows and WMP updates; and

WHEREAS, in July of 2013 the Whatcom County Council recognized that the Planning Unit had not met since June 30, 2009; and

WHEREAS, on July 23, 2013, Whatcom County Council unanimously adopted Resolution 2013-025 wherein the Whatcom County Council declared its policy on the continuing role of the Planning Unit and re-affirmed the Council’s role in approving water resource plans pursuant to RCW 90.82; and

WHEREAS, Resolution 2013-025 requested that the Planning Unit report regularly to the County Council and that the County Executive facilitate this reporting function; and

WHEREAS, the Planning Unit resumed meeting in September 2013 and has met regularly since that time; and

WHEREAS, on May 21, 2014, the Planning Unit revised its Process and Procedural Agreement to clarify that its decisions would be based on majority vote of the members present, except where other procedures were mandated by statute; and
WHEREAS, RCW 90.82.130 states, "Upon completing its proposed watershed plan, the planning unit may approve the proposal by consensus of all of the members of the planning unit or by consensus among the members of the planning unit appointed to represent units of government and a majority vote of the nongovernmental members of the planning unit"; and

WHEREAS, Whatcom County, represented by staff of the County Executive, is a governmental member of the Planning Unit; and

WHEREAS, on January 19, 2018, Engrossed Substitute Senate Bill 6091 (ESSB 6091), an act relating to ensuring that water is available to support development, took effect; and

WHEREAS, ESSB 6091 at Section 202, Subsection 4(a) requires the Initiating Governments to collaborate with the Planning Unit to update the WRIA 1 Watershed Plan, "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"; and

WHEREAS, ESSB 6091 (Section 202, Subsection 4(b)) specifies that the updated watershed plan must include at a minimum "those actions that the planning units determine to be necessary to offset potential impacts to instream flows associated with permit-exempt domestic water use"; and

WHEREAS, ESSB 6091 (Section 202 Subsection 5) establishes a fee of five hundred dollars to be paid to Whatcom County by applicants for building permits or subdivisions, three hundred fifty dollars of which is to be deposited in a new watershed restoration and enhancement account in the custody of the State Treasurer; and

WHEREAS, ESSB 6091 (Section 202 Subsection 5) also establishes a maximum annual average withdrawal rate of three thousand gallons per day for domestic withdrawals exempt from permitting under RCW 90.44.050; and

WHEREAS, ESSB 6091 contemplates that the updated watershed plan may recommend modifications to the water use quantity standards and fees established under Section 202 Subsection 5 and may also identify evidence-based conservation requirements and other water resource management measures; and

WHEREAS, ESSB 6091 (Section 202 Subsection 6) states that rules adopted pursuant to this Act may: (1) rely on the updated watershed plan’s recommendations and procedures to authorize new withdrawals exempt from permitting under RCW 90.44.050 that would potentially impact a closed waterbody or minimum flow or level; (2) rely on projects identified in the updated watershed plan to offset consumptive water use; and (3) include updates to fees based on the Planning Unit’s determination of the costs for offsetting water use; and

WHEREAS, the WRIA 1 Watershed Management Plan was adopted pursuant to RCW 90.82.130, which states that the Planning Unit’s recommended plan must be submitted to the County for final approval or disapproval; and

WHEREAS, the adopted WRIA 1 Watershed Management Plan may be amended only through a form of negotiated rule making that uses the same processes that applied in WRIA 1 for developing the plan.
NOW, THEREFORE BE IT RESOLVED:

Section 1: Findings. The County Council finds that the update of the adopted WRIA 1 Watershed Management Plan specified in ESSB 6091 is a high priority that warrants extremely careful Council oversight. Because of its potentially significant impacts on citizens of Whatcom County, the updated plan must be developed in an open and transparent manner. Meetings of the County Council provide an essential opportunity for public involvement in the process of updating this important plan.

Section 2: Council Authority. Whatcom County Council is the legislative body with exclusive authority under Chapter 90.82 to finally approve the updated WRIA 1 Watershed Management Plan required under ESSB 6091.

Section 3: Planning Unit Role. Pursuant to RCW 90.82, the Planning Unit is designed to be broadly representative of local water interests in WRIA 1. The Planning Unit is the sole entity, established under RCW 90.82, responsible for recommending amendments to the adopted WRIA 1 Watershed Management Plan for Council action. Because the Planning Unit is established pursuant to statute with the power to take actions which are necessary antecedents to the Council’s action in final plan approval, the Planning Unit is a sub agency of government subject to the Open Public Meetings Act. Meetings of the Planning Unit provide an additional opportunity for public involvement in the process of updating the WRIA 1 Watershed Management Plan.

Section 4: Initiating Governments Role. Under RCW 90.82, the Initiating Governments developed the scope of work for watershed planning and organized the WRIA 1 Planning Unit. Under ESSB 6091, the Initiating Governments have the additional task of collaborating with the Planning Unit to update the WRIA 1 Watershed Management Plan.

Section 5: Requests for Information. The County Council requests that the Planning Unit continue to report regularly to the County Council on the status of its work. In order to enhance public involvement, many of these reports should take place during regular evening Council meetings. The Council further requests that the County Executive continue to facilitate this reporting function. The Council also requests a briefing from the County Executive on how the Initiating Governments will collaborate with the Planning Unit to update the WRIA 1 Watershed Management Plan, while maintaining and supporting the Planning Unit’s statutory responsibilities per RCW 90.82 and ESSB 6091. Ideally, this briefing will convey a joint statement from the Initiating Governments and the Planning Unit.

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:

Karen Frakes, Prosecuting Attorney
TITLE OF DOCUMENT:
Update from Whatcom Events on Ski to Sea Race

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.)

Update from Whatcom Events on Ski to Sea Race

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:**
Presentation of 2017 Bellingham Whatcom Tourism results.

**ATTACHMENTS:**
N/A

**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.)

Presentation of Bellingham Whatcom Tourism results for 2017 presented by President and CEO, Sandy Ward

**COMMITTEE ACTION:**

**COUNCIL ACTION:**

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

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<tr>
<td>K. Olson</td>
<td>KO</td>
<td>3-26-18</td>
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<tr>
<td>Jon Hutchings</td>
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<td>Purchasing/Budge:</td>
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<td></td>
<td>4-2-18</td>
<td></td>
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<tr>
<td>Executive:</td>
<td></td>
<td></td>
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</table>

**TITLE OF DOCUMENT:**

Amendment No. 2 to Ordinance 2014-081 Establishing the Agate Heights Estate/Bay Lane Storm Water Improvements Fund and Establishing a Project Based Budget for Agate Heights Estate/Bay Lane Stormwater Improvements

**ATTACHMENTS:**

Ordinance Amendment, Exhibit A, Supplemental Budget Request, and Memorandum

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

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

Amendment Number 2 to the Agate Heights Estate/Bay Lane Stormwater Improvements Fund Project Budget Requests additional appropriation authority of $528,219 for a new Project Based Budget total of 1,308,219.

**COMMITTEE ACTION:**

**COUNCIL ACTION:**

4/10/2018: Introduced 7-0

**Related County Contract #:**

**Related File Numbers:**

**Ordinance or Resolution Number:**

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

AMENDMENT NO. 2 TO ORDINANCE NO. 2014-081 ESTABLISHING THE AGATE HEIGHTS/ESTATE BAY LANE STORM WATER IMPROVEMENTS FUND AND ESTABLISHING A PROJECT BASED BUDGET FOR AGATE HEIGHTS ESTATE/BAY LANE STORM WATER IMPROVEMENTS

WHEREAS, Agate Heights Estate/Bay Lane Storm Water improvements is listed as item number 1 on the 2018-2023 Six-Year Water Resources Improvement Program,

WHEREAS, the project will treat runoff from approximately 90 acres and includes system upgrades to improve water quality through construction of bio infiltration swales and channel stabilization to reduce ditch erosion, and

WHEREAS, additional funding is being requested to complete design phases for both phase 1 and 2 and to construct phase 1, and

WHEREAS, this request adds additional funding for wages and benefits, contracted professional services, county survey and permit assistance, as well as permit fees to the project based budget for this Stormwater project and will more accurately reflect the true costs of the project, and

WHEREAS, this budget request will supplement the original proposal and first amendment by adding professional service categories and inter-fund account codes needed to track those specific activities, and

WHEREAS, these additional expenses will be funded by a transfer from Real Estate Excise Tax II funds,

NOW, THEREFORE, BE IT ORDAINED by the Whatcom County Council that Ordinance No. 2014-081 is hereby amended to add $528,219 of expenditure authority, as described in Exhibit A, to the current project budget of $780,000, for a total amended project budget of $1,308,219.

ADOPTED this ____ day of April, 2018.

ATTEST:

Dana Brown-Davis, Clerk of the Council

Rud Browne, Council Chair

APPROVED AS TO FORM:

Civil Deputy Prosecutor

Jack Louws, County Executive

( ) Approved ( ) Denied
## Agate Heights Estate/Bay Lane Stormwater Improvements

<table>
<thead>
<tr>
<th>Account</th>
<th>Descriptions</th>
<th>Current Amended Project Budget</th>
<th>Amendment #2 to Ord. 2014-080</th>
<th>Total Amended Project Budget</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Expenditures</strong></td>
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<td></td>
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<tr>
<td>6110 Wages</td>
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<td></td>
<td></td>
<td><strong>$780,000</strong></td>
<td><strong>$528,219</strong></td>
<td><strong>$1,308,219</strong></td>
</tr>
<tr>
<td><strong>Revenues</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>8301.324 REET II Transfer In</td>
<td></td>
<td>$780,000</td>
<td>$528,219</td>
<td>$1,308,219</td>
</tr>
</tbody>
</table>
MEMORANDUM

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

THROUGH: Jon Hutchings, Public Works Director

FROM: Kraig Olason, Senior Planner

DATE: March 20, 2018

RE: Supplemental Budget request #2576 - Agate Heights Estate/Bay Lane Stormwater Improvements

- Requested Action
  Please find attached for approval supplemental budget request number 2 from Public Works Stormwater for the Agate Heights Estate/Bay Lane Stormwater Improvement project.

- Background and Purpose
  This project will improve water quality in the Lake Whatcom watershed by substantially reducing the discharge of phosphorus and other pollutants to Agate Bay. Runoff along Agate Bay Road and Agate Heights Road will be addressed by improving the existing ditches to increase infiltration and filtration treatment and decrease the flow velocity. Stormwater will also be managed with low impact development methods (bio-infiltration swales or media filter drains with infiltration). This is a priority capital project in the Lake Whatcom Comprehensive Stormwater Management Plan and is listed as Item No. 1 on the 2018-2023 Six-Year Water Resources Improvement Program.

  The funds requested are to complete design phases for both phase 1 and 2 and to construct phase 1. Final construction costs for phase 2 have yet to be developed. Over $900,000 in Grant funds from Washington Department of Ecology are being offered and may be available to offset much of the costs for Phase 2. Reimbursement for work already underway on phase 2 should be eligible if a final contract agreement with WDOE is completed by fall of 2018.

- Funding Amount and Source
  This request, in the additional amount of $528,219 will be funded by Real Estate Excise Tax II funds.

  Please contact Kraig Olason at extension 6301, if you have any questions or concerns regarding the terms of this agreement,
Supplemental Budget Request

Public Works

Fund 365  Cost Center 365100  Originator: Kraig Olason

Stormwater

Status: Pending

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

Name of Request: Agate Heights Supplement #2

Department Head Signature (Required on Hard Copy Submission)  Date: 3/26/18

<table>
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<tr>
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<th>Object</th>
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<th>Amount Requested</th>
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<td>Professional Services</td>
<td>$405,144</td>
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<td>6699</td>
<td>Other Services-Interfund</td>
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<td></td>
<td>7199</td>
<td>Other Miscellaneous/Interf</td>
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<tr>
<td></td>
<td>8301.324</td>
<td>Operating Transfer In</td>
<td>($528,219)</td>
</tr>
</tbody>
</table>

Request Total  $0

1a. Description of request:

This project will improve water quality in the Lake Whatcom watershed by substantially reducing the discharge of phosphorus and other pollutants to Agate Bay. Runoff along Agate Bay Road and Agate Heights road will be addressed by improving the existing ditches to increase infiltration and filtration treatment and decrease the flow velocity. Stormwater will also be managed with low impact development methods (media filter drains) This is a priority capital project in the Lake Whatcom Comprehensive Stormwater Management Plan and is listed as the No. 1 project on the 2018-2023 Six-Year Water Resources Improvement Program.

The funds requested are to complete design phases for both phase 1 and 2 and to construct phase 1. Final construction costs for phase 2 have yet to be developed. Over $900,000 in Grant funds from Washington Department of Ecology are being offered and may be available to offset much of the costs for Phase 2. Reimbursement for work already underway on phase 2 should be eligible if a final contract agreement with WDOE is completed by fall of 2018.

1b. Primary customers:

The primary customers of this project are the users of Lake Whatcom, both those that rely on it for drinking water and those who use it recreationally.

2. Problem to be solved:

Water quality improvement is the primary benefit of the project, especially the reduction of phosphorus through the treatment of local area runoff by the installed treatment systems. This amendment compliments the project based budget by providing enhanced detail of funding needs. The original proposal and first amendment didn’t include professional services categories or inter-fund transfer codes needed to track those specific activities. They are included in this supplemetnal request.

3a. Options / Advantages:

The additional funds will provide funding necessary to complete the construction and construction related activities required to finish phase 1 and additional funds to cover expenses incurred in the ongoing design of phase 2.

3b. Cost savings:

There are no direct cost savings associated with this request.
Supplemental Budget Request

<table>
<thead>
<tr>
<th>Public Works</th>
<th>Stormwater</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Supp'l ID #</strong> 2576</td>
<td><strong>Fund</strong> 365 <strong>Cost Center</strong> 365100 <strong>Originator:</strong> Kraig Olason</td>
</tr>
</tbody>
</table>

**4a. Outcomes:**
This supplemental request provides more accurate tracking and better detail from which to manage this capital project.

**4b. Measures:**
N/A

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

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

**6. Funding Source:**
The supplement request will be funded by REET.
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<thead>
<tr>
<th>CLEARANCES</th>
<th>Initial</th>
<th>Date</th>
<th>Date Received in Council Office</th>
<th>Agenda Date</th>
<th>Assigned to</th>
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<td>04/10/18</td>
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<td></td>
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<td></td>
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<tr>
<td>Prosecutor:</td>
<td>UNF</td>
<td>3/29/18</td>
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<tr>
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<td>4.2.18</td>
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**TITLE OF DOCUMENT:** 2018 Supplemental Budget Request #6

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

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<th>SEPA review required?</th>
<th>( ) Yes ( X ) NO</th>
<th>Should Clerk schedule a hearing?</th>
<th>( ) Yes ( X ) NO</th>
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<tr>
<td>SEPA review completed?</td>
<td>( ) Yes ( X ) NO</td>
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</table>

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

**Supplemental #6 requests funding from the General Fund:**

1. To appropriate $40,000 in Non Departmental to fund transfer in support of AS Facilities building security patrol services.
2. To appropriate $44,011 in Sheriff to fund boating safety program patrols from grant and vessel registration proceeds.
3. To appropriate $345,000 in Sheriff to fund Federal Fiscal Year 17 Operation Stonegarden program from grant proceeds.
4. To appropriate $43,495 in Superior Court to fund Commercial Sexual Exploitation of Children (CSEC) Task Force support activities from grant proceeds.

**From the Road Fund:**

5. To fund the addition of a Clerk/Receptionist FTE position in Engineering Services.

**From the Emergency Management Fund:**

6. To appropriate $60,000 in Sheriff-Division of Emergency Management to fund Whatcom Unified Emergency Coordination Center (WUECC) projects from donation proceeds.

**From the Conservation Futures Fund:**

7. To appropriate $1,242,327 to fund four agricultural conservation easement purchases (Matheson, Broad Leaf Farm, Grubbs, and Cougar Creek).

**From Real Estate Excise Tax Fund I:**

8. To appropriate $450,000 to fund Williamson Way renovation for Facilities Management relocation.

**From the Real Estate Excise Tax Fund II:**

9. To appropriate $528,219 to fund transfer in support of Amendment No. 2 to the Agate Heights Estate/Bay Lane Storm Water Project budget.

**From the Administrative Services Fund:**

10. To appropriate $40,000 in Facilities to fund building security patrol services from the proceeds of a General Fund transfer.

**COMMITTEE ACTION:**

<table>
<thead>
<tr>
<th>COUNCIL ACTION:</th>
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</thead>
<tbody>
<tr>
<td>4/10/2018: Introduced 7-0</td>
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</table>

**Related County Contract #:**

**Related File Numbers:**

**Ordinance or Resolution Number:**

83
ORDINANCE NO. 
AMENDMENT NO. 6 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>
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<th>Revenues</th>
<th>Net Effect</th>
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</thead>
<tbody>
<tr>
<td>General Fund</td>
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<tr>
<td>Non Departmental</td>
<td>40,000</td>
<td>-</td>
<td>40,000</td>
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<tr>
<td>Sheriff</td>
<td>389,011</td>
<td>(361,811)</td>
<td>27,200</td>
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<tr>
<td>Superior Court</td>
<td>43,495</td>
<td>(30,000)</td>
<td>13,495</td>
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<tr>
<td><strong>Total General Fund</strong></td>
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<td><strong>(391,811)</strong></td>
<td><strong>80,695</strong></td>
</tr>
<tr>
<td>Road Fund</td>
<td>43,539</td>
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<td>43,539</td>
</tr>
<tr>
<td>Emergency Management Fund</td>
<td>60,000</td>
<td>(60,000)</td>
<td>-</td>
</tr>
<tr>
<td>Conservation Futures Fund</td>
<td>1,242,327</td>
<td>(937,500)</td>
<td>304,827</td>
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<tr>
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<td>-</td>
<td>450,000</td>
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<tr>
<td>Real Estate Excise Tax Fund II</td>
<td>528,219</td>
<td>-</td>
<td>528,219</td>
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<tr>
<td>Administrative Services Fund</td>
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<td>(40,000)</td>
<td>-</td>
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<tr>
<td><strong>Total Supplemental</strong></td>
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<td><strong>(1,429,311)</strong></td>
<td><strong>1,407,280</strong></td>
</tr>
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</table>

In addition, Exhibit C – Authorized Positions in the 2017-2018 Budget Ordinance should be 
amended to provide for the following FTE change:

- Add 1 FTE Clerk/Receptionist in Public Works - Engineering

ADOPTED this ___ day of ____________________, 2018.

ATTEST:

WHATCOM COUNTY COUNCIL
WHATCOM COUNTY, WASHINGTON

Dana Brown-Davis, Council Clerk

Rud Browne, Chair of the Council

APPROVED AS TO FORM:

( ) Approved  ( ) Denied

Jack Louws, County Executive

Date: ______________________

I:\BUDGET\SUPPLS\2018_Suppl\Supplemental #6-2018.docx
<table>
<thead>
<tr>
<th>Department/Fund</th>
<th>Description</th>
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<th>(Increased) Decreased Revenue</th>
<th>Net Effect to Fund Balance (Increase) Decrease</th>
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<tr>
<td><strong>General Fund</strong></td>
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<td></td>
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<tr>
<td>Non Departmental</td>
<td>To fund transfer in support of security patrol services.</td>
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<td>-</td>
<td>40,000</td>
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<tr>
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<td>To fund recreational boating safety program from grant proceeds.</td>
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<td>To fund boating safety program overtime patrols from vessel registration proceeds</td>
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<td>27,200</td>
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<tr>
<td>Sheriff</td>
<td>To fund Federal Fiscal Year 2017 Operation Stonegarden program from grant proceeds</td>
<td>345,000</td>
<td>(345,000)</td>
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<td>Superior Court</td>
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<tr>
<td><strong>Total General Fund</strong></td>
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<td>(391,811)</td>
<td>80,695</td>
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<td>Conservation Futures Fund</td>
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<tr>
<td>Planning &amp; Development Services</td>
<td>To fund Matheson agricultural conservation easement.</td>
<td>215,718</td>
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<td>To fund Broad Leaf Farm agricultural conservation easement.</td>
<td>271,963</td>
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<td>144,463</td>
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<td>To fund Grubbs agricultural conservation easement.</td>
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<td>Real Estate Excise Tax Fund I</td>
<td>To fund Williamson Way renovation for Facilities Management relocation.</td>
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<td>450,000</td>
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<td>To fund transfer in support of Amendment No. 2 to Agate Bay Storm Water Project Budget</td>
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<td>-</td>
<td>528,219</td>
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<td>Administrative Services Fund - Facilities</td>
<td>To fund building patrol services from General Fund transfer.</td>
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<td>(40,000)</td>
<td>-</td>
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<td>2,836,591</td>
<td>(1,429,311)</td>
<td>1,407,280</td>
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Supplemental Budget Request

Non-Departmental

<table>
<thead>
<tr>
<th>Suppl ID #</th>
<th>Fund</th>
<th>Cost Center</th>
<th>Originator</th>
</tr>
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<tbody>
<tr>
<td>2980</td>
<td>1</td>
<td>4530</td>
<td>M Caldwell</td>
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</table>

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

Name of Request: Transfer to fund security patrol services

X

Department Head Signature (Required on Hard Copy Submission) Date

<table>
<thead>
<tr>
<th>Costs</th>
<th>Object</th>
<th>Object Description</th>
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<tr>
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</table>

1a. Description of request:
Companion supplemental to Facilities Supplemental ID #2571 Building Patrol Services to provide funding from the General Fund for security patrol services.

1b. Primary customers:

2. Problem to be solved:

3a. Options / Advantages:

3b. Cost savings:

4a. Outcomes:

4b. Measures:

5a. Other Departments/Agencies:

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

6. Funding Source:
General Fund

Wednesday, March 28, 2018
MEMORANDUM

TO:        Jack Louws, County Executive
FROM:          Sheriff Bill Elfo
DATE:    March 23, 2018
SUBJECT: Sweet supplemental Budget ID# 2574
          Recreational Boating Safety Grant - 2018

The attached Supplemental Budget requests budget authority for the 2018 Recreational Boating Safety Grant.

Background and Purpose
The Sheriff’s Office received a Recreational Boating Safety Grant from Washington State Parks and Recreation Commission for the period March 1 through September 30, 2018. This is an annual grant awarded to the Sheriff’s Office to conduct on the water patrols during the peak boating period.

Funding Amount and Source

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

Thank you.
Supplemental Budget Request

Sheriff Operations

Suppl ID # 2574

Fund 1 Cost Center 1003512006 Originator: Dawn Pierce

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

Name of Request: Recreational Boating Safety Grant - 2018

Department Head Signature (Required on Hard Copy Submission) Date

X

3.23.18

Costs:

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

1b. Primary customers:
Whatcom County citizens and visitors

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

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

3b. Cost savings:
Cost savings of $16,811.

4a. Outcomes:
Marine patrols will be conducted during the peak boating period from May to September 2018.

4b. Measures:
Written vessel inspections will be completed and submitted to State Parks.

5a. Other Departments/Agencies:

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: March 23, 2018
SUBJECT: Supplemental Budget ID# 2575
Boating Safety Program OT Patrols - 2018

The attached supplemental budget requests budget authority for Boating Safety Program Overtime Patrols in 2018.

Background and Purpose
The Sheriff’s Office is currently the only law enforcement agency in Whatcom County that operates a state approved boating safety program under WAC 352-65. State approved boating safety programs require that certified deputies patrol the waterways during peak recreational boating periods. The Sheriff’s Office provides recreational boating safety patrols and enforcement of both county code and state law, and VRF Reserve Accounts funds are needed for water patrols in 2018.

Funding Amount and Source
$27,200 from the Vessel Registration Fee (VRF) Reserve Account.

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

Thank you.
Supplemental Budget Request

Sheriff Operations

Suppl ID # 2575  Fund 1  Cost Center 2960  Originator: Dawn Pierce

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

Name of Request: Boating Safety Program OT Patrols - 2018

Department Head Signature (Required on Hard Copy Submission)  Date

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<td>Request Total</td>
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<td>$27,200</td>
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</table>

1a. Description of request:
The Sheriff's Office operates a state approved boating safety program under WAC 352-65 and provides recreational boating safety patrols and enforcement of both county code and state law.

Vessel Registration Fees (VRF) are collected by the State and allocated to counties for approved boating safety education and law enforcement programs. In accordance with state law, these funds are deposited into an account dedicated solely for supporting the jurisdiction's boating safety program.

1b. Primary customers:
Whatcom County citizens and visitors

2. Problem to be solved:
State approved boating safety programs require that certified officers patrol the waterways during peak recreational boating periods. The Sheriff's Office schedules water patrols during the boating season from Memorial Day weekend through Labor Day weekend on overtime so as not to adversely impact the regular patrol schedule. VRF Reserve Account funds are needed to conduct water patrols in 2018.

3a. Options / Advantages:

3b. Cost savings:

4a. Outcomes:
Water patrols will be conducted per state approved Boating Safety Program requirements.

4b. Measures:
The Sheriff's Office will provide on-the-water patrols and enforcement of boating laws and regulations.

5a. Other Departments/Agencies:

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

6. Funding Source:
Vessel Registration Fee (VRF) Reserve Account funds.

Friday, March 23, 2018

Rpt: Rpt Suppl Regular
MEMORANDUM

TO: Jack Louws, County Executive
FROM: Sheriff Bill Elfo
DATE: March 26, 2018

SUBJECT: Supplemental Budget ID# 2578
        FY17 Operation Stonegarden – 2018


Background and Purpose
The U.S. Department of Homeland Security (DHS) Homeland Security Grant Program (HSGP) authorized FY2017 Operation Stonegarden funds of $345,000 to Whatcom County to enhance law enforcement’s preparedness and operational readiness along the international borders of the United States: $120,000 for the Sheriff’s Office and $225,000 for other area law enforcement agencies (sub-recipients).

Funding Amount and Source

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

Thank you.
Supplemental Budget Request

Status: Pending

Sheriff Operations

Fund 1 Cost Center 1003517604 Originator: Dawn Pierce

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

Name of Request: FY17 Operation Stonegarden - 2018

Department Head Signature (Required on Hard Copy Submission) Date

X

3/26/18

Costs:

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<td>7220</td>
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<td>Request Total</td>
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<td>$0</td>
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1a. Description of request:

The U.S. Department of Homeland Security (DHS) Federal Emergency Management Agency (FEMA) awarded $345,000 to Whatcom County for Operation Stonegarden Grant Program (OPSG) FY2017. These funds are awarded 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. The Sheriff's Office will use the allocation as follows: $64,400 for overtime, $48,000 for equipment, $7,600 for mileage, and $225,000 for sub-recipients.

The Whatcom County Sheriff's Office and other law enforcement agencies will use OPSG funding to provide enhanced patrols to increase law enforcement presence in maritime and land based order 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

2. Problem to be solved:

Whatcom County shares over 131 miles of border with Canada (89 miles of land border and 42 miles of maritime border). These borders are open, easily accessible, and vulnerable to incursion by undocumented aliens, contraband smugglers, and potential terrorists.

Whatcom County's land border with Canada is adjacent to the Vancouver metropolitan area which lies immediately north of the international boundary. Intelligence indicates there are multiple terrorist organizations and/or sympathizers located in Canada, many in the Vancouver area. Due to its temperate climate and close proximity to Vancouver, B.C., seaports, international airports, and the I-5 corridor, Whatcom County has been a favored operational area for alien drug, and weapons smugglers. The vulnerability in border security set against the volume of criminal activity in the region puts Whatcom County borders at risk.
Supplemental Budget Request

Sheriff

| Suppl ID # 2579 | Fund 1 | Cost Center | Originator: Dawn Pierce |

Operation Stonegarden projects will strengthen partnerships among federal, state, and local agencies and improve border security through increased cooperation and enhanced patrols.

3a. Options / Advantages:
OPSG funds are awarded specifically for projects that will enhance law enforcement's preparedness and operational readiness along international borders of the United States, projects that would otherwise have to be funded with local monies or eliminated.

3b. Cost savings:
Total award $345,000:
Whatcom County Sheriff's Office $120,000; other law enforcement agencies (sub-recipients) $225,000.

4a. Outcomes:
Enhanced patrols will be completed per contract specifications and timelines.
Daily Activity Reports will be completed and sent to Border Patrol.

4b. Measures:
The Whatcom County Sheriff's Office and U.S. Border Patrol will monitor projects and expenditures against contract deliverables.

5a. Other Departments/Agencies:

Although receiving no OPSG funding, U.S. Border Patrol will provide coordination among participating agencies. Participating agencies receiving OPSG funding will provide enhanced law enforcement presence to reduce criminal activity in border areas.

5b. Name the person in charge of implementation and what they are responsible for:
The following individuals will coordinate projects within their jurisdictions: Special Operations Supervisor Molly Pacheco, U.S. Border Patrol - Blaine Sector; Undersheriff Jeff Parks, Whatcom County Sheriff's Office; Sgt. Russ Mullins, WA Department of Fish & Wildlife; Chief Michael Knapp, Blaine PD; Chief Dan MacPhee, Everson PD; Chief Kevin Turner, Ferndale PD; Chief John Billester, Lynden PD; Chief Daniel DeBruin, Sumas PD, and Chief Ralph Long, Lummi Nation PD.

6. Funding Source:
Supplemental Budget Request

Superior Court

Suppl ID # 2573 Fund 1 Cost Center 3195 Originator: Dave Reynolds
Expenditure Type: One-Time Year 2 2018 Add'l FTE Add'l Space Priority 1

Name of Request: CSEC Task Force Support

X

Department Head Signature (Required on Hard Copy Submission) Date 3-23-2018

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1a. Description of request:
Whatcom County Superior Court has been part of a task force who is committed to addresses the Commercial Sexually Exploited Children’s Task Force. Judge Raquel Montoya-Lewis is part of this initiative, and applied for an received a grant through the State of Washington to support the coordination and outreach of this task force. Whatcom County is contracting with both the Domestic Violence and Sexual Assault Services (DVSAS) and NorthWest Youth Services to coordinate the task force.

1b. Primary customers:
The primary customers are commercially sexually exploited children.

2. Problem to be solved:
Like many locations in the United State, Whatcom County is working to eliminate commercially sexually exploited children. A local task force is partnering to address this issue. This grant will provide monies to support the local task force.

3a. Options / Advantages:
The County can not absorb these duties. Contracting with DVSAS and NWYS is the best option as they have been involved in these efforts over the past several years.

3b. Cost savings:
The long term cost savings of these efforts will be determined at a later date.

4a. Outcomes:
Train and support for the task force.

4b. Measures:
Quarterly reports are required by the granting agency who will monitor and measure the success of the efforts.

5a. Other Departments/Agencies:
Will provide funding and support to NWYS and DVSAS. Other stakeholders on the task force will benefit from these efforts.

5b. Name the person in charge of implementation and what they are responsible for:
Karen Burke, DVSAS and Riannon Bardsley, NWYS.

6. Funding Source:
DSHS Children’s Administration $50,000 grant. $20,000 received in advance from DSHS in 2017.

Friday, March 23, 2018
1a. Description of request:
The requested service is the addition of a full time employee (FTE) in a Clerk/Receptionist role operating at the Engineering Services Counter.

1b. Primary customers:
The primary customers benefiting from the addition of this FTE will be the Development Community, including permit applicants, developers, engineers and architects.

2. Problem to be solved:
There is currently one staff person assigned to the Engineering Services counter and when that staff person is unavailable, either on break, vacation, sick or other, there is a requirement for another staff person to cover the counter. That means that person is being pulled away from their standard work responsibilities for a period of time. The upcoming Customer Service Initiative must be given an opportunity to succeed and the best way to provide timely and consistent service is to verify full coverage of the Engineering Counter through the addition of a FTE.

3a. Options / Advantages:
Other options considered include work shifts of existing staff to cover the counter for a period of a few hours at a time during any service interruption due to assigned counter staff unavailability. This shift assignment severely cuts into productivity of any affected staff and is not a viable solution. Also considered, is a relocation of support staff work stations to the area near the Engineering Services counter. This option would result in a distracting work environment for the relocated staff members as well as creating a highly condensed work space both for existing counter staff and any relocated work stations. The option to add a FTE for coverage of the Engineering Services counter is the best option because that increases everyday customer service levels as well as providing 100% coverage when staff may be unavailable for any reason.

3b. Cost savings:
There are no specific cost savings associated with the addition of a FTE for coverage of the Engineering Services counter. However, overall budget increase is negligible when compared to recent changes to the Engineering Services division.

4a. Outcomes:
Outcomes for the addition of a FTE assigned to the Engineering Services counter will be seen immediately upon hire. The specific deliverables include, but are not limited to, an increase in the level of attention to customers at the counter, full time coverage for incoming applicants, developers and Engineers, relief on demands of current engineering/admin staff for coverage of the counter during assigned staff absence, ability to accept additional duties such as scanning old plan sets, providing addressing services, filing/organization of electronic documents, as well as other Customer Service
Supplemental Budget Request

<table>
<thead>
<tr>
<th>Public Works</th>
<th>Engineering Development</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Supp</strong> 10 #2557</td>
<td><strong>Fund</strong> 108  <strong>Cost Center</strong> 10853</td>
</tr>
</tbody>
</table>

focused duties that may arise in ongoing coordination efforts between the Departments of Public Works – Engineering and Planning & Development Services.

4b. **Measures:**
Success of the addition of a FTE will be readily determinable through decreased wait times for customers, quicker reaction to customer questions as they arise, a full-time coverage of the counter without the need to pull other staff away from existing workloads that would then be neglected. The success will be measured through visual observation of shorter wait times and quicker public interactions with the counter staff members. Also, success can be measured through the ongoing reduction to the massive amounts of paper documents stored in file cabinets and drawers. Programmatically scanning these documents and electronically filing them will greatly reduce clutter, need for hard storage and will open up existing storage space to be used for other purposes, such as meeting space, design review space, or computer work stations.

5a. **Other Departments/Agencies:**
This request will most definitely impact both other departments and agencies. Departments impacted will be Planning & Development Services, Health, and Fire. By increasing the level of coverage of the Engineering Services Counter, these departments will be positively benefitted through a reduction of time necessary to address concerns from applicants, developers and Engineers. Also, the additional FTE will reduce paper storage areas thus opening up additional building space available for work stations or meeting space.

5b. **Name the person in charge of implementation and what they are responsible for:**
No other Departments or Agencies are responsible for implementation of the new FTE.

6. **Funding Source:**
The funding source for this additional salary and benefits comes from Road Fund Business Unit 10853 and there is currently sufficient budget authority for this expenditure from April 1 through December 31, 2018.

Friday, March 16, 2018  
Rpt: Rpt Suppl Regular
## 2018 Budget Values

- Current 2018 Wages Budget = $374,185
- Current 2018 Benefits Budget = $270,566
- Current Total ES-T Staff Budget = $644,751

### Wage & Benefit Comparison

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## Engineering Services - Development Division Restructuring

By: DWR  
Date: 03/16/2018

### 2018 Budget Values

- Current 2018 Wages Budget = $374,185
- Current 2018 Benefits Budget = $270,566
- Current Total ES-D Staff Budget = $644,751

### Wage & Benefit Comparison

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<tr>
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<th>Fringe/year</th>
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<td>Current 2018 Rate for Temp. Reception</td>
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MEMO

To: Jack Louws, County Executive
From: Sheriff Bill Elfo, Director of Emergency Management
       John Gargett, Deputy Director of Emergency Management
Subject: Supplemental Budget Request ID # 2567
         Whatcom Unified Emergency Coordination Center (WUECC) Projects
Date: March 21, 2018

The attached Supplemental Budget Request seeks expenditure authority to proceed with various projects to enhance the capabilities of the Whatcom Unified Emergency Coordination Center (WUECC) to be funded by donations from WUECC’s private industry partners.

- Background and Purpose
  The Whatcom Unified Emergency Coordination Center (WUECC) is the single coordinated emergency point for all of Whatcom County and includes participation from the private sector and multiple political jurisdictions. As the WUECC is used and after each exercise and disaster activation, WUECC partners discuss projects that could enhance and improve the WUECC infrastructure and operational capabilities.

  WUECC partners have discussed and prioritized projects that will enhance the functionality of the WUECC. Projects include the purchase and installation of additional screens and projectors as part of the Situation Assessment Management System Project begun in 2017, electrical and plumbing improvements, IT equipment, maintenance, repair, and replacement of office equipment, and general operational readiness equipment and supplies.

- Funding Amount and Source
  $60,000; with donations from WUECC’s private industry partners.

Please contact John Gargett (778-7161, jgargett@co.whatcom.wa.us) or Frances Burkhart (778-7161, fburkhar@co.whatcom.wa.us) if you have any questions.

Our Vision: The Office of Sheriff: Dedicated to making Whatcom County the Safest in the State through Excellence in Public Safety.
Supplemental Budget Request

Sheriff Emergency Management

Supp1ID # 2567 Fund 167 Cost Center 16786 Originator: Frances Burkhart

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

Name of Request: WUECC Projects

[Signature] 3.21.2018

Department Head Signature (Required on Hard Copy Submission) Date

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1a. Description of request:
Whatcom County Sheriff’s Office Division of Emergency Management requires expenditure authority to move ahead with WUECC projects.

1b. Primary customers:
Whatcom Unified Emergency Coordination Center partners.

2. Problem to be solved:
The Whatcom Unified Emergency Coordination Center (WUECC) is operated as a partnership between the City of Bellingham, the Port of Bellingham, and Whatcom County. In addition, members of the Whatcom County Emergency Management Council, first responder agencies, and private industry partners utilize the facility, enhancing interagency cooperation and coordination. The facility provides office space for the day-to-day running of both the Bellingham and Whatcom County emergency management programs, rooms for meetings and trainings with an emergency management nexus, equipment bays for response vehicles, and an Emergency Coordination Center for use during exercises and disasters.

After each exercise and disaster response, WUECC partners discuss projects that could enhance and improve the WUECC infrastructure and capabilities. Projects may include, but are not limited to, the purchase and installation of additional screens and projectors as part of the Situation Assessment Management System Project begun in 2017; electrical and plumbing improvements; IT and radio equipment; maintenance, repair, and replacement of office equipment; and general operational readiness equipment and supplies.

3a. Options / Advantages:
WUECC partners prioritize and fund projects that will enhance the functionality of the WUECC.

3b. Cost savings:
$60,000 - These projects are funded by donations from WUECC industry partners.

4a. Outcomes:
WUECC projects will be completed, enhancing the overall capabilities of the facility for all users.

Wednesday, March 21, 2018
Rpt: Rpt Suppl Regular
4b. Measures:
Projects will be monitored for progress and completion. Effectiveness of improvements are evaluated during exercises and activations.

5a. Other Departments/Agencies:
All WUECC partners will benefit from the enhanced capabilities of the facility. Whatcom County Facilities will assist in the coordination of and contracting for any projects involving electrical, plumbing, carpentry work, etc. Bellingham and Whatcom County Information Technology will assist in the coordination of any IT projects.

5b. Name the person in charge of implementation and what they are responsible for:
Whatcom County Facilities - Mike Russell
Bellingham Information Technology - Ian Stewart and Patrick Lord
Whatcom County Information Technology - Perry Rice

6. Funding Source:
Donations from industry partners (BP, Kinder Morgan, Phillips 66, Shell Oil, etc).
Memorandum

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

THROUGH: Mark Personius, Director, PDS

FROM: Chris Elder, PDR Program Administrator

DATE: March 16, 2018

SUBJECT: Supplemental Budget Request to complete agricultural conservation easement acquisition for PDR applicant Matheson

Introduction
The Whatcom County Purchase of Development Rights (PDR) Program was initiated in September of 2001. The program has successfully purchased 125 development rights on 899 acres through 18 agricultural conservation easements.

The Purchase of Development Rights Oversight Committee has recommended purchase of an agricultural conservation easement on the Matheson property. Whatcom County Council has approved the PDR Program Administrator and County Executive to proceed with the acquisition of these easements through Resolution 2016-029. This supplemental budget requests include all costs associated with closing of this agricultural conservation easement including easement cost, baseline documentation fees, easement monitoring fees, and associated closing costs. This request will support completion of the PDR process on this property.

Background and Purpose
The Matheson conservation easement will represent the twentieth purchase under the County’s Agricultural Purchase of Development Rights Program. Completion of this easements will add an additional 17.9 acres to the total protected acreage in Whatcom County. This will bring the total protected acreage up to 936.6 acres. Whatcom Land Trust has developed baseline condition reports for the easement area and will be the legally responsible party to monitor and enforce terms of the conservation easements.

The Matheson conservation easement was selected to receive matching funds through the Natural Resource Conservation Service (NRCS) Agricultural Conservation Easement Program (ACEP). These funds represent 50% of the actual easement cost.
Matheson - PDR Supplemental Budget Request

<table>
<thead>
<tr>
<th>Matheson Agricultural Conservation Easement</th>
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<tbody>
<tr>
<td>- Easement monitoring and enforcement</td>
<td>$12,000.00</td>
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<td>- Background Documents preparation</td>
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<td>- Escrow and closing costs</td>
<td>$1,900.08</td>
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Subtotal: $215,718.31

- Reimbursement from NRCS: ($100,000)

Net cost to Whatcom County after reimbursement: $115,718.31

Request Summary
This request is consistent with Resolution 2016-029 which authorizes the PDR Program Administrator and County Executive to enter into a purchase and sale agreement for the agricultural conservation easement on this property. The conservation easement will be completed and recorded in April, 2018.

Please contact Chris Elder, PDR Program Administrator at (360)778-5932 with any questions or concerns.
1a. Description of request:

The proposed budget amendment is to cover all associated costs for completion of an agricultural conservation easement on the Matheson application.

The Purchase of Development Rights Oversight Committee has recommended purchase of an agricultural conservation easement on the Matheson property. Whatcom County Council has approved the PDR Program Administrator and County Executive to proceed with the acquisition of these easements through Resolution 2016-029. This supplemental budget requests include all costs associated with closing of this agricultural conservation easement including easement cost, baseline documentation fees, easement monitoring fees, and associated closing costs. This request will support completion of the PDR process on this property.

The Matheson conservation easement will represent the twentieth purchase under the County’s Agricultural Purchase of Development Rights Program. Completion of this easements will add an additional 17.9 acres to the total protected acreage in Whatcom County.

1b. Primary customers:

The community at large benefits from the PDR program due to the permanent protection of the land for farming purposes. This area will never be developed with additional housing and will stay in low-service cost status in perpetuity. Multiple benefits to agriculture, wildlife, water quality and stormwater retention are among the benefits for the community.

2. Problem to be solved:

The primary focus of the Purchase of Development Rights Program is to permanently protect prime/productive agricultural land from conversion to non-agricultural uses. This property contains prime agricultural soils and has been recommended for protection by the Purchase of Development Rights Oversight Committee.

3a. Options / Advantages:

The Agricultural Advisory Committee has considered the PDR program as an integral component of an overall agricultural protection strategy. The Growth Management Act requires the protection of resource lands. This is one of several efforts the County is making to comply with the state requirement. Zoning and Open Space Taxation are other programs currently employed by Whatcom County to protect agricultural land. PDR’s are valuable partly because they are the only action currently available for the County to achieve permanent protection on agricultural lands.
3b. Cost savings:

Savings are difficult to quantify. Studies indicate that resource lands are the lowest cost properties for community services. Other savings are based on the benefits of not converting the property to some more intensive use. Water quality degradation, excessive stormwater runoff and increased costs for roads and other service provisions are eliminated when conservation easements establish a permanent agricultural development pattern in a given area. Maintaining a critical mass of viable agricultural land - especially land with water rights as this has - also helps support the agriculture economy.

4a. Outcomes:

The PDR program originally targeted 10,000 acres for purchase. Since that time the Council endorsed a "Rural Land Study" that has targeted some 25,000 acres of agricultural lands within rural zoned land that they would like to see with additional protection. This additional acreage will require significant increase in funding for the PDR program as well as the development of additional innovative techniques. The addition of this farm to the PDR land base will occur in 2018.

4b. Measures:

The easement on this farm will be purchased with assistance from a Title company through a typical closing process. The successful closing of the easement purchase marks the outcome of this specific request. Annual monitoring reports are supplied by the Whatcom Land Trust for each completed agricultural conservation easement.

5a. Other Departments/Agencies:

This is a joint project which involves the Whatcom Land Trust (on-going monitoring/enforcement responsibilities) and Whatcom County – PDR program administration/funding. Reimbursement funding also comes from the Natural Resource Conservation Service.

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

The Whatcom Land Trust will be responsible for the long-term monitoring under the terms of the conditions in the conservation easement and based on the contract that they have with Whatcom County. Gabe Epperson is the Conservation Director.

6. Funding Source:

Conservation Futures Fund (as requested)
Therefore the total coming out of will be $215,718.31, though the NRCS will reimburse Whatcom County for a total of $100,000 towards this transaction. The net expenditure after reimbursement will be $115,781.31.
Memorandum

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

THROUGH: Mark Personius, Director, PDS

FROM: Chris Elder, PDR Program Administrator

DATE: March 16, 2018

SUBJECT: Supplemental Budget Request to complete agricultural conservation easement acquisition for PDR applicant Broad Leaf Farm

Introduction
The Whatcom County Purchase of Development Rights (PDR) Program was initiated in September of 2001. The program has successfully purchased 125 development rights on 899 acres through 18 agricultural conservation easements.

The Purchase of Development Rights Oversight Committee has recommended purchase of an agricultural conservation easement on the Broad Leaf Farm property. Whatcom County Council has approved the PDR Program Administrator and County Executive to proceed with the acquisition of these easements through Resolution 2017-042. This supplemental budget requests include all costs associated with closing of this agricultural conservation easement including easement cost, baseline documentation fees, easement monitoring fees, and associated closing costs. This request will support completion of the PDR process on this property.

Background and Purpose
The Broad Leaf Farm conservation easement will represent the twenty-second purchase under the County's Agricultural Purchase of Development Rights Program. Completion of this easements will add an additional 66.2 acres to the total protected acreage in Whatcom County. This will bring the total protected acreage up to 1,160.6 acres. Whatcom Land Trust has developed baseline condition reports for the easement area and will be the legally responsible party to monitor and enforce terms of the conservation easements.

The Broad Leaf Farm conservation easement was selected to receive matching funds through the Natural Resource Conservation Service (NRCS) Agricultural Conservation Easement Program (ACEP). These funds represent 50% of the actual easement cost.
Broad Leaf Farm - PDR Supplemental Budget Request

Broad Leaf Farm Agricultural Conservation Easement $255,000.00
- Easement monitoring and enforcement $12,750.00
- Background Documents preparation $2000.00
- Escrow and closing costs $2,213.13

Subtotal $271,963.13

- Reimbursement from NRCS ACEP ($127,500)

- Net cost to Whatcom County after reimbursement $144,463.13

Request Summary
This request is consistent with Resolution 2017-042 which authorizes the PDR Program Administrator and County Executive to enter into a purchase and sale agreement for the agricultural conservation easement on this property. The conservation easement will be completed and recorded by July, 2018.

Please contact Chris Elder, PDR Program Administrator at (360)778-5932 with any questions or concerns.
Supplemental Budget Request

Planning & Development Services

Fund 175
Cost Center 17550

Originator: Chris Elder

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

Name of Request: Broad Leaf Farm Agricultural Conservation Easement

X

Department Head Signature (Required on Hard Copy Submission) Date

3-19-18

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1a. Description of request:
The proposed budget amendment is to cover all associated costs for completion of an agricultural conservation easement on the Broad Leaf Farm application. The Purchase of Development Rights Oversight Committee has recommended purchase of an agricultural conservation easement on the Broad Leaf Farm property. Whatcom County Council has approved the PDR Program Administrator and County Executive to proceed with the acquisition of these easements through Resolution 2017-042. This supplemental budget requests include all costs associated with closing of this agricultural conservation easement including easement cost, baseline documentation fees, easement monitoring fees, and associated closing costs. This request will support completion of the PDR process on this property.

Background and Purpose
The Broad Leaf Farm conservation easement will represent the twenty-second purchase under the County’s Agricultural Purchase of Development Rights Program. Completion of this easements will add an additional 66.2 acres to the total protected acreage in Whatcom County. This will bring the total protected acreage up to 1,160.6 acres.

1b. Primary customers:
The community at large benefits from the PDR program due to the permanent protection of the land for farming purposes. This area will never be developed with additional housing and will stay in low-service cost status in perpetuity. Multiple benefits to agriculture, wildlife, water quality and stormwater retention are among the benefits for the community.

2. Problem to be solved:
The primary focus of the Purchase of Development Rights Program is to permanently protect prime/productive agricultural land from conversion to non-agricultural uses. This property contains prime agricultural soils and has been recommended for protection by the Purchase of Development Rights Oversight Committee.

3a. Options / Advantages:
The Agricultural Advisory Committee has considered the PDR program as an integral component of an overall agricultural protection strategy. The Growth Management Act requires the protection of resource lands. This is one of several efforts the County is making to comply with the state requirement. Zoning and Open Space Taxation are other programs currently employed by Whatcom County to protect agricultural land. PDR’s are valuable partly because they are the only action currently available for the County to achieve permanent protection on agricultural lands.

Monday, March 19, 2018

Rpt: Rpt Suppl Regular
Supplemental Budget Request

Planning & Development Services  Planning

Status: Pending

Supp ID #: 2568  Fund: 175  Cost Center: 17550  Originator: Chris Elder

3b. Cost savings:
Savings are difficult to quantify. Studies indicate that resource lands are the lowest cost properties for community services. Other savings are based on the benefits of not converting the property to some more intensive use. Water quality degradation, excessive stormwater runoff and increased costs for roads and other service provisions are eliminated when conservation easements establish a permanent agricultural development pattern in a given area. Maintaining a critical mass of viable agricultural land – especially land with water rights as this has – also helps support the agriculture economy.

4a. Outcomes:
The PDR program originally targeted 10,000 acres for purchase. Since that time the Council endorsed a “Rural Land Study” that has targeted some 25,000 acres of agricultural lands within rural zoned land that they would like to see with additional protection. This additional acreage will require significant increase in funding for the PDR program as well as the development of additional innovative techniques. The addition of this farm to the PDR land base will occur in 2018.

4b. Measures:
The easement on this farm will be purchased with assistance from a Title company through a typical closing process. The successful closing of the easement purchase marks the outcome of this specific request. Annual monitoring reports are supplied by the Whatcom Land Trust for each completed agricultural conservation easement.

5a. Other Departments/Agencies:
This is a joint project which involves the Whatcom Land Trust (on-going monitoring/enforcement responsibilities) and Whatcom County – PDR program administration/funding. Reimbursement funding also comes from the Natural Resource Conservation Service.

5b. Name the person in charge of implementation and what they are responsible for:
The Whatcom Land Trust will be responsible for the long-term monitoring under the terms of the conditions in the conservation easement and based on the contract that they have with Whatcom County. Gabe Epperson is the Conservation Director

6. Funding Source:
Conservation Futures Fund (as requested)
Therefore the total coming out of will be $271,963.13, though the NRCS will reimburse Whatcom County for a total of $127,500 towards this transaction. The net expenditure after reimbursement will be $144,463.13.
Memorandum

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

THROUGH: Mark Personius, Director, PDS

FROM: Chris Elder, PDR Program Administrator

DATE: March 16, 2018

SUBJECT: Supplemental Budget Request to complete agricultural conservation easement acquisition for PDR applicant Grubbs

Introduction
The Whatcom County Purchase of Development Rights (PDR) Program was initiated in September of 2001. The program has successfully purchased 125 development rights on 899 acres through 18 agricultural conservation easements.

The Purchase of Development Rights Oversight Committee has recommended purchase of an agricultural conservation easement on the Grubbs property. Whatcom County Council has approved the PDR Program Administrator and County Executive to proceed with the acquisition of these easements through Resolution 2016-029. This supplemental budget requests include all costs associated with closing of this agricultural conservation easement including easement cost, baseline documentation fees, easement monitoring fees, and associated closing costs. This request will support completion of the PDR process on this property.

Background and Purpose
The Grubbs conservation easement will represent the nineteenth purchase under the County’s Agricultural Purchase of Development Rights Program. Completion of this easements will add an additional 19.7 acres to the total protected acreage in Whatcom County. This will bring the total protected acreage up to 918.7 acres. Whatcom Land Trust has developed baseline condition reports for the easement area and will be the legally responsible party to monitor and enforce terms of the conservation easements.

The Grubbs conservation easement was selected to receive matching funds through the Natural Resource Conservation Service (NRCS) Agricultural Conservation Easement Program (ACEP). These funds represent 50% of the actual easement cost. The Grubbs conservation easement was also selected to receive matching funds through the Washington State Recreation and Conservation Office (RCO) Washington Wildlife and Recreation Program (WWRP). These funds represent 50% of the actual easement cost.
Grubbs - PDR Supplemental Budget Request

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<td>- Escrow and closing costs</td>
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Subtotal                                           $95,199.81

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<td>- Reimbursement from NRCS</td>
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<td>- Reimbursement from WA RCO</td>
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Net cost to Whatcom County after reimbursement     $15,199.81

**Request Summary**
This request is consistent with Resolution 2016-029 which authorizes the PDR Program Administrator and County Executive to enter into a purchase and sale agreement for the agricultural conservation easement on this property. The conservation easement will be completed and recorded in April, 2018.

Please contact Chris Elder, PDR Program Administrator at (360)778-5932 with any questions or concerns.
Supplemental Budget Request

Planning & Development Services

Fund: 175 Cost Center: 17550

Originator: Chris Elder

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

Name of Request: Grubbs Agricultural Conservation Easement

X

Department Head Signature (Required on Hard Copy Submission) Date: 3-19-18

Costs:

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<td>6610</td>
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<td>7320</td>
<td>Land</td>
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Request Total: $15,200

1a. Description of request:

The proposed Budget amendment is to cover all associated costs for completion of an agricultural conservation easement on the Grubbs application.

The Purchase of Development Rights Oversight Committee has recommended purchase of an agricultural conservation easement on the Grubbs property. Whatcom County Council has approved the PDR Program Administrator and County Executive to proceed with the acquisition of these easements through Resolution 2016-029. This supplemental budget requests include all costs associated with closing of this agricultural conservation easement including easement cost, baseline documentation fees, easement monitoring fees, and associated closing costs. This request will support completion of the PDR process on this property.

The Grubbs conservation easement will represent the nineteenth purchase under the County’s Agricultural Purchase of Development Rights Program. Completion of this easements will add an additional 19.7 acres to the total protected acreage in Whatcom County.

1b. Primary customers:

The community at large benefits from the PDR program due to the permanent protection of the land for farming purposes. This area will never be developed with additional housing and will stay in low-service cost status in perpetuity. Multiple benefits to agriculture, wildlife, water quality, and stormwater retention are among the benefits for the community.

2. Problem to be solved:

The primary focus of the Purchase of Development Rights Program is to permanently protect prime/ productive agricultural land from conversion to non-agricultural uses. This property contains prime agricultural soils and has been recommended for protection by the Purchase of Development Rights Oversight Committee.

3a. Options / Advantages:

The Agricultural Advisory Committee has considered the PDR program as an integral component of an overall agricultural protection strategy. The Growth Management Act requires the protection of resource lands. This is one of several efforts the County is making to comply with the state requirement. Zoning and Open Space Taxation are other programs currently employed by Whatcom County to protect agricultural land. PDR’s are valuable partly because they are the only action currently available for the County to achieve permanent protection on agricultural lands.

Monday, March 19, 2018

Rpt: Rpt Suppl Regular
Supplemental Budget Request

Planning & Development Services   Planning

Suppl # 2582   Fund 17$   Cost Center 17550   Originator: Chris Elder

3b. Cost savings:
Savings are difficult to quantify. Studies indicate that resource lands are the lowest cost properties for community services. Other savings are based on the benefits of not converting the property to some more intensive use. Water quality degradation, excessive stormwater runoff and increased costs for roads and other service provisions are eliminated when conservation easements establish a permanent agricultural development pattern in a given area. Maintaining a critical mass of viable agricultural land – especially land with water rights as this has – also helps support the agriculture economy.

4a. Outcomes:
The PDR program originally targeted 10,000 acres for purchase. Since that time the Council endorsed a “Rural Land Study” that has targeted some 25,000 acres of agricultural lands within rural zoned land that they would like to see with additional protection. This additional acreage will require significant increase in funding for the PDR program as well as the development of additional innovative techniques. The addition of this farm to the PDR land base will occur in 2018.

4b. Measures:
The easement on this farm will be purchased with assistance from a Title company through a typical closing process. The successful closing of the easement purchase marks the outcome of this specific request. Annual monitoring reports are supplied by the Whatcom Land Trust for each completed agricultural conservation easement.

5a. Other Departments/Agencies:
This is a joint project which involves the Whatcom Land Trust (on-going monitoring/enforcement responsibilities) and Whatcom County – PDR program administration/funding. Reimbursement funding also comes from the Natural Resource Conservation Service and Washington State Recreation and Conservation Office.

5b. Name the person in charge of implementation and what they are responsible for:
The Whatcom Land Trust will be responsible for the long-term monitoring under the terms of the conditions in the conservation easement and based on the contract that they have with Whatcom County. Gabe Epperson is the Conservation Director.

6. Funding Source:
Conservation Futures Fund (as requested)
Therefore the total coming out of will be $95,199.81, though the NRCS and RCO will reimburse Whatcom County for a combined total of $80,000 towards this transaction. The net expenditure after reimbursement will be $15,199.81.
Memorandum

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

THROUGH: Mark Personius, Director, PDS

FROM: Chris Elder, PDR Program Administrator

DATE: March 16, 2018

SUBJECT: Supplemental Budget Request to complete agricultural conservation easement acquisition for PDR applicant Cougar Creek Ranch

Introduction
The Whatcom County Purchase of Development Rights (PDR) Program was initiated in September of 2001. The program has successfully purchased 125 development rights on 899 acres through 18 agricultural conservation easements.

The Purchase of Development Rights Oversight Committee has recommended purchase of an agricultural conservation easement on the Cougar Creek Ranch property. Whatcom County Council has approved the PDR Program Administrator and County Executive to proceed with the acquisition of these easements through Resolution 2016-029. This supplemental budget requests include all costs associated with closing of this agricultural conservation easement including easement cost, baseline documentation fees, easement monitoring fees, and associated closing costs. This request will support completion of the PDR process on this property.

Background and Purpose
The Cougar Creek Ranch conservation easement will represent the twenty-first purchase under the County’s Agricultural Purchase of Development Rights Program. Completion of this easements will add an additional 157.8 acres to the total protected acreage in Whatcom County. This will bring the total protected acreage up to 1094.4 acres. Whatcom Land Trust has developed baseline condition reports for the easement area and will be the legally responsible party to monitor and enforce terms of the conservation easements.

The Cougar Creek Ranch conservation easement was selected to receive matching funds through the Natural Resource Conservation Service (NRCS) Agricultural Conservation Easement Program (ACEP). These funds represent 50% of the actual easement cost. The Grubbs conservation easement was also selected to receive matching funds through the Washington State Recreation and Conservation Office (RCO) Washington Wildlife and Recreation Program (WWRP). These funds represent 50% of the actual easement cost.
Cougar Creek Ranch - PDR Supplemental Budget Request

**Cougar Creek Ranch Agricultural Conservation Easement**

- Easement monitoring and enforcement $24,000.00
- Background Documents preparation $1,818.23
- Escrow and closing costs $3,627.32

Subtotal $659,445.55

- Reimbursement from NRCS ($315,000)
- Reimbursement from WA RCO ($315,000)

Net cost to Whatcom County after reimbursement $29,445.55

**Request Summary**

This request is consistent with Resolution 2016-029 which authorizes the PDR Program Administrator and County Executive to enter into a purchase and sale agreement for the agricultural conservation easement on this property. The conservation easement will be completed and recorded by June, 2018.

Please contact Chris Elder, PDR Program Administrator at (360)778-5932 with any questions or concerns.
Supplemental Budget Request

Planning & Development Services  Planning

Supp'l ID # 2565  Fund 175  Cost Center 17550  Originator: Chris Elder

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

Name of Request: Cougar Creek Agricultural Conservation Easement

X

Department Head Signature (Required on Hard Copy Submission)  Date

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<th>Amount Requested</th>
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Request Total: $29,446

1a. Description of request:
The proposed budget amendment is to cover all associated costs for completion of an agricultural conservation easement on the Cougar Creek Ranch application. The Purchase of Development Rights Oversight Committee has recommended purchase of an agricultural conservation easement on the Cougar Creek Ranch property. Whatcom County Council has approved the PDR Program Administrator and County Executive to proceed with the acquisition of these easements through Resolution 2016-029. This supplemental budget requests include all costs associated with closing of this agricultural conservation easement including easement cost, baseline documentation fees, easement monitoring fees, and associated closing costs. This request will support completion of the PDR process on this property.

The Cougar Creek Ranch conservation easement will represent the twenty-first purchase under the County's Agricultural Purchase of Development Rights Program. Completion of this easements will add an additional 157.8 acres to the total protected acreage in Whatcom County. This will bring the total protected acreage up to 1094.4 acres.

1b. Primary customers:
The community at large benefits from the PDR program due to the permanent protection of the land for farming purposes. This area will never be developed with additional housing and will stay in low-service cost status in perpetuity. Multiple benefits to agriculture, wildlife, water quality and stormwater retention are among the benefits for the community.

2. Problem to be solved:
The primary focus of the Purchase of Development Rights Program is to permanently protect prime/productive agricultural land from conversion to non-agricultural uses. This property contains prime agricultural soils and has been recommended for protection by the Purchase of Development Rights Oversight Committee.

3a. Options / Advantages:
The Agricultural Advisory Committee has considered the PDR program as an integral component of an overall agricultural protection strategy. The Growth Management Act requires the protection of resource lands. This is one of several efforts the County is making to comply with the state requirement. Zoning and Open Space Taxation are other programs currently employed by Whatcom County to protect agricultural land. PDR’s are valuable partly because they are the only action currently available for the County to achieve permanent protection on agricultural lands.

Monday, March 19, 2018

Rpt: Rpt Suppl Regular
3b. Cost savings:
Savings are difficult to quantify. Studies indicate that resource lands are the lowest cost properties for community services. Other savings are based on the benefits of not converting the property to some more intensive use. Water quality degradation, excessive stormwater runoff and increased costs for roads and other service provisions are eliminated when conservation easements establish a permanent agricultural development pattern in a given area. Maintaining a critical mass of viable agricultural land – especially land with water rights as this has – also helps support the agriculture economy.

4a. Outcomes:
The PDR program originally targeted 10,000 acres for purchase. Since that time the Council endorsed a "Rural Land Study" that has targeted some 25,000 acres of agricultural lands within rural zoned land that they would like to see with additional protection. This additional acreage will require significant increase in funding for the PDR program as well as the development of additional innovative techniques. The addition of this farm to the PDR land base will occur in 2018.

4b. Measures:
The easement on this farm will be purchased with assistance from a Title company through a typical closing process. The successful closing of the easement purchase marks the outcome of this specific request. Annual monitoring reports are supplied by the Whatcom Land Trust for each completed agricultural conservation easement.

5a. Other Departments/Agencies:
This is a joint project which involves the Whatcom Land Trust (on-going monitoring/enforcement responsibilities) and Whatcom County – PDR program administration/funding. Reimbursement funding also comes from the Natural Resource Conservation Service and Washington State Recreation and Conservation Office.

5b. Name the person in charge of implementation and what they are responsible for:
The Whatcom Land Trust will be responsible for the long-term monitoring under the terms of the conditions in the conservation easement and based on the contract that they have with Whatcom County. Gabe Epperson is the Conservation Director.

6. Funding Source:
Conservation Futures Fund (as requested)
Therefore the total coming out of will be $659,445.55, though the NRCS and WA RCO will reimburse Whatcom County for a total of $630,000 ($315,000 each) towards this transaction. The net expenditure after reimbursement will be $29,445.55.
MEMO TO: Jack Louws, County Executive  
FROM: Rob Ney, Project and Operations Manager  
DATE: March 27, 2018  
RE: Supplemental Budget Request for Williamson Way relocation and renovation of Facilities Management.

Requested Action  
Please allow this memo to serve as a request for approval of the attached Budget Supplemental Request that would provide funding for the renovation and relocation of the Facilities Management Division to the Williamson Way site. This request is for $450,000.00.

Background and Purpose  
It is desired to expand the Facilities Management staff. The existing Lottie Street facility has reached its capacity and it is not feasible to accommodate any additional staff. Facilities Management and the Executive researched cost effective options to relocate the Facilities Management Division. The Williamson Way facility quickly elevated to the top of this list.

This supplemental budget request would allow for the following renovations at Williamson Way: Add three administrative and four technician offices, replace one of the HVAC units, add AC to the entire office/administration area, add security and perimeter fencing for fleet vehicles and the building, add access controls including a badge activated vehicle gate, creation of a conference room that may also serve as a training room, re-cabling the entire building to current data standards, expansion of the County’s fiber ring into the building, and associated electrical and finish improvements to accommodate the above work. The one time budget request also includes the cost of relocation and moving expenses.

Funding Amount and Source  
REET 1  

Should you have any questions, do not hesitate to contact me at x5387.
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FROM: Rob Ney, Project and Operations Manager
DATE: March 27, 2018
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Requested Action
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This supplemental budget request would allow for the following renovations at Williamson Way: Add three administrative and four technician offices, replace one of the HVAC units, add AC to the entire office/administration area, add security and perimeter fencing for fleet vehicles and the building, add access controls including a badge activated vehicle gate, creation of a conference room that may also serve as a training room, re-cabling the entire building to current data standards, expansion of the County’s fiber ring into the building, and associated electrical and finish improvements to accommodate the above work. The one time budget request also includes the cost of relocation and moving expenses.

Funding Amount and Source
This would be a REET 1 transfer to the Facilities Management budget (50791).

Should you have any questions, do not hesitate to contact me at x5387.
Supplemental Budget Request

**Administrative Services**
- **Fund**: 326
- **Cost Center**: 7350
- **Originator**: Rob Ney

**Facilities Management**
- **Expenditure Type**: One-Time
- **Year**: 2018
- **Priority**: 1

**Name of Request**: Williamson Way Renovation for FM Relocation

<table>
<thead>
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<th>Department Head Signature (Required on Hard Copy Submission)</th>
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<tbody>
<tr>
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</tbody>
</table>

**Costs:**

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<tbody>
<tr>
<td>7350</td>
<td>Buildings &amp; Structures</td>
<td>$450,000</td>
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</tbody>
</table>

**Request Total**: $450,000

---

1a. **Description of request:**

Provide one-time construction funds for renovation of the Williamson Way property. Facilities Management desires to move its operations to the Williamson Way site. Additional offices, security and controls, HVAC replacement and upgrades, and perimeter fencing will be included in the project.

1b. **Primary customers:**

Primary customers are the existing and future staff of Facilities Management. It could also be deduced that the entire County, who receives service from Facilities Management, are the customers who benefit from this relocation and anticipated expansion of staff.

2. **Problem to be solved:**

Facilities Management staff is anticipated to increase. The current Lottie Street location has no additional capacity to expand to accept additional staff. Anticipated increases in staff include a project manager to be initially funded with the Crisis Triage facility, and conversion of the Facilities Manager position into two lower level positions (after Mike Russell’s retirement). Relocating to the Williamson Way facility will allow this expansion, has appropriate shop area for our technicians, and allows future expansion of operations into the future.

3a. **Options / Advantages:**

The expansion of staff is not possible in the current location. Staff has worked with the Executive’s office to find a cost effective method to relocate the Facilities Management Division. The Williamson Way site is an economical solution for this relocation. The building is owned by the County and has been vacant for several years. The cost for renovations is relatively low compared to new construction. There is no other existing County owned sites that fit this criteria. Building a new building was not considered due to cost.

3b. **Cost savings:**

Although this proposal is $450,000, it is a fraction of what a new facility would cost the County. The renovation costs include items necessary to relocate the Facilities Maintenance operation, along with future staff expansion considerations. It was concluded that providing expansion space at this time would only add incremental costs, and would be less expensive than doing this downline. This facility should fit the facilities staff, including any expansion, for the next decade.

4a. **Outcomes:**

The relocation of the Facilities Management staff into an office that has ample administrative space, shop space for the technicians, will allow the anticipated expansion of duties, responsibilities and services provided by the department.

The Executive has indicated that an expansion of staff comes with additional responsibility. It will be assumed that the services provided by Facilities Management will be increased with the additional staff capacity.

*Wednesday, March 28, 2018*
4b. Measures:
There are several large scale projects being anticipated in the near future (Jail renovations, the Courthouse Exterior project, 1500 State Street, Civic Center Building). The additional staff being considered will help to manage these projects in a cost effective manner for the County.

5a. Other Departments/Agencies:
All County Departments that receive services from Facilities Management,

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

6. Funding Source:
REET 1
Supplemental Budget Request

Non-Departmental

Fund 324  Cost Center 32469  Originator: Randy Rydel

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

Name of Request: REET II Companion to SBR-2576 Agate Bay

Department Head Signature (Required on Hard Copy Submission)  Date

X  4.2.18

<table>
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<td>Operating Transfer Out</td>
<td>$528,219</td>
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Request Total $528,219

1a. Description of request:
This is a companion request to Agate Bay Project Budget Amendment #2 - supplemental ID 2576. This transfers funding from REET II to fund the completion of Phase I and II design and construction Phase I.

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:
Real Estate Excise Tax Fund II

Monday, March 26, 2018
MEMO TO:     Jack Louws, County Executive
FROM:        Rob Ney, Project and Operations Manager
DATE:        March 23, 2018
RE:          Supplemental Budget Request for Patrol Services County facilities.

Requested Action

Please allow this memo to serve as a request for approval of the attached Budget Supplemental Request that would provide funding for expanded patrol services of County owned facilities by a private contracted service. This request is for $40,000.00.

Background and Purpose

Facilities Management first contracted for Patrol Services in December 2016. The original service included patrols three times per evening/early morning patrols, 365 days/year, of the 1500 State Street site. In early 2017, the service was expanded to include 509 Girard Street and the Northwest Annex site. In late November of 2017, the service was expanded again to include the Public Defender’s office.

This service is being further expanded this year, to include several more sites. In total this list includes: Public Works’ Civic Center building, the Public Defenders Plaza Building, Health’s Girard Street building, Health’s State Street building, Forest Street Annex, the Champion Street parking lot, Northwest Annex, Central Shop, and future expansion to Williamson Way.

Funding Amount and Source

This would be a General Fund transfer to the Facilities Management budget (50791).

Should you have any questions, do not hesitate to contact me at x5387.
Supplemental Budget Request

Administrative Services

<table>
<thead>
<tr>
<th>Supp ID #</th>
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<tbody>
<tr>
<td>2571</td>
<td>507</td>
<td>50791</td>
<td>Rob Ney</td>
</tr>
</tbody>
</table>

Expenditure Type: Ongoing  Year 1 2017  Add'l FTE ☐ Add'l Space ☐ Priority 1

Name of Request: Building Patrol Services

X

Department Head Signature (Required on Hard Copy Submission) Date

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<tr>
<td>6610.2005</td>
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<tr>
<td>8301</td>
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</table>

Request Total $0

1a. Description of request:

Unarmed patrol services for eight county buildings, and one stand-alone parking lot. This service is 365 days/year.

1b. Primary customers:

Whatcom County, Employees who work in these buildings and any public who utilize services in these buildings.

2. Problem to be solved:

Verifying all facilities are secure, reduce vandalism, avoid loitering and camping on public property, and limit abandoned vehicles and other unwanted activities.

3a. Options / Advantages:

Facilities has installed signage, utilized vegetation control, and installed security gates and cameras as deterrents. All of these methods are useful. The patrols are another level of security that is desired for our County facilities. Having patrol services allows the County to react quicker to issues within our facilities, ultimately reducing additional damage or theft. The County has employed a patrol services for many of our sites, however, this current scope expands service to the remaining buildings outside of the civic core. Patrol services have had a positive outcome in reducing destructive behavior.

3b. Cost savings:

By removing/reducing unwanted activity, Facilities staff has had to respond less often to after hour calls, work orders for vandalism, repairs or cleanups for these buildings. In addition, the contracted patrol service is significantly less expensive then hiring additional employees to perform the same services.

4a. Outcomes:

By including the additional buildings in the patrol services Facilities will not have to respond to these types of work orders and can focus their time on more important projects. This patrol services will reduce accumulations of trash, bodily waste, needles, theft, fights and disruption of services.

4b. Measures:

We monitor the patrol service activity via nightly reports submitted by the officers doing patrols each night, this will allow us to follow up on any issues in a timely manner.

5a. Other Departments/Agencies:

This should only involve the other departments as they shouldn’t have to worry about homeless or unwanted activity in/around their buildings. This includes:

Central Plaza
Civic Center
Health Department (509 Girard)

Wednesday, March 28, 2018

Rpt: Rpt Suppl Regular
### Supplemental Budget Request

**Administrative Services**  
**Facilities Management**

<table>
<thead>
<tr>
<th>Suppl TD #</th>
<th>Fund</th>
<th>Cost Center</th>
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<tbody>
<tr>
<td>2571</td>
<td>507</td>
<td>50791</td>
<td>Rob Ney</td>
</tr>
</tbody>
</table>

Forest Street Annex  
State Street Annex (Health)  
Champion Street Parking lot  
Northwest Annex  
Central Shop  
Williamson Way

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

Rob Ney

**6. Funding Source:**

General Fund
TITLE OF DOCUMENT: Flood Control Zone District and Subzones 2018 Supplemental Budget Request #2

ATTACHMENTS: Resolution, Memoranda and Budget Modification Requests

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

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

Supplemental #2 requests funding from the Flood Control Zone District Fund:

1. To appropriate $250,000 in River and Flood to fund emergency/new projects.
2. To appropriate $500,000 in River and Flood to fund Nooksack River integrated floodplain planning from grant proceeds.

COMMITTEE ACTION: 

BOARD OF SUPERVISORS ACTION:
4/10/2018: 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.
RESOLUTION NO._______
(A resolution of the Whatcom County Flood Control Zone District Board of Supervisors)

AMENDMENT NO. 2 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></th>
<th>Expenditures</th>
<th>Revenues</th>
<th>Net Effect</th>
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</thead>
<tbody>
<tr>
<td>Flood Control Zone District - River &amp; Flood</td>
<td>750,000</td>
<td>(500,000)</td>
<td>250,000</td>
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<tr>
<td>Total Supplemental</td>
<td>750,000</td>
<td>(500,000)</td>
<td>250,000</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:

Civil Deputy Prosecutor
<table>
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<tr>
<th>Flood Control Zone District and Subzones Budgets Amendment #2</th>
<th>Expenditures</th>
<th>Revenues</th>
<th>Fund Balance</th>
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<tr>
<td><strong>Flood Control Zone District Fund</strong></td>
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<td></td>
<td></td>
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<tr>
<td>River and Flood</td>
<td></td>
<td></td>
<td></td>
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<tr>
<td>To fund emergency/new projects</td>
<td>250,000</td>
<td>-</td>
<td>250,000</td>
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<tr>
<td>River and Flood</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>To fund Nooksack River integrated floodplain planning from grant proceeds.</td>
<td>500,000</td>
<td>(500,000)</td>
<td>-</td>
</tr>
<tr>
<td><strong>Total Supplemental</strong></td>
<td>750,000</td>
<td>(500,000)</td>
<td>250,000</td>
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</table>
MEMORANDUM

DATE: March 23, 2018

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

THROUGH: Jon Hutchings, Director

FROM: Paula J Harris, P.E., River and Flood Manager
       Gary Stoyka, Natural Resources Manager

RE: 2018 Flood Control Zone District Supplemental Budget Request

Requested Action
Enclosed for your review and consideration are two supplemental budget requests for the 2018 Flood Control Zone District budget (see attached Supplemental Budget Request ID# 2569 and 2570)

Background and Purpose
Supplemental budget request #2569 includes revenues and expenditures to support the floodplain integrated planning (FLIP) process for the Lower Nooksack River through 2018. The revenues are from a National Estuary Program (NEP) grant and will fund scientific, engineering and planning support for the FLIP process.

Supplemental budget request #2570 restores the budget allocation for emergency projects that result from flooding or erosion and require immediate attention. High water events in January and February resulted in erosion along the bank of the North fork Nooksack River and threatened to wash out Truck Road. An emergency project to protect the roadway was constructed in February and was funded using FCZD and Road funds. Replenishing the emergency budget allocation will allow the FCZD to respond quickly if additional flood damages threaten infrastructure of public safety throughout the rest of the year.

Funding Amount and Source
Combined, these supplemental budget requests will have the following impact to the 2018 FCZD budget:

- Add $750,000 in budgeted expenditures
- Add $500,000 in budgeted revenues
• Impact the 2018 FCZD budget by a net of $250,000 in additional expenditure authority

The FCZD Advisory Committee will be reviewing these budget requests at their April meeting.

Please contact Paula Harris at extension 6285, if you have any questions or concerns regarding these supplemental budget requests.

Encl.
Supplemental Budget Request

Public Works

Flood Control Zone District

<table>
<thead>
<tr>
<th>Supp# ID #</th>
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<th>Cost Center</th>
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<tr>
<td>2570</td>
<td>169</td>
<td>169112</td>
<td>Paula Harris</td>
</tr>
</tbody>
</table>

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

Name of Request: Emergency/new projects

Date: 3/23/18

Department Head Signature (Required on Hard Copy Submission)

<table>
<thead>
<tr>
<th>Costs:</th>
<th>Object</th>
<th>Object Description</th>
<th>Amount Requested</th>
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<tr>
<td>Request Total</td>
<td>$250,000</td>
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</table>

1a. Description of request:

The FCZD includes a $250,000 allocation for emergency/new projects in the annual budget in order to be able to quickly respond to flood damages to protect public safety and infrastructure. High water during January and February of this year resulted in erosion along the North Fork Nooksack River that threatened to wash out Truck Road. An emergency project was designed and implemented in February to protect the road.

The project was funded jointly by the FCZD and Road funds. Much of the FCZD emergency budget allocation was expended during construction. The emergency permits issued for the project include a condition to meet with the Washington Department of Fish and Wildlife to identify impacts and develop a mitigation plan to address them. This work will be performed over the next few months and will likely expend the rest of the $250,000 emergency project allocation.

This request is to restore the $250,000 budget allocation for any emergency or new projects that may be required during the remainder of 2018.

1b. Primary customers:

The general public

2. Problem to be solved:

This request is to provide funding for a future emergency project if one is needed to protect public safety or infrastructure during the remainder of 2018.

3a. Options / Advantages:

The other option is to not restore the allocation for emergency projects, which would make it difficult for the FCZD to respond quickly, potentially resulting in loss of public infrastructure and impacts to public safety.

3b. Cost savings:

The savings are in not having to reconstruct infrastructure that was destroyed.

4a. Outcomes:

This funding will only be used if new damages result in increased risk to public safety or infrastructure that needs to be addressed quickly.

4b. Measures:

NA

5a. Other Departments/Agencies:

FCZD projects are often done in conjunction with Roads or other local sponsors such as diking districts and subzones. Because this allocation is for a project that is not yet identified, we cannot identify which...
agency or department this will be.

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

See above answer.

6. Funding Source:

FCZD fund balance
Supplemental Budget Request

Public Works

<table>
<thead>
<tr>
<th>Fund</th>
<th>Cost Center</th>
<th>Originator</th>
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</thead>
<tbody>
<tr>
<td>169</td>
<td>718003</td>
<td>Paula Harris</td>
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</tbody>
</table>

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

Name of Request: Nooksack River Integrated Floodplain Planning

Department Head Signature (Required on Hard Copy Submission): 3/23/18

<table>
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<td>7210</td>
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<tr>
<td>Request Total</td>
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1a. Description of request:
The FCZD received a grant through the National Estuary Program (NEP) to supplement the County’s efforts in developing an integrated floodplain plan for the Lower Nooksack River. The grant provides $750,000 in funding to support the following planning and engineering activities as part of the Floodplain Integrated Planning (FLIP) process:
- assistance in coordinating the technical studies already underway and working with the FLIP stakeholder group
- development of reach-scale strategies and specific project concepts within each reach of the river
- development of conceptual designs and cost-estimates for project alternatives
- support in developing a cost-benefit model and using it to evaluate alternatives
- investigation on how the alternatives being considered downstream of Ferndale (Reach 1) will affect sedimentation in the lower river channel and floodplain

The grant period of performance is for two years so this budget supplement includes revenues and expenditures expected to be contracted in 2018.

1b. Primary customers:
The planning process is designed to integrate flood hazard reduction and salmon habitat protection and restoration with the needs of agriculture and other floodplain land uses. A stakeholder team has been established that represents all these interests and includes representatives from over 30 different entities including federal, state, local, and tribal organizations and diking districts, subzones and watershed improvement districts.

2. Problem to be solved:
The Lower Nooksack River Comprehensive Flood Hazard Management Plan (CFHMP) was initiated after the large floods of 1989 and 1990 and adopted in 1999. The primary focus of the existing CFHMP is on flood hazard reduction in the Lower Nooksack River floodplain. Several species of salmon have been listed for protection under the Endangered Species Act since the CFHMP was developed, and additional species of salmon and trout support important Treaty and non-Treaty fisheries. Agricultural land uses within the floodplain are affected by changes in hydrology and sedimentation impacting flood magnitude and timing, drainage and channel migration. The current CFHMP update process will focus on developing floodplain management strategies that integrate flood risk reduction with salmon habitat protection and restoration, while sustaining adjacent floodplain land uses.

3a. Options / Advantages:
Another option would be to not update the existing CFHMP. The existing plan is dated and many of the projects in it may no longer be feasible or implementable. The plan did not include the level of technical

Thursday, March 22, 2018
Supplemental Budget Request

Public Works

<table>
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<th>Supp1 ID #:</th>
<th>Fund</th>
<th>Cost Center</th>
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</thead>
<tbody>
<tr>
<td>2569</td>
<td>169</td>
<td>718003</td>
<td>Paula Harris</td>
</tr>
</tbody>
</table>

analyses that the current process includes which will result in better project designs that recognize the river's processes and past and potential changes in the system.

3b. Cost savings:

Development of an integrated plan with broad local support will position the FCZD well for future grant applications through the State's Floodplains by Design program. The FCZD has already received $3.5 million for the Canyon Creek and Deming Levee Improvement projects and has submitted a pre-application for the next round of funding in the amount of $6 million.

4a. Outcomes:

The final outcome will be an integrated floodplain management plan for the Lower Nooksack River that includes reach strategies and specific projects to implement those strategies. The plan will include a capital project list that will guide the FCZD's future work plans and budgets for decades to come.

At this point the planning process is expected to take several years to complete. A detailed project plan and schedule is one of the first tasks in the NEP grant and will be developed over the next few months.

4b. Measures:

A broadly-supported integrated floodplain management plan will result and be adopted by the FCZD Board of Supervisors.

5a. Other Departments/Agencies:

This will be shared with the FLIP stakeholder team to support the planning process. The FLIP stakeholder team includes representatives from:

- Agriculture
- Diking districts 1, 2, 3, and 4
- Flood Control Zone District Advisory Committee
- City of Everson
- City of Ferndale
- City of Sumas
- City of Lynden
- Department of Ecology
- Department of Natural Resources
- Lynden/Everson Subzone
- Sumas/Nooksack/Everson Subzone
- Lummi Natural Resources
- Nooksack Tribe
- National Marine Fisheries Service
- Puget Sound Partnership
- Save Family Farming
- South Lynden Watershed Improvement District
- Bertrand Watershed Improvement District
- The Nature Conservancy/Floodplains by Design
- US Army Corps of Engineers
- US Geological Survey
- University of Washington Climate Impacts Group
- Whatcom County Planning and Development Services
- Whatcom County Parks
- Whatcom County Public Works (WCPW)
- Whatcom Conservation District
- Whatcom Public Utility District #1
- Washington Department of Fish and Wildlife
- Washington State Department of Transportation

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

The FLIP planning process includes a Steering Committee to guide the process that consists of:

Thursday, March 22, 2018

Rpt: Rpt Suppl Regular

134
6. Funding Source:

The work under this supplemental budget request will be funded through the NEP grant. Several technical studies that support the FLIP planning process are being funded using a combination of FCZD, NOAA, and Salmon Recovery Funding Board (SRFB) funds.
**WHATCOM COUNTY COUNCIL AGENDA BILL**

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<th>CLEARANCES</th>
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<th>Date</th>
<th>Date Received in Council Office</th>
<th>Agenda Date</th>
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<td>Prosecutor:</td>
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<td>Purchasing/Budget:</td>
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**TITLE OF DOCUMENT:** Approval to Purchase Satellite Communications System (RFP #18-21)

**ATTACHMENTS:** Memos from Finance and Sheriff’s Office/Emergency Management

**SEPA review required** ( ) Yes ( x ) NO

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

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

**Requested Date:**

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

The Emergency Management Division of the Whatcom County Sheriff’s Office requests approval to purchase a Satellite Communications System for the communications van, as a result of RFP #18-21. The total cost of this purchase is $54,999.00. Funding for this purchase was approved on 2018 Supplemental Budget Request #3, Ordinance #2018-002

**COMMITTEE ACTION:**

**COUNCIL ACTION:**

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

**Please Note:** Once adopted and signed, ordinances and resolutions are available for viewing and printing on the County’s website at: www.co.whatcom.wa.us/council.
DATE: April 12, 2018

TO: Jack Louws, County Executive

FROM: Brad Bennett, AS Finance Manager

SUBJECT: Approval to Purchase Satellite Communications System

BACKGROUND

The Emergency Management Division of the Sheriff's Office is requesting approval to purchase a satellite communications system for the Sheriff's Office communication van, as a result of RFP #18-21 Rapidly Deployable Interoperable Communications System.

The vendor is TacSat Networks, who meets all requirements of the solicitation. The total cost for this purchase is $54,999.00, including equipment, a three-year maintenance agreement, one-year prepaid usage, freight, and sales tax.

FUNDING

Funding for this purchase was received via a Phillips 66 Corporate Citizenship Grant, appropriated on 2018 Supplemental Budget Request #3, and approved on Ordinance #2018-002. I recommend approval.

Approved as recommended:

[Signature]

AS Finance Manager

County Executive

Date of Council Action: __________________________
MEMORANDUM

To: Brad Bennett, AS Finance Manager
From: Sheriff Bill Elfo, Director
       John Gargett, Deputy Director
       WCSO-Division of Emergency Management
Subject: RFP #18-21 Rapidly Deployable Interoperable Communications System
Date: April 11, 2018

- Requested Action
Approval to purchase the SATCOM POD+ Rapidly Deployable Interoperable Communications System for the amount of $54,999.00, including sales tax.

- Background and Purpose
Whatcom County Sheriff’s Office Division of Emergency Management recommends approval of the attached RFP proposal for the purchase of the SATCOM POD+ Satellite System from TacSat Networks, Inc. TacSat Networks, Inc’s proposal meets all of the technical requirements of the specifications contained in the RFP #18-21 package. TacSat Networks, Inc. provided the only submission and came in within the approved budget.

<table>
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<th>TacSat system components; three-year maintenance agreement (taxable)</th>
<th>$41,843.32</th>
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<tr>
<td>Sales tax @ 8.5%</td>
<td>$3,556.68</td>
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<tr>
<td>TacSat pre-paid usage (non-taxable)</td>
<td>$9,599.00</td>
</tr>
<tr>
<td><strong>Total Cost:</strong></td>
<td><strong>$ 54,999.00</strong></td>
</tr>
</tbody>
</table>

- Funding Source
Funding for this capital purchase was received from a Phillips 66 Corporate Citizenship Grant, appropriated on 2018 Supplemental Budget Request #3, and approved on Ordinance #2018-002.

- Recommendation
Please approve this purchase and forward it to the Executive and the Whatcom County Council for approval at the April 24, 2018 Whatcom County Council Meeting.

Please contact John Gargett at 778-7160 if you have any questions or concerns regarding the terms of this award.

Our Vision: The Office of Sheriff: Dedicated to making Whatcom County the Safest in the State through Excellence in Public Safety.
**ESTIMATE**

**ADDRESS**
John Gargett  
Whatcom County Sheriff's  
311 Grand Ave  
Bellingham, WA 98225 USA

**SHIP TO**
John Gargett  
Whatcom County Sheriff's  
311 Grand Ave  
Bellingham, WA 98225 USA

**ESTIMATE #** 08201505-179  
**DATE** 04/11/2018  
**EXPIRATION DATE** 05/11/2018

**SHIP VIA**  
Common Carrier

<table>
<thead>
<tr>
<th>ACTIVITY</th>
<th>QTY</th>
<th>RATE</th>
<th>AMOUNT</th>
</tr>
</thead>
</table>
| Sales: TSN Pod +  
The SATCOM POD+ is a lightweight, rapidly deployable communications network that utilizes Ka-band satellite backhaul for the ultimate off-grid or redundant connectivity. The SATCOM POD+ is ideal for any organization that depends on a full suite of communication capabilities anytime, anywhere. Includes Cobham/Viasat M-SAT G3 over the horizon Explorer 122 communications option | 2 | 20,895.00 | 41,790.00 |
| VS P40R  
Pre-paid, 40 GB usage, valid for 1 year. All plans include: Up to 18 Mbps download, Up to 5 Mbps upload*, Access throughout the ViaSat-1 coverage area, includes reasonable tier-1 email and phone technical support. *Varies by location and time of day | 2 | 2,995.00 | 5,990.00 |
| Cobham/Viasat Explorer 122 MSAT G-3 satellite Push To Talk Radio Solution: Includes Explorer 122 L-Band terminal with integrated antenna. advanced Explorer PTT radio | 1 | 5,610.00 | 5,610.00 |
| Services  
G-3 Unlimited PTT service coverage for the Americas 1 year pre-paid plan | 3 | 1,203.00 | 3,609.00 |
<p>| Equipment Sale: VS-Pro 2 Semi Fixed | 2 | 0.00 |</p>
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<tr>
<td>ViaSat Surfbeam Pro 2 .75m Semi-Fixed satellite terminal, cabling and</td>
<td>2</td>
<td>-2,878.34</td>
<td>-5,756.68</td>
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<tr>
<td>antenna. Includes wall mounting system and non penetrating roof mount</td>
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<tr>
<td>system. The Semi-Fixed system has the same performance specifications</td>
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<tr>
<td>as the ViaSat Pro 2 Portable system. (included at no charge)</td>
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<tr>
<td><strong>Discount</strong></td>
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<tr>
<td>Cause V participant discount per SATCOMPod +, NOTE: This quote has</td>
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<tr>
<td>certain discounts for Whatcom County’s or other participation in the</td>
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<tr>
<td>Department of Homeland Security Cause V exercise Nov. 2017</td>
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<tr>
<td>Cobham G-3 install cable set</td>
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<td>200.00</td>
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Shipping included

**TOTAL** $51,442.32

Accepted By

Accepted Date
TITLE OF DOCUMENT: Interlocal Cooperative Purchasing Agreement with Jefferson County

ATTACHMENTS: Memos from Finance

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

Administrative Services – Finance requests approval to for the Executive to enter into an Interlocal Cooperative Purchasing Agreement with Jefferson County. This agreement will allow Whatcom County to utilize Jefferson County’s competitively bid supplies, goods, services, and equipment, per RCW Chapter 39.34, Interlocal Cooperation Act.
DATE: April 16, 2018  
TO: Jack Louws, County Executive  
FROM: Brad Bennett, AS Finance Manager  
SUBJECT: Approval for an Interlocal Cooperative Agreement with Jefferson County

- **Background & Purpose**  
  Administrative Services Finance is requesting approval to enter into a cooperative purchasing agreement with Jefferson County. This agreement will allow Whatcom County to utilize Jefferson County’s competitively bid contracts for purchases of supplies, goods, services, and equipment, per RCW Chapter 39.34 Interlocal Cooperation Act.

- **Funding**  
  There is no fee to enter into this agreement.

[Signature]

AS Finance Manager

Approved as recommended:

[Signature]

County Executive

Date of Council Action  

142
This Agreement, made and entered into by and between JEFFERSON COUNTY, State of Washington, a Washington municipal corporation (hereinafter referred to as "Jefferson County") and WHATCOM COUNTY, State of Washington, a Washington municipal corporation (hereinafter referred to as "Whatcom County"), (collectively "Parties"), and whereby the Parties agree to cooperative governmental purchasing upon the following terms and conditions:

1. **Cooperative Purchases.** The Parties hereto, pursuant to Chapters 36 and 39 bidding laws, Revised Code of Washington, and pursuant to Chapter 39.34 of the Revised Code of Washington do hereby agree to cooperatively purchase supplies, goods, services, and equipment as a result of competitive bidding and within the qualifications or specifications established by and for Jefferson County and Whatcom County.

Parties will finalize their own arrangements, including option selection, selections, trade-in, and delivery arrangements for goods, services, and equipment directly with the applicable contractor or vendor. Jefferson County and Whatcom County agree that each Party has no liability as far as the durability, serviceability, performance and warranty of the goods, services, and equipment selected. It is also agreed that the goods, services, and equipment selected shall be agreed upon by each individual Party and will not be perceived as selected by the other Party. Jefferson County and the Whatcom County accept no responsibility of the performance of any contracts by the contractor, and Jefferson County and Whatcom County accept no responsibility for payment of the purchase price for any contract entered into by the other Party.

2. **Administration.** No new or separate legal or administrative entity is created to administer the provisions of this Agreement. Each Party reserves the right to contract independently for the purchase of any particular class of goods or services with or without notice to the other Party. The Parties reserve the right to exclude the other Party from any particular purchasing or services contract, with or without notice to the other Party.

3. **Term.** This Agreement shall take effect immediately and shall continue in effect until terminated. It may be terminated by either Party by giving ten (10) days written notice to the other; provided, however, that termination shall not affect or impair joint purchases of the Parties that are agreed to on or before the date of termination.

4. **Compliance with Laws.** Each Party accepts responsibility for compliance with federal, state, or local laws and regulations including, in particular, that Party's bidding requirements applicable to the acquisition of any goods, services, or equipment obtained through the cooperative process agreed to herein.

5. **Indemnification.** Each Party shall be liable and responsible for the consequence of any negligent or wrongful act or failure to act on the part of itself and its employees. Neither Party assumes responsibility to the other Party for the consequences of any act or omission of any person, firm, or corporation not a party to this Agreement.

6. **Recording.** As provided by RCW 39.34.040, this Agreement shall not take effect unless and until it has (i) been duly executed by both parties, and (ii) either filed with the respective county Auditor or posted on the respective county's website.
7. **General Provisions.** This Agreement contains all of the agreements of the Parties with respect to any matter covered or mentioned in this Agreement. No provision of this agreement may be amended or modified except by written agreement signed by the Parties. This Agreement shall be binding upon and inure to the benefit of the Parties' successors in interest, heirs, and assigns.

8. Any provision of this Agreement which is declared invalid or illegal shall in no way effect or invalidate any other provision. In the event either of the Parties defaults on the performance of any terms of this Agreement or either Party places the enforcement of this Agreement in the hands of an attorney, or files a lawsuit, each Party shall pay all its own attorneys' fees, costs and expenses.

9. The venue for any dispute related to this Agreement shall be in Whatcom County if the bid is issued by Whatcom County or in Jefferson County if the bid is issued by Jefferson County. Failure of either Party to declare any breach or default by the other Party immediately upon the occurrence thereof, or delay in taking any action in connection with, shall not waive such breach or default. Time is of the essence of this Agreement and each and all of its provisions in which performance is a factor.

IN WITNESS WHEREOF, the parties have caused duplicate originals of this Agreement to be executed on the day and year the last signature hereto is affixed.

**WHATCOM COUNTY, WASHINGTON**

______________________________
Jack Louws, County Executive

Dated: ________________________

Approved as to form:

By: __________________________
Chief Civil Deputy

**JEFFERSON COUNTY, WASHINGTON**

BOARD OF COMMISSIONERS

______________________________
David Sullivan, Chair

______________________________
Kathleen Kler, Member

______________________________
Kate Dean, Member

Approved as to form:

______________________________
Philip C. Hunsucker Date
Chief Civil Deputy Prosecutor
Jefferson County Prosecutor's Office
### TITLE OF DOCUMENT:
Discussion regarding potential property acquisition

### ATTACHMENTS:
None

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

Discussion regarding a potential property acquisition with Public Works staff. (Discussion of this item may take place in executive session (closed to the public pursuant to RCW 42.30.110 (1) (b))

### COMMITTEE ACTION:

### COUNCIL ACTION:

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<thead>
<tr>
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**TITLE OF DOCUMENT:** Department Updates to Council

**ATTACHMENTS:**

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

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**TITLE OF DOCUMENT:**
Presentation from Safe Storage PNW

**ATTACHMENTS:**

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

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<tr>
<th>Should Clerk schedule a hearing?</th>
<th>( ) Yes</th>
<th>( ) NO</th>
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<tbody>
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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.)
Presentation from Safe Storage PNW

**COMMITTEE ACTION:**

**COUNCIL ACTION:**

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

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**WHATCOM COUNTY COUNCIL AGENDA BILL**

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<td>4/16/18</td>
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**TITLE OF DOCUMENT:**

*An Ordinance Regarding Establishment of Speed Limits on certain roads in the Birch Bay area.*

**ATTACHMENTS:**

1. Memo to County Executive and County Council
2. Map A-D
3. Speed Limit Ordinance

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

<table>
<thead>
<tr>
<th>Should Clerk schedule a hearing?</th>
<th>( ) Yes</th>
<th>( ) NO</th>
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</table>

**REQUESTED DATE:** 5/8/2018

**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.)

To comply with RCW 46.61.415, at the direction of the County Council, it is found necessary and expedient to modify the speed limits on certain roads in the Birch Bay 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](http://www.co.whatcom.wa.us/council).
Memorandum

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

Through: Jon Hutchings, Director

From: Joseph P. Rutan, P.E., County Engineer/Assistant Director

Date: April 11, 2018

Re: Ordinance Regarding Designation of Speed Limits for Certain Birch Bay Area Roads as 25 mph.

Requested Action:
Adoption of an ordinance to designate the speed limit on certain Birch Bay area roads as 25 mph.

Background and Purpose:
The Birch Bay Chamber of Commerce has requested to designate Birch Bay Drive and all 25 mph roads leading to, and contiguous with, Birch Bay Drive as a golf cart zone per RCW 46.08.175. Several existing roads within this proposed zone are commonly understood to be 25 mph although they do not have an ordinance designating them as such. (See attached maps)

Additional Information:
RCW 46.08.175 requires that a roadway designated as a golf cart zone have a posted speed limit of 25 mph or less.

Per Whatcom County Ordinance 87-27, all County roads are 35 mph unless otherwise designated.
ORDINANCE NO.________
ESTABLISHMENT OF 25 MPH SPEED LIMIT
ON CERTAIN BIRCH BAY AREA ROADS

WHEREAS, the Whatcom County Council is authorized under RCW 46.61.415 to establish speed limits on certain County roads; and

WHEREAS, the Birch Bay Chamber of Commerce has requested to designate Birch Bay Drive and all 25 mph roads that lead to, and are contiguous with, Birch Bay Drive as a Golf Cart Zone per RCW 46.08.175; and

WHEREAS, RCW 46.08.175 requires that roadways designated as golf cart zones must have a posted speed limit of 25 miles per hour or less;

NOW, THEREFORE, BE IT ORDAINED that the speed limits be established as follows:

1. 25 mph on Birch Point Loop
2. 25 mph on Bay road, from 500 feet East of Jackson road to Halibut Drive.
3. 25 mph on all roads within the plat of Maple Crest 2nd Addition, Section 24, Township 40 North, Range 1 West, W.M.
4. 25 mph on all roads within the plat of First Addition to Maple Crest, Section 24, Township 40 North, Range 1 West, W.M.
5. 25 mph on all roads within the plat of Maple Crest 3rd Addition, Section 24, Township 40 North, Range 1 West, W.M.
6. 25 mph on all roads within the plat of Bernard, Beattys plat of ‘Maple Crest’, Section 24, Township 40 North, Range 1 West, W.M.
7. 25 mph on all roads within the plat of Cottonwood Beach, Section 24, Township 40 North, Range 1 West, W.M.
8. 25 mph on all roads within the plat of Cottonwood Beach Park, Section 24, Township 40 North, Range 1 West, W.M.
9. 25 mph on all roads within the plat of Morgan Cottonwood Beach, Section 24, Township 40 North, Range 1 West, W.M.
10. 25 mph on all roads within the plat of Forsberg plat, Section 24, Township 40 North, Range 1 West, W.M.
11. 25 mph on all roads within the plat of Gordon Addition Morgan Cottonwood Beach Plat, Section 24, Township 40 North, Range 1 West, W.M.
12. 25 mph on all roads within the plat of Birch Bay West End Estates, Section 24, Township 40 North, Range 1 West, W.M.
13. 25 mph on all roads within the plat of Birch Bay West End Estates Addition No. 1, Section 24, Township 40 North, Range 1 West, W.M.
14. 25 mph on all roads within the plat of Birch Bay Park, Section 36, Township 40 North, Range 1 West, W.M.
15. 25 mph on all roads within the plat of Bay View Terrace Amended, Section 36, Township 40 North, Range 1 West, W.M.
16. 25 mph on all roads within the plat of Parkland, Section 31, Township 40 North, Range 1 East, W.M.
17. 25 mph on all roads within the plat of Birch Bay Park First Addition, Section 31, Township 40 North, Range 1 East, W.M.
18. 25 mph on all roads within the plat of First Addition to Whispering Pines, Section 31, Township 40 North, Range 1 East, W.M.
19. 25 mph on all roads within the plat of Whispering Pines, Section 31, Township 40 North, Range 1 East, W.M.
20. 25 mph on all roads within the plat of Malibu Estates, Section 2, Township 39 North, Range 1 West, W.M.
21. 25 mph on all roads within the plat of Woodhaven, Section 2, Township 39 North, Range 1 West, W.M.

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

Provisions of this ordinance are hereby added to Whatcom County Code, Section 10.04.

ADOPTED this _____ day of ______, 2018.

ATTEST: WHATCOM COUNTY COUNCIL
WHATCOM COUNTY, WASHINGTON

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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**TITLE OF DOCUMENT:**
An Ordinance creating a “golf cart zone” on certain roads in the Birch Bay area.

**ATTACHMENTS:**
1. Memorandum to County Executive and County Council
2. Golf Cart Zone Maps A-D
3. RCW 46.08.175 & 46.04.1945
4. Ordinance

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

Designation of certain roads in the Birch Bay area, as a “golf cart zone” as defined in RCW 46.08.175

**COMMITTEE ACTION:**

**COUNCIL ACTION:**

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<th>Related File Numbers:</th>
<th>Ordinance or Resolution Number:</th>
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Please Note: Once adopted and signed, ordinances and resolutions are available for viewing and printing on the County’s website at: www.co.whatcom.wa.us/council.
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: April 11, 2018
Re: Ordinance creating a “Golf Cart Zone” on certain roads in the Birch Bay area

Requested Action
At the request of the Whatcom County Council Public Works Committee, the Public Works Department respectfully submits the attached ordinance to create a “Golf Cart Zone” on certain roads in the Birch Bay area.

Background and Purpose
The Whatcom County Council Public Works Committee met on 11/21/2017 to discuss the creation of a golf cart zone in Birch Bay. The Birch Bay Chamber of Commerce President, Mr. Billy Brown, spoke in favor of the creation of a golf cart zone. The Committee directed the Public Works Department to coordinate with the Whatcom County Sheriff to develop an ordinance for the creation of a golf cart zone in Birch Bay.

This proposed “Golf Cart Zone” will include Birch Bay Drive and All County Roads posted 25 mph or less, that lead to and are contiguous with, Birch Bay Drive. (See attached maps)

Information
Creation of golf cart zones is allowed per RCW 46.08.175 while “golf carts” are defined under RCW 46.04.1945, see attached. RCW 46.08.175 requires that a roadway designated as a “Golf Cart Zone” have a posted speed limit of 25 mph or less.

Several existing roads within the proposed “Golf Cart Zone” are commonly understood to be 25 mph although they do not have an ordinance designating these as such. An ordinance to officially designate these roads as 25 mph must be approved prior to the adoption of this “Golf Cart Zone” ordinance.

Please contact Joe Rutan at extension 6219 with any questions regarding this ordinance.
RCW 46.08.175

Golf cart zones.

(1) The legislative authority of a city or county may by ordinance or resolution create a golf cart zone, for the purposes of permitting the incidental operation of golf carts, as defined in RCW 46.04.1945, upon a street or highway of this state having a speed limit of twenty-five miles per hour or less.

(2) Every person operating a golf cart as authorized under this section is granted all rights and is subject to all duties applicable to the driver of a vehicle under chapter 46.61 RCW.

(3) Every person operating a golf cart as authorized under this section must be at least sixteen years of age and must have completed a driver education course or have previous experience driving as a licensed driver.

(4) A person who has a revoked license under RCW 46.20.285 may not operate a golf cart as authorized under this section.

(5) The legislative authority of a city or county may prohibit any person from operating a golf cart as authorized under this section at any time from a half hour after sunset to a half hour before sunrise.

(6) The legislative authority of a city or county may require a decal or other identifying device to be displayed on golf carts authorized on the streets and highways of this state under this section. The city or county may charge a fee for the decal or other identifying device.

(7) The legislative authority of a city or county may prohibit the operation of golf carts in designated bicycle lanes that are within a golf cart zone.

(8) Golf carts must be equipped with reflectors, seat belts, and rearview mirrors when operated upon streets and highways as authorized under this section.

(9) A city or county that creates a golf cart zone under this section must clearly identify the zone by placing signage at the beginning and end of the golf cart zone on a street or road that is part of the golf cart zone. The signage must be in compliance with the department of transportation's manual on uniform traffic control devices for streets and highways.

(10) Accidents that involve golf carts operated upon streets and highways as authorized under this section must be recorded and tracked in compliance with chapter 46.52 RCW. The accident report must indicate that a golf cart operating within a golf cart zone is involved in the accident.

[ 2010 c 217 § 4.]

RCW 46.04.1945

Golf cart.

"Golf cart" means a gas-powered or electric-powered four-wheeled vehicle originally designed and manufactured for operation on a golf course for sporting purposes and has a speed attainable in one mile of not more than twenty miles per hour. A golf cart is not a nonhighway vehicle or off-road vehicle as defined in RCW 46.04.365.

[ 2011 c 171 § 12; 2010 c 217 § 3.]

NOTES:

CREATING A "GOLF CART ZONE" ON CERTAIN ROADS IN THE BIRCH BAY AREA

WHEREAS, Birch Bay area residents have requested to operate golf carts in the Birch Bay area; and

WHEREAS, RCW 46.08.175 allows for creation of golf cart zones; and

WHEREAS, the Birch Bay Chamber of Commerce supports the creation of a golf cart zone in the Birch Bay area; and

WHEREAS, the speed limit on all the roads in the proposed Golf Cart Zone are 25 mph or less; and

WHEREAS, operators of golf carts shall be licensed motor vehicle operators as required by RCW 46.20.001.

NOW, THEREFORE, BE IT ORDAINED by the Whatcom County Council that a Golf Cart Zone is hereby on Birch Bay Drive and all county roads posted 25 mph or less that lead to, and are contiguous with, Birch Bay Drive;

BE IT FURTHER ORDAINED that the County Engineer is hereby directed to install the appropriate signs; and

BE IT FURTHER ORDAINED that the Sheriff’s Department be provided a copy of this ordinance.

ADOPTED this ___ day of __________, 2018.

ATTEST:

WHATCOM COUNTY COUNCIL
WHATCOM COUNTY, WASHINGTON

Dana Brown-Davis, Council Clerk
Rud Browne, Council Chair

APPROVED AS TO FORM:

( ) Approved ( ) Denied

Civil Deputy Prosecutor
Jack Louws, Executive

Date: ______________________
Title of Document: Executive Office discussion with Council on homeless housing issues

Attachments: No attachments

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

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

Executive and Deputy to provide an update to Council on homeless housing issues

Committee Action:

Council Action:

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

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**WHATCOM COUNTY COUNCIL AGENDA BILL**

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**TITLE OF DOCUMENT:**

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

**ATTACHMENTS:**

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

**SEPA review required?**

( x ) Yes  
( ) NO

**SEPA review completed?**

( x ) 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.)

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

**COMMITTEE ACTION:**

2/13/2018: Held in Committee
3/27/2018: Presented, comments received, and discussed
4/10/2018: Presented, discussed, and heard testimony

**COUNCIL ACTION:**

1/30/2018: Introduced 7-0
2/13/2018: Held in Committee
2/27/18: Discussed in SCOTW. Held in committee for four weeks (March 27). The focus will be on vesting.

**Related County Contract #:**

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Memorandum

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

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

THROUGH: Mark Personius, AICP, Director

DATE: April 13, 2018

SUBJECT: Code Amendment: Land Use and Development Procedures – Title 22

Staff has presented and discussed with Council all of Chapter 22.05 Project Permit Procedures from the proposed Title 22. At the April 24, 2018 meeting, staff will present the final four chapters of the title.

On April 12, 2018, PDS staff gave an additional (third) briefing to the Building Industry Association of Whatcom County on proposed Title 22 and decided to reschedule the public hearing to May 8, 2018. This additional time will give Council and the public an opportunity to review changes to the final chapters of proposed Title 22 before the hearing. Below is a brief summary of those chapters we will be reviewing:

- **Chapter 22.10 Legislative Procedures**, combines procedures for comprehensive plan amendments and zoning amendments (including both zoning map changes and code text amendments), from current Chapters 2.160 and 20.90, respectively. The goal is to make the process easier to understand, especially when a zoning amendment requires a comprehensive plan amendment and both are processed at the same time. The following substantive changes are proposed:
  - Removal of the Transfer of Development Rights (TDRs) as a requirement of the expansion of an urban growth area (UGA). It appears as a TDR purchase requirements may be considered a tax, fee or charge and may be inconsistent with RCW 82.02.020. It should be noted that the TDR/PDR Work Group is currently evaluating alternatives to the traditional TDR program.
  - To create consistency between the comprehensive and text amendment process, staff has proposed to remove the option for an automatic docketing
of a citizen initiated zoning amendment without Council approval. Citizens can still request Planning Commission, County Council and the administration to docket items. It can be viewed as unequitable to allow some proposals to simply bypass the Council review and docket decision-making process by paying fees. Further, a Council review of an action beforehand could prevent the processing of an amendment not consistent with state law from needlessly moving forward. The proposal allows multiple paths for amendments but does not automatically place paid amendment requests on the docket if denied by Council.

- **Chapter 22.15 Code Compliance Procedures**, consolidating code enforcement procedures from Chapter 20.94 with other enforcement procedures scattered throughout the code. For this process, this chapter title will be reserved as a placeholder for when the separate process of consolidating those procedures is completed at a later date.

- **Chapter 22.20 Land Use and Development Code Interpretation Procedures**, would add procedures for citizens to request PDS interpretations of the County’s land use and development codes to clarify conflicting or ambiguous wording. For example, how to apply a setback to a specific site. Interpretation procedures commonly appear in other jurisdictions’ codes and is required by RCW 36.70B.110(11). Whatcom County Code has no such provision, and staff has proposed wording similar to the City of Bellingham’s code (BMC 21.10.270).

- **Chapter 22.25 Land Use and Development Fees**, would place the fee provisions, now located in Title 20 Zoning, in Title 22, where it would apply to all development related titles of the County Code. These fee provisions include reference to the Unified Fee Schedule, and procedures for refunds. Staff has not proposed significant changes to this code section.

In the packet, staff has included the draft ordinance for the proposed Title 22. If you have any questions please submit them by email to akeenan@whatcomcounty.us and nsmith@whatcomcounty.us so that staff may prepare a response. Please also feel free to contact Amy Keenan at 778-5943 or Nick Smith at 778-5913 with any questions or concerns.

Thank you.

Attachments:
Draft Ordinance (Proposed Title 2, 20 & 22)
EXHIBIT A
Whatcom County Code Title 22
AMENDMENTS

Title 22

Reserved Land Use and Development Procedures

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

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

Chapter 22.05
PROJECT PERMIT PROCEDURES

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

Sections:

1

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22.05.010 Purpose and applicability.
22.05.020 Project permit processing table.
22.05.030 Consolidated permit review.
22.05.040 Preapplication conference.
22.05.050 Application and determination of completeness.
22.05.060 Vesting.
22.05.070 Notice of application.
22.05.080 Posting of application.
22.05.090 Open record hearings.
22.05.100 Consistency review and recommendations.
22.05.110 Final decisions.
22.05.120 Recommended decisions to county council.
22.05.130 Permit review timeframes.
22.05.140 Expiration of project permits.
22.05.150 Permit revocation procedure.
22.05.160 Appeals.
22.05.170 Annual Report.
22.05.180 Interpretation, conflict, and severability.

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

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

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

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

22.05.020 Project Permit Processing Table
(1) Marked boxes in the table below indicate the required general steps for processing all project permit applications or administrative actions. The requirements for each step listed in the top row of the table are provided in WCC sections 22.05.040 through 22.05.160, as indicated. Specific requirements for each project permit can be found through the references given in the table.
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<th>Notice of Application Required (see 22.05.070)</th>
<th>Site Posting Required (see 22.05.080)</th>
<th>Legal Notice of Open Record Hearing Required (see 22.05.090)</th>
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<td>County Council</td>
<td>Superior Court</td>
</tr>
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</table>

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

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

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

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

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

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

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

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

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

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

22.05.030 Consolidated permit review.1

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

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

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

**233.030-22.05.040 Preapplication conference.**

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

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

B.(2) WCC 233.020(A)22.05.020 indicates the project permits for which a preapplication conference may be requested is required prior to the submittal of a project permit application subject to this chapter. For other permits, the applicant may request a preapplication.

C.(32) The county shall charge the applicant a fee for a preapplication conference per the Unified Fee Schedule. If the county makes a determination of completeness on a project permit submitted within one year of the notice of site-specific submittal requirements per subsection (86) of this section, preapplication meeting, the preapplication fee shall be applied to the application cost.

D.(43) It is the responsibility of the applicant to initiate a preapplication conference through a written request or other means allowed by the technical administrator application. The request application shall, at a minimum, include the following written information: all items identified on the pre-application form and the department's administrative manual.

1. Property owner's name, address, phone number, fax number;
2. Applicant/project representative name, address, phone number, fax number;
3. Project site parcel number;
4. Project site address (if available);
5. Written description of the project;
6. One copy of the current deed to the property;
7. A site plan drawn at a scale of one inch equals 100 feet or larger that includes the following:
   a. North arrow;
   b. Scale;
   c. All existing and proposed property lines with dimensions of parcel;
   d. Location and size of existing and proposed structures labelled appropriately;
   e. Location and size of existing and proposed easements and/or rights-of-way on or adjacent to the project site;
f. Significant physical features such as drainageways, wet areas, steep or unstable slopes,
g. Location of utilities including wells and septic systems when applicable.

E. (5) The applicant may provide additional information to facilitate more detailed review. See WCC 2.33.040, Application submittal information, for additional submittal information. The department’s administrative manual for additional submittal information.

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

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

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

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

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

2.33.05022.05.050 Permit receipt and Application, fees, and determination of completeness.

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

\(^2\) RCW 36.70B.070(1) allows 28 days; Title 21 currently has 28 days for subdivision plat applications, which would be changed to 14 days under this proposal.
complete or the application is incomplete. To the extent known by the county, other agencies of local, state, or federal government that may have jurisdiction shall be identified on the determination.

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

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

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

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

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

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

20.04.03122.05.060 Vesting of permits. [The proposal would replace the County’s vesting provisions of WCC 20.04.031 in this subsection so that they will clearly apply to all development permits (not just those listed in Title 20 Zoning) and to add clearer language that is more consistent with wording in state law and with recent court decisions. The current WCC 20.04.031(1)’s definition of project permit is proposed to be deleted, with a new reference to the County Code’s definition (consistent with state law) to be added to 22.05.010.]

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

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

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

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

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

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

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

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

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

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

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

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

(1) Project Permits Defined. For the purpose of this section, “project permit” and “project permit application” shall be as defined in RCW 36.70B.020:

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

(2) Project Permits Approved Prior to Effective Date:

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

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

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

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

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

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

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

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

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

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

(5) Additional Provisions:

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

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

2.33.06022.05.070 Notice of application for a proposed land use action.
A. (1) For Type II, III, and IV applications per WCC 22.05.020, the county shall issue a notice of application shall be issued for project permit applications within 14 calendar days after determination of completeness and at least 15 calendar days prior to the open hearing. The date of notice shall be the date of mailing.

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

C. (3) Notice shall include:

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

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

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

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

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

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

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

8. (g) A statement of the limits of the public of the minimum public comment period which shall be the right of any person to comment on the application within a 15 calendar days time period for all project permits except (30 calendar days for shoreline substantial development permits, shoreline conditional use, shoreline variance and major project permits for mitigation banks which shall have a minimum comment period of no more than 30 calendar days).

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

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

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

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

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

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

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

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

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

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

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

22.05.080 Posting of public notice Application. [existing text from 20.84.235(2)]

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

22.05.090 Open record hearings.

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

20.92.215 (1) Open record hearing notice.

Notice of the time and place of the open record hearing shall be given pursuant to WCC 2.33.060 and 2.33.070. 2.33.070 Notice of an open record hearing.
A. (a) The hearing examiner shall publish a notice of open record hearing shall be published by the hearing examiner once in the official county newspaper and on the Whatcom County website at least 1014 calendar days prior to an open record hearing. The notice shall consist of the date, time, place, and type of the hearing. In addition, personal notice shall be provided to any person who has requested such notice in a timely manner, consistent with WCC 2.33.060 22.05.0670(e)(3)(B)(h).

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

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

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

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

20.92.228(2) Open record hearing.

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

20.92.224(3) Combined county and agency hearing.

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

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

2.33.080 22.05.100 Consistency review and staff report recommendations.
A. Fundamental land use planning choices made in adopted comprehensive plans and development regulations shall serve as the foundation for project review. During project permit review, the review authority shall determine if the project proposal is consistent with the county’s comprehensive plan, other adopted plans, existing regulations and development standards.

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

1. Type of land use permitted on the site;
2. Density of development allowed on site, such as units per acre or floor area ratio or lot coverage;
3. Availability and adequacy of public facilities and infrastructure (when applicable);
4. Character of the development.

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

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

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

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

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

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

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

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

20.92.400 22.05.110 Final decisions.
(1) The director or designee's final decision on all Type I or II applications shall be in the form of a written determination or permit. The determination or permit may be granted subject to conditions, modifications, or restrictions that are necessary to comply with all applicable codes.

20.92.410 Final decision conditions—Applications and appeals.
(2) The hearing examiner's final decision on all Type III applications per WCC 22.05.020 or appeals per 22.05.160(1) shall either grant or deny the application or appeal.

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

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

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

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

20.92.600 Appeal to county council.
20.92.610 Applicant appeal.

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

The appellant shall file a written notice of appeal at the county council office within 10 business days of the final decision of the hearing examiner. Any parties of record from the hearing examiner’s proceedings who wish to continue to be considered parties of record must register with the county council in writing no later than 10 days after the date of the notification of appeal letter which is sent from the hearing examiner’s office. The notification of appeal letter will be sent from the hearing examiner’s office within three working days of receiving written notification from the county council office that an appeal has been filed.

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

-County Council appeal process, is-proposed-to-be-omitted.]

20.92.300 Recommended decisions to county council.

20.92.310 Recommended conditions.

20.92.30022.05.120 Recommended decisions to county council.

20.92.310 Recommended conditions:

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

20.92.320 Recommended decision—Findings and conclusions:

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

20.92.320 Recommended decision—Findings and conclusions:

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

20.92.330 Filing recommended decision:

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

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

20.92.500 Process for subdivision application and major project permits:

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

20.88.215 A written notice of the scheduled public hearing shall be mailed not less than
10 working days prior to the hearing as follows:
(1) For sites within urban growth areas: Notice shall be mailed to each property
owner within 300 feet of the external boundaries of the subject property as shown
by the records of the county assessor;
(2) For sites outside urban growth areas: Notice shall be mailed to each property
owner within 1,000 feet of the external boundaries of the subject property as
shown by the records of the county assessor.
Also notice of the hearing shall be published in a newspaper of general circulation in the
area of the proposed project at least 10 working days prior to the public hearing. Notice
shall consist of time and date of hearing, and brief description of the property and the
project. Further, signs meeting the approval of the zoning administrator shall be
erected on each frontage of the project site by the applicant not less than 10 working days
prior to the hearing.
(4) For major project permitsplanned unit developments and major project permits
the following shall apply:

20.88.220(a) The recommendation of the hearing examiner regarding planned
unit developments and major project permits major project permits shall be
based upon the criteria set forth in WCC 20.85.335.130 and 20.85.335.130, respectively.(1) through (7).
20.92.520(b) The hearing examiner shall file the recommendation with the clerk of the county council within 21 calendar days following the conclusion of the open record hearing. shall, upon receipt of the recommended decision on a major project permit, process that recommendation in the manner set forth in the major project permit chapter of this title (Chapter 20.88 WCC).

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

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

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

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

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

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

20.88.250 Reserved.

20.88.255(5) 5(d) The county council’s final written decision may include conditions when the project is approved and shall state the findings of fact upon which the decision is based.

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

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

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

2.33.090-22.05.130 Notice of final decision and pPermit review
limitationstimeframes and notice of final decision.

A. Unless otherwise exempted in WCC 2.33.020 or subsection (C) of this section, the county
shall issue a notice of final decision on a project permit application as follows:
1. Within 90 days of a determination of completeness if the project is exempt from SEPA
review unless a shorter review period is provided in other provisions of the Whatcom
County Code;
2. Within 90 days of a determination of completeness if the project is a subdivision under
WCC Title 21 unless a shorter review period is provided in other provisions of the Whatcom
County Code;
3. Within 120 days of a determination of completeness if the project is other than a
subdivision and is subject to SEPA review unless a shorter review period is provided in
other provisions of the Whatcom County Code.

B. In determining the number of days that have elapsed after an application is determined
to be complete, the following time periods shall be excluded:
(1) The county shall issue a notice of final decision for all permit types, on, including
procedures for administrative appeal and notice that affected property owners may
request a change in valuation for property tax purposes, to the applicant, the
Whatcom County assessor, and any person who requested notice or submitted
substantive comments on the application within 120 calendar days of the date the
department determined the application complete 5, except as provided below:

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

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

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

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

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

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

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

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

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

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

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

3. (iii) Is substantially revised by the applicant, including all redesigns of proposed land divisions pursuant to WCC 2.10.150, in which case a new time period shall start from the date at which the revised project application is determined to be complete.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

20.92.250 22.05.150 Permit revocation procedure.

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

20.92.255 Permit revocation hearing.

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

20.92.260 Permit revocation or grace period.

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

20.92.610 Applicant Appeal. 22.05.160 Appeals.

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

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

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

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

(iv) The specific relief requested; and

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

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

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

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

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

22.05.180 Interpretation, conflict and severability.

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

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

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

LEGISLATIVE ACTION PROCEDURES

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

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

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

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

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

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

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

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

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

20.90.041(2)(4) The county council, by majority vote, may remove a proposed amendment from the approved docket by motion, unless:

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

20.90.050 22.10.030 Processing of initiated docketed amendments.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(2) (a) The county shall mail Notice shall be mailed to property owners as follows:

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

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

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

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

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

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

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

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

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

2.160.08022.10.060 Approval criteria.

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

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

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

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

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

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

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

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

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

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

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

(2) In order to approve an amendment to the development regulations, the planning commission and county council shall find that the amendment is consistent with the comprehensive plan.
Chapter 22.15  
CODE COMPLIANCE PROCEDURES  
(Reserved)  
[This is a place-holder for a future consolidated chapter on enforcement procedures. It would largely be based on current Chapter 20.94 Enforcement and Penalties, with enforcement procedures from other titles added, because PDS staff enforces more than just Title 20 Zoning.]  

Chapter 22.20  
LAND USE AND DEVELOPMENT CODE INTERPRETATION PROCEDURES  
[Based on City of Bellingham’s code interpretation process, BMC 21.10.270]  
Sections:  
22.20.010 Purpose and applicability.  
22.20.020 Request for interpretation.  
22.20.030 Procedure.  
22.20.040 Factors for Consideration.  
22.20.050 Issuance of Interpretation.  
22.20.060 Appeals.  

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

LAND USE AND DEVELOPMENT FEES

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

Sections:

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

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

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

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

22.04.090 22.25.020 Application fees and other fees.
Fees for conditional-use permits, variances, planned-unit developments, project permits, applications, legislative amendments, and docketed amendments and fees for other approvals and reviews as set forth in this title shall be as provided in the County's Unified Fee Schedule.

22.04.091 22.25.030 Reduced application fees.
When any given project requires more than one of the following permits or applications, the total amount of fees shall be reduced by 25 percent of the required aggregate permit and application fees; provided any fees required for processing of an EIS shall not be included as part of the total amount of fees to be reduced by 25 percent.
(1) Subdivision plat application;

(2) Rezone application;

(3) Shoreline substantial development permit, variance or conditional use;

(4) Major development permit;

(5) Conditional use permit;

(6) Variance;

(7) Planned unit development.

20.04.092 22.25.040 Refund of application fees.
Refunds of application fees for project permits and for amendments to the Whatcom County Comprehensive Plan, development regulations and official maps shall be computed based on the following, unless otherwise indicated in Whatcom County Code. All refund requests shall be submitted in writing to the department of planning and development services. The date of application for a refund request shall be the date the written refund request is received by the department. For the purpose of computing elapsed calendar days, the day after the date of application or deadline date as appropriate shall be counted as day one.

(1) Fees for Project Permits.

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

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

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

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

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

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

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

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

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

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

Whatcom County Code Title 2
Administration and Personnel

AMENDMENTS

Title 2
ADMINISTRATION AND PERSONNEL

Chapters:

2.11 Repealed Hearing Examiner

2.33 Permit Review Procedures Reserved

2.160 Comprehensive Plan Amendments Reserved

Chapter 2.02
COUNTY COUNCIL

2.02.160 Hearing examiner.
The county council shall administer an annual contract for hearing examiner services. The duties of the hearing examiner are established in Chapter 20.92 2.11 WCC.


Chapter 2.11

INFORMATION-CENTER (Repealed by Ord.-93.042)

HEARING EXAMINER

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

Sections:

20.92 2.11.010 Purpose.
20.92 2.11.100 Hearing examiner office.
20.92 2.11.110 Creation and purpose.
20.92 2.11.120 Pro tempore hearing examiner.
20.92 2.11.130 No interference with the hearing examiner.
20.92 2.11.140 Qualifications.
20.92 2.11.150 Appointment and removal.
20.92 2.11.200 Hearing examiner – Duties and powers.
20.92 2.11.205 Recommended decisions.
20.92 2.11.210 Final decisions.
20.92 2.11.215 Administrative Appeals – Appeal Period.
20.92 2.11.220 Rules and regulations.
20.92 2.11.225 Department reports.
20.92 2.11.230 Changes in legislation.
20.92 2.11.235 Additional powers.
20.92 2.11.240 Limited jurisdiction.

20.92 2.11.010 Purpose.
The purpose of this chapter is to establish the authority and responsibilities of the Hearing Examiner, provide a system of considering and applying regulatory devices which will best satisfy these three basic needs:

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

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

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

20.922.11.100 Hearing examiner office.

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

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

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

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

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

20.922.11.200 Hearing examiner – Duties and powers.

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

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

(2) Planned unit developments;

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

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

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

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

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

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

(3) Applications for zoning ordinance conditional use permits.

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

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

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

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

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

(10) Applications for flood damage prevention variances.

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

(12) Preliminary subdivisions and subdivision variances.

(13) Preliminary binding site plan proposals.

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

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

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

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

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

20.92.211-2.11.215 Administrative appeals – Appeal period.

Appeals to the hearing examiner on the subjects listed in WCC 22.05.020 20.92.210(1) and (2) must be filed within 14 calendar days of the date of administrative determination pursuant to WCC 22.20.160.

20.92.225 2.11.220 Rules and regulations.

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

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

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

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

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

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

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

Chapter 2.33

PERMIT REVIEW PROCEDURES

Reserved

[This chapter is proposed to be deleted in its entirety, with most of its content moved to the new Chapter 22.05 Project Permit Procedures.]
Sections:

2.33.010 Purpose and applicability:

2.33.020 Exemptions:

2.33.030 Preapplication review:

2.33.040 Application submittal information:

2.33.050 Permit receipt and determination of completeness:

2.33.060 Notice of application for a proposed land use action:

2.33.070 Notice of an open record hearing:

2.33.080 Consistency review and staff report:

2.33.090 Permit review limitations and notice of final decision:

2.33.100 Consolidated permit review:

2.33.110 Open record hearings:

2.33.120 Annual report:

2.33.010 Purpose and applicability:

A. The purpose of this chapter is to consolidate the application, review, and approval processes for land development in Whatcom County in a manner that is easily understood and concise. It is further intended for this chapter to comply with state direction by integrating environmental and land use review within a 120-day period.

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

1. Conditional uses;

2. Variances;

3. Subdivisions;

4. Shoreline permits when an open record hearing is required;

5. General binding site plans;

6. Lot consolidation relief;

7. Site-specific rezones;

8. Reasonable use;

2.33.020 Exemptions:

The following are exempt from the provisions of this chapter:

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

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

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

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

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

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

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

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

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

D. It is the responsibility of the applicant to initiate a preapplication conference through a written request or other means allowed by the technical administrator. The request shall, at a minimum, include the following written information:

1. Property owner’s name, address, phone number, fax number;
2. Applicant/project representative name, address, phone number, fax number;
3. Project site parcel number;
4. Project site address (if available);
5. Written description of the project;
6. One copy of the current deed to the property;
7. A site plan drawn at a scale of one inch equals 100 feet or larger that includes the following:

a. North arrow;

b. Scale;

c. All existing and proposed property lines with dimensions of parcel;

d. Location and size of existing and proposed structures labelled appropriately;

e. Location and size of existing and proposed easements and/or rights-of-way on or adjacent to the project site;

f. Significant physical features such as drainageways, wet areas, steep or unstable slopes;

g. Location of utilities including wells and septic systems when applicable.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

C. Notice shall include:

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

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

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

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

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

6. Any other information determined appropriate by the county;

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

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

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

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

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

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

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

E. Notices of application should be sent to neighboring cities and other agencies or tribes that will potentially be affected, either directly or indirectly, by the proposed development. (The county shall be responsible for such notification.)

F. With the exception of substantial development permit applications and major project permit applications for mitigation banks, a public comment period shall be 15 days following the date of notice of application. Substantial development permit applications and major project permit applications for mitigation banks require a 30-day period. All public comments received on the notice of application must be received in the department of planning and development services by 4:30 p.m. on or before the last day of the comment period. The county may require the applicant to pay the cost of providing notice.

G. No SEPA threshold determination shall be issued until the expiration of the public comment period established for the notice of application. This condition shall not apply if a determination of significance is made by the county.
H. Public notice given for project permit applications, SEPA documents, project hearings, and appeals hearings as required by this chapter and other provisions of the county code may be combined when practical, where such combined notice will expedite the permit review process, and where provisions applicable to each individual notice are met through the combined notice.

2.33.070 Notice of an open-record hearing:
A. A notice of open-record hearing shall be published by the hearing examiner once in the official county newspaper at least 10 days prior to an open-record hearing. The notice shall consist of the date, time, place, and type of the hearing. In addition, personal notice shall be provided to any person who has requested such notice in a timely manner, consistent with WCC 2.33.060(C)(8).

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

C. An affidavit verifying distribution of the notice must be submitted to the county two working days prior to the open-record hearing.

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

E. All costs associated with providing notice shall be paid by the applicant.

2.33.080 Consistency review and staff report:
A. Fundamental land-use planning choices made in adopted comprehensive plans and development regulations shall serve as the foundation for project review. During project review, the review authority shall determine if the project proposal is consistent with the county’s comprehensive plan, other adopted plans, existing regulations and development standards. The review authority shall at a minimum use four criteria for determining consistency, as follows:

1. Type of land-use permitted on the site;

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

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

4. Character of the development.

B. The county may conduct a more specific evaluation in addition to the evaluation of the four main categories listed in subsection (A) of this section in considering project consistency when other criteria are required by federal, state or local regulations.
C. County staff shall file one consolidated report with the hearing examiner at least 17 days prior to a scheduled hearing. The staff report shall address the proposed development or action, summarizing the comments and recommendations of county departments, affected agencies, special districts and public comments received within the 15-day or 30-day comment period as established in WCC 2.33.060(F). The report shall also provide an evaluation of the project proposal for consistency as indicated in this section. The staff report shall include findings, conclusions, and proposed recommendations for response to the proposal.

D. The conclusions of a consistency determination made under this section shall be documented in the project permit decision.

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

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

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

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

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

1. Any period during which the applicant has been required by the county to correct plans, perform required studies, or provide additional required information.
   a. The period shall be calculated from the date the county notifies the applicant of the need for additional information until the date the county receives the additional information. The county shall have 14 days after the date the information has been provided to the county to determine adequacy of the information;
   b. If the information submitted by the applicant under this subsection is insufficient, the county shall notify the applicant of the deficiencies and the provisions of this section shall apply as if a new request for information has been made;

2. Any period during which an environmental impact statement is being prepared following a determination of significance pursuant to Chapter 43.21C RCW and WCC Title 16;
3. The period specified for administrative appeals of project permits as provided in Chapter 20.92 WCC;

4. The period specified for administrative appeals of development standards as provided in WCC 12.08.035(1);

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

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

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

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

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

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

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

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

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

G. Unless otherwise acted upon by the county in a manner consistent with this chapter, permit applications subject to this chapter shall be approved as submitted within the timeliness established in WCC 2.33.090.

2.33.100 Consolidated permit review:
A. At the request of the applicant, the county shall integrate and consolidate the review and decision on two or more project permits subject to this chapter that relate to the proposed project action.
B. If the applicant elects the consolidated permit review process, the determination of completeness, notice of application, and notice of final decision must include all project permits being reviewed through the consolidated permit review process.

C. The consolidated permit review may combine an open record hearing on one or more permits with an open record appeal hearing on other permits.

2.33.110 Open record hearings.
Open record hearings subject to this chapter shall be undertaken pursuant to Chapter 20.92 WCC and other relevant chapters relating to specific permit processes.

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

Chapter 2.160

COMPREHENSIVE PLAN AMENDMENTS

Reserved

[This chapter is proposed to be deleted in its entirety, with much of its content moved to the new Chapter 22.10 Legislative Action Procedures.]

Sections:
2.160.010 Authority.
2.160.020 Purpose.
2.160.030 Definitions—Types of comprehensive plan amendments.
2.160.040 Application.
2.160.050 Initiation of comprehensive plan amendments.
2.160.060 Docket of initiated comprehensive plan amendments.
2.160.070 Review and evaluation of comprehensive plan amendments.
   —Staff report.
2.160.080 Approval criteria.
2.160.090 Review and evaluation of comprehensive plan amendments.
   —Planning commission.
2.160.100 Review and evaluation of comprehensive plan amendments.
   —County council.
2.160.110 Fees.

2.160.010 Authority.
The Growth Management Act (GMA) requires that an adopted comprehensive plan shall be subject to continuing review and evaluation, any amendments or revisions to the comprehensive plan conform to the requirements of Chapter 36.70A RCW, and that any changes to development regulations or official controls are consistent with and implement the comprehensive plan (RCW 36.70A.130(2)). Additionally, the GMA requires that the county establish procedures whereby proposed
amendments or revisions of the comprehensive plan are considered by the county council no more frequently than once every year; except, that amendments may be considered more frequently under the following circumstances:

A. The initial adoption of a subarea plan that does not modify the comprehensive plan policies and designations applicable to the subarea;

B. Adoption or amendment of a shoreline master program;

C. The amendment of the capital facilities element of a comprehensive plan that occurs concurrently with the adoption or amendment of a county or city budget; or

D. To resolve an appeal of the comprehensive plan filed with the Growth Management Hearings Board or court.

2.160.020 Purpose.
The purpose of this chapter is to define the types of plan amendments and establish timelines and procedures to be followed when proposals are made for amending or revising the Whatcom County Comprehensive Plan.

2.160.030 Definitions—Types of comprehensive plan amendments.
A. “Capital facilities element amendment” means a proposed change or revision to the capital facilities element of the comprehensive plan, including the six-year capital improvement program.

B. “Comprehensive plan amendment” means a proposed change or revision to the Whatcom County Comprehensive Plan, including but not limited to a capital facilities element amendment, text amendment, change to the comprehensive plan designations map or urban growth area amendment.

C. “Text amendment” means a proposed change or revision in the text of any element of the comprehensive plan including revisions to the goals, policies, objectives, principles or standards of the plan.

D. “Urban growth area amendment” means a proposed change or revision to an urban growth area boundary as adopted by the comprehensive plan.

E. “Final concurrent review” means the consideration by the county council of all comprehensive plan amendments that were reviewed and recommended by the council during the previous docket year. This review shall take place on or about February 1st of the year after the previous docket year.

2.160.040 Application.
A. Applications for suggested-comprehensive plan amendments shall include at least the following information:

1. A description of the comprehensive plan amendment being proposed including proposed map or text changes;

2. An explanation of how the comprehensive plan amendment relates to the approval criteria in WCC 2.160.080, Approval criteria;
3. A complete State Environmental Policy Act (SEPA) environmental checklist; and

4. Name, address, and phone number of the applicant, and, if applicable, assessor’s parcel number, section, township, and range.

B. The department of planning and development services may prescribe additional information requirements and shall provide forms for proposed comprehensive plan amendments.

C. Completed applications for comprehensive plan amendments must be received by planning and development services by December 31st to be considered for initiation during the next calendar year. Applications proposed by planning and development services are not subject to the December 31st deadline.

2.160.050 Initiation of comprehensive plan amendments:
A. Comprehensive plan amendments shall be initiated by a resolution of the county council adopted by majority vote on or about March 1st each year.

B. Planning and development services may request a comprehensive plan item be initiated at any time during the year. Requested amendments of this type shall be placed on the docket by a majority vote of the county council and will be considered concurrently with other docketed items in accordance with the procedures in WCC 2.160.100.

C. In determining whether to initiate a comprehensive plan amendment, the county council will consider the following factors:

1. If the amendment relates to a site within a city’s urban growth area; modification of a city’s urban growth area boundary, or amends comprehensive plan text relating to a city’s urban growth area, the county shall consult with and consider the comments from the city, including comments relating to the availability of services. Proposed amendments to city urban growth areas shall be processed in accordance with adopted interlocal agreements between the city and county and any subsequent amendments;

2. If the amendment relates to removing designated agricultural, forestry or mineral resource lands, the council shall consider any long-term trends in the loss of resource lands and cumulative impacts of approving such an amendment;

3. Whether the county has already set a future date for examining the area or issue; and

4. Planning and development services’ existing work plan and the additional work the amendment would require of planning and development services staff.

D. The following amendment proposals shall be deemed initiated and included in the resolution that initiates comprehensive plan amendments:
1. Amendment proposals that the county council approves for initiation from those applications received within the application period;

2. Comprehensive plan amendments proposed by councilmembers that the county council approves for initiation;

3. Amendment proposals timely submitted by cities and approved by the county council;

4. Amendment proposals timely submitted by the county executive;

E. The resolution setting the list of comprehensive plan amendments initiated for the amendment cycle, the docket, shall be forwarded to the department of planning and development services. Upon receipt of the resolution, the department shall make copies available to the public and begin the process for the review and evaluation of the proposed amendments as set out in WCC 2.160.070.

F. County planning and development staff shall forward a copy of any suggested plan amendment which would modify a city’s urban growth area to the appropriate city staff within 15 days of receipt, and shall notify the city of the date the county council is scheduled to review the proposed amendment at least 10 days prior to consideration by the county council.

2.160.060 Docket of initiated comprehensive plan amendments.
A. The department of planning and development services shall keep a docket of initiated comprehensive plan amendments and WCC Title 20 map and text amendments as initiated by the procedures in WCC 2.160.050.

B. The docket shall include the following information:

1. File number;

2. Name and address of the person or agency proposing the plan amendment;

3. Type of amendment being proposed and description of the amendment;

4. Initial year of proposed amendment;

5. Section, township and range of affected area, if applicable.

C. The docket and all application files shall be available for public review at the planning and development services department during normal business hours.

2.160.070 Review and evaluation of comprehensive plan amendments—Staff report.
A. The department of planning and development services shall conduct environmental review under SEPA and prepare reports including recommendations on all initiated comprehensive plan amendments and forward both the reports and the result of the environmental review to the planning commission.
B. Reports shall evaluate the merits of each initiated amendment based on the approval criteria of WCC 2.160.080.

C. If a proposed amendment relates to a site within a city’s urban growth area, will modify a city’s urban growth area or will amend text relating to a city’s urban growth area, planning and development services staff shall identify and follow any additional procedures called for in an adopted interlocal agreement between the county and that city.

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

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

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

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

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

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

   c. Anticipated impact upon designated agricultural, forest and mineral resource lands.

4. The amendment does not include or facilitate spot-zoning.

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

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

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

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

2.160.090 Review and evaluation of comprehensive plan amendments—Planning commission.
A. The planning commission shall receive the staff’s findings and recommendations for the initiated amendments and shall take public comment and hold public hearing(s) on the amendments.

B. At the conclusion of the public hearings and comment period, the commission shall evaluate the merits of each amendment in relationship to the approval criteria of WCC 2.160.080 and shall make a recommendation to the county council as to whether the amendments should be approved, approved with modifications or denied. The planning commission shall then cause written findings of fact, reasons for action, conclusions and recommendations to be prepared for each amendment. The written findings of fact, reasons for action and conclusions shall be forwarded to the county council in the form of a proposed ordinance(s) for its consideration.

2.160.100 Review and evaluation of comprehensive plan amendments—County council.
A. Comprehensive plan amendments, except for amendments adopted by emergency ordinance pursuant to Section 2.40 of the Whatcom County Charter, shall be adopted by ordinance after a recommendation by the planning commission has been submitted to the council for consideration. All initiated amendments to the comprehensive plan with the exception of amendments set forth in WCC 2.160.010 shall be considered by the council no more frequently than once a year and concurrently so the cumulative effect of the various proposals can be ascertained. The council may schedule such additional public hearings as the council deems necessary to serve the public interest.

B. If, after deliberating, the council believes the public interest may be better served by departing from the recommendation of the planning commission on an initiated amendment, the council shall conduct a public hearing on that amendment.

C. The council shall decide to approve, approve with modifications or deny comprehensive plan amendments based upon the approval criteria in WCC 2.160.080. Those amendments may be recommended for final concurrent review throughout the year. Final concurrent review by the county council should occur on or about February 1st.
D. The council shall send recommended comprehensive plan amendments on to final concurrent review by December 31st. Amendments that have not been either recommended or denied by the council by December 31st will be re-docketed for the next amendment cycle with the same number with which they were initially docketed.

2.160.110 Fees:
A. Application fees shall not be required for any application submitted by the county council, county councilmembers, county executive, planning commission, and county planning and development services.

B. All other applicants shall pay application fees as specified in the Unified Fee Schedule.

C. Once an amendment is initiated by resolution of the county council, the applicant shall pay the initiation fee within 15 days. The county council may take official action to waive the initiation fee at the time it approves the initiating resolution if it finds the proposed amendment will clearly benefit the community as a whole and will not be for private financial gain.
EXHIBIT D

Whatcom County Code Title 20
Zoning

AMENDMENTS

Title 20

ZONING

Chapters:

. . . .

20.90 Amendments Reserved.
20.92 Hearing-Examiner Reserved.

. . . .

Chapter 20.04

GENERAL PROVISIONS

Sections:

. . . .

20.04.031 Vesting-of-permits Reserved.

. . . .

20.04.090 Application-fees and other fees Appeals.
20.04.091 Reduced application-fees Reserved.
20.04.092 Refund of application-fees Reserved.

. . . .

20.04.031 Vesting-of-permits Reserved [Vesting provisions proposed to be revised and moved to 22.05.060 because they pertain to procedures in

1
other titles than Title 20 Zoning. Definition of project permit (subsection (1), referencing state law) is proposed to be moved to 22.05.010.]

(1) Project Permits Defined. For the purpose of this section, “project permit” and “project permit application” shall be as defined in RCW 36.70B.020:

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

(2) Project Permits Approved Prior to Effective Date.

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

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

(3) Project Permit Applications Submitted After the Effective Date.

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

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

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

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

(4) Project Permit Applications Submitted Prior to the Effective Date, But Which Have Not Received Final Approval on or Before the Effective Date.
(a) Project permit applications submitted prior to the effective date of the ordinance codified in this section but which have not received final approval on or before the effective date of the ordinance codified in this section shall be deemed vested under the zoning and land use regulations in effect at the time the county accepted payment of an application fee; provided, that the county has not subsequently notified the applicant that the application is incomplete.

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

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


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

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

[Fees provisions of 20.04.090 - .092 are proposed to be moved to a new chapter, WCC 22.25, because it pertains to all land use and development chapters not just Title 20 zoning.]

20.04.090 Application fees and other fees. Appeals.

Fees for conditional use permits, variances, planned unit developments, initiated amendments and fees for other approvals and reviews as set forth in this title shall be as provided in the County’s Unified Fee Schedule. Any party of record may appeal any order, final permit decision, or final administrative determination in the administration or enforcement of this title. The hearing examiner shall have the authority to hear and decide appeals pursuant to WCC 22.05.160.

20.04.091 Reduced application fees. Reserved.

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

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

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

(1) Fees for Project Permits.

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

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

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

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

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

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

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

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

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

Chapter 20.13
WIRELESS COMMUNICATION FACILITIES

20.13.050 Administrative approval uses.
The following uses are considered administrative approval uses and shall require a wireless communication facility (WCF) permit in accordance with Chapters 2.33 22.05 and 20.84 WCC, and shall be subject to a threshold determination in accordance with the Whatcom County SEPA Ordinance unless categorically exempt; provided, that WCF permit proposals located in nonresidential related districts shall be exempt from the public noticing requirements found in Chapter 2.33 WCC, Permit Review Procedures.

20.13.060 Conditional uses.
(1) The following uses shall require conditional use permit approval by the hearing examiner, and shall be processed in accordance with Chapters 2.33 22.05 and 20.84 WCC and shall be subject to a threshold determination in accordance with the Whatcom County SEPA Ordinance, unless categorically exempt. Such uses shall comply with county, state, and federal law and regulations and all applicable provisions of this chapter. The applicant or applicant’s agent must also submit documentation to the administrator that demonstrates that any new antennas meet Federal Communication Commission (FCC) emission standards (as applicable). The administrator may refer an application for a conditional use to a technical review committee for review and comment prior to referring the application to the hearing examiner for a decision.

20.13.170 Appeals.
The hearing examiner shall have the authority to decide, in conformity with this chapter, appeals from any order, requirement, permit decision or determination made by an administrative official in the administration or enforcement of this chapter where more than one interpretation is possible; provided, that such appeal shall be filed within 14 days of the action being appealed. The hearing examiner shall hear appeals under this chapter in the same manner as provided in WCC 20.92.210(2) 22.05.160.

Chapter 20.15

COMMERCIAL MUSHROOM SUBSTRATE PRODUCTION FACILITIES

20.15.170 Appeals.
The hearing examiner shall have the authority to decide, in conformity with this chapter, appeals from any order, requirement, permit decision or determination made by an administrative official in the administration or enforcement of this chapter where more than one interpretation is possible; provided, that such appeal shall be filed within 14 days of the action being appealed. The hearing examiner shall hear appeals under this chapter in the same manner as those appeals he has authority to hear under WCC 20.92.210(1) as provided in WCC 22.05.160.

Any such appeal shall be reviewed de novo by the hearing examiner as to the scope of review and the standard of review.

Chapter 20.78

TRANSPORTATION CONCURRENCY MANAGEMENT

20.78.090 Appeal.
(1) The results of an administrative reconsideration pursuant to WCC 20.78.080 may be appealed to the hearing examiner, as provided by Chapter 20.92 WCC in WCC 22.05.160.
Chapter 20.80
SUPPLEMENTARY REQUIREMENTS

20.80.738 Development moratoria – implementation, removal, and exceptions.

(2) Request for Removal of Development Moratorium. A development moratorium may be considered for removal by the hearing examiner when all of the following requirements are met:

(a) Public Hearing Required.

(i) The county shall set a date for public hearing before the examiner pursuant to WCC Chapter 22.05 2.33.060 and 2.33.070 after all the requests for additional information or plan corrections have been satisfied and the necessary components have been received as required for a complete application.

(ii) The public hearing shall follow the procedures set forth in WCC Chapter 22.05-20.92 WCC.

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Chapter 20.84
VARIANCES, CONDITIONAL USES, ADMINISTRATIVE APPROVAL USES AND APPEALS

Sections:
20.84.100 Variances.
20.84.150 Reserved.
20.84.200 Conditional uses.
20.84.210 Application.
20.84.220 Criteria.
20.84.225 Revisions to conditional use permits.
20.84.230 Open record hearing notice. Reserved.
20.84.235 Administrative approval uses.
20.84.236 Revisions to administrative approval use permits.
20.84.240 Appeals. Reserved.
20.84.250 Fees. Reserved.
20.84.260 Date of expiration. Reserved.

20.84.100 Variances.
.110 The hearing examiner shall have authority to grant a variance from the provisions of this ordinance and of WCC Title 22, the Guide Meridian Improvement Plan, when, in the opinion of the hearing examiner, the conditions set forth in WCC 20.84.120 herein have been found to exist. In such cases, a variance may be granted which is in harmony with the general purpose and intent of this ordinance so that the spirit of this ordinance shall be observed, public safety and welfare secured, and substantial justice done; provided, that no variance shall be granted which authorizes a use which is not permitted by the underlying zoning.

.120 Before any variance may be granted, it shall be shown that the following circumstances are found to apply:

(1) That any variance granted shall not constitute a grant of special privilege, be based upon reasons of hardship caused by previous actions of the property owner, nor be granted for pecuniary reasons alone;

(2) Because of special circumstances applicable to the subject property, including size, shape, topography, location or surrounding, the strict application of the zoning ordinance is found to cause a hardship and deprive the subject property of a use or improvement otherwise allowed in the identical zone classification. Aesthetic considerations or design preferences without reference to restrictions based upon the physical characteristics of the property do not constitute sufficient hardship under this section;

(3) The granting of the variance will not be materially detrimental to the public welfare, or injurious to the property or improvements in the vicinity and zone in which the subject is situated.

20.84.150 Reserved.
Repealed by Ord. 2016-011.

20.84.200 Conditional uses.

20.84.210 Application.
Conditional use permit applications shall be processed per the provisions of WCC Chapter 22.05. Upon application, the hearing examiner may grant conditional use permits for such uses as set forth in this ordinance. Conditional use permits shall be nontransferable unless said transfer is further approved by the hearing examiner.

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

(1) Will be harmonious and in accordance with the general and specific objectives of Whatcom County’s Comprehensive Plan and zoning regulations.

(2) Will be designed, constructed, operated, and maintained so as to be harmonious and appropriate in appearance with the existing or intended character of the
general vicinity, and that such use will not change the essential character of the same area.

(3) If located in a rural area (as designated in the Comprehensive Plan), will be consistent with rural land use policies as designated in the rural lands element of the Comprehensive Plan.

(4) Will not be hazardous or disturbing to existing or future neighboring uses.

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

(6) Will not create excessive additional requirements at public cost for public facilities and services, and will not be detrimental to the economic welfare of the community.

(7) Will not involve uses, activities, processes, materials, equipment and conditions of operation that will be detrimental to any persons, property, or the general welfare by reasons of excessive production of traffic, noise, smoke, fumes, glare or odors.

(8) Will have vehicular approaches to the property which shall be so designed as not to create an interference with traffic on surrounding public streets.

(9) Will not result in the destruction, loss or damage of any natural, scenic or historic feature of major importance.

20.84.225 Revisions to conditional use permits.
The hearing examiner may administratively approve revisions to conditional use permits; provided, that the proposed changes are within the scope and intent of the original permit. “Within the scope and intent of the original permit” shall mean the following:

(1) Lot coverage and height may be increased a maximum of 10 percent from the provisions of the original permit; provided, that revisions involving new structures not shown on the original site plan shall require a new permit; and provided further, that any revisions authorized under this paragraph shall not exceed height, lot coverage, setback or any other requirements of the regulations for the area in which the project is located; and provided further that any revisions authorized under this paragraph shall be reviewed for consistency with the relevant chapters and policies in the Comprehensive Plan.

(2) Landscaping may be added to a project without necessitating an application for a new permit; provided, that the landscaping is consistent with conditions (if any) attached to the original permit and is consistent with the regulations for the area in which the project is located;
(3) The use authorized pursuant to the original permit is not changed;

(4) No additional over-water construction will be involved for shoreline conditional use permits;

(5) No substantial increase in adverse environmental impact will be caused by the project revision.

20.84.230 Reserved. Open-record hearing notice.

Notice of application and notice of open-record hearing shall take place consistent with WCC 2.33.060 and 2.33.070. If a proposed project is within a city’s urban growth area, notice shall also be sent to the applicable city staff and planning commission at least 15 days prior to the hearing.

20.84.235 Administrative approval uses.

(1) Administrative approval applications shall be processed per the provisions of WCC Chapter 22.05.

(1) The applicant shall submit an administrative approval use application form to the planning and development services department together with all of the following:

(a) Documentation of compliance with approval requirements;

(b) The filing fee specified in the Unified Fee Schedule;

(c)(i) For sites within urban growth areas: Stamped envelopes with typed addresses for each property owner within 300 feet of the external boundaries of the subject property as shown by the records of the county assessor (1,000 feet for adult businesses);

(ii) For sites outside urban growth areas: Stamped envelopes with typed addresses for each property owner within 1,000 feet of the external boundaries of the subject property as shown by the records of the county assessor.

(d) Three copies of a site plan at a scale of one inch equals 20 feet for sites that are less than five acres, and one inch equals 40 feet for sites five acres or more (if requested by the applicant, a different scale may be approved by planning and development services). The site plan shall show locations of property boundaries, locations and sizes of structures, vehicular access and parking areas, locations and types of water and sewer services, and locations and types of structures on adjacent properties.

(2) Upon receipt of application materials per subsection (1) of this section, the planning and development services department shall send a notice of the proposal to all owners of property within 300 feet of the external boundaries of the subject property for sites within urban growth areas and 1,000 feet for properties outside urban growth areas, and to the applicable city staff and planning commission if the property is within a city’s urban growth area, at least 15 days prior to the decision date. The applicant shall also post public notices of the proposal on all roads.
frontages of the subject property so as to be visible to adjacent property owners and to passing motorists. Said notices shall be provided to the applicant by the planning and development services department and shall remain in place for at least 15 days prior to the decision. A signed affidavit of posting shall be returned at least one week prior to the decision. Property owners who have been notified of the proposal shall have a period of 15 days from the date printed on the mailed notice or 15 days from the posting of notice on the property, whichever is later, within which to submit to the planning and development services department a written response in support of or in opposition to all or parts of the proposal.

(3)(2) Planning and development services shall approve or deny all administrative approval use applications. Decisions for all administrative approval use permits except adult businesses shall be based upon compliance with:

(a) The criteria established for the proposed use in the appropriate zone district;
(b) The Comprehensive Plan policies governing the associated land use designation;
(c) In rural areas, consideration will be given to the cumulative impacts of permitted uses in relation to the governing Comprehensive Plan policies and zoning district; and
(d) The requirement of this section and of WCC 20.84.220.

Decisions for administrative approval use permits for adult businesses shall be based solely upon the criteria in subsection (7)(3) of this section.

(4) Decisions on administrative approval use permits for adult businesses shall be issued within 20 days of receiving a complete application. An application for an adult business is complete if it contains all of the information specified in subsection (1) of this section.

(5) If the permit is denied, the applicant shall be notified in writing. The grounds for denial and the applicant’s right to appeal shall be set forth in this notification.

(6) Any party of record may appeal the decision. For purposes of administering this section, parties of record shall be defined as the applicant, the owner of the property, and any person who has submitted a written response to the proposal. Each application for appeal of an administrative approval shall be accompanied by a fee as specified in the Unified Fee Schedule.

(7)(3) Criteria for Adult Businesses. Prior to granting administrative approval for an adult business, planning and development services shall find that the proposed use at the proposed location satisfies or will satisfy all the following criteria:

(a) The adult business will be in accordance with Policies 2AAA-1 through 2AAA-4 of the Whatcom County Comprehensive Plan.

[Proposed for deletion because the provisions of adult businesses in the Comprehensive Plan are codified in 20.66 Light Impact Industrial, the only zone where these businesses are permitted.]
(ba) The adult business will be consistent with WCC 20.66.131.

(eb) The adult business shall be closed from 2:00 a.m. to 10:00 a.m. if it contains:

(i) An “adult eating or drinking establishment” as defined by WCC 20.97.008(2); or

(ii) An “adult theater” as defined by WCC 20.97.008(3); or

(iii) An “other adult commercial establishment” as defined by WCC 20.97.008(4); or

(iv) One or more viewing booths.

(dc) If the adult business includes one or more viewing booths, the interior of the adult business will incorporate all of the following measures:

(i) Each viewing booth shall have at least a three-foot wide opening where a customer enters and exits the booth that is without doors, physical barriers, or visual barriers; and

(ii) Each viewing booth shall have at least one 100-watt light bulb that is properly working and turned on when business is open. The light bulb shall not be covered or otherwise shielded except with a commercially available lighting fixture. A minimum of one 12-inch by 12-inch durable metal sign shall be located at the entrance to each viewing booth area stating that lights shall remain on; and

(iii) Aisles or hallways adjacent to viewing booths shall be a minimum of five feet wide; and

(iv) There shall be no holes or openings in common walls between viewing booths.

For adult businesses containing one or more viewing booths, a condition of administrative approval shall require an unannounced inspection every six months during business hours by Whatcom County to ensure that measures in subsections (7)(d)(i) through (iv) of this section are being implemented on an ongoing basis.

**20.84.236 Revisions to administrative approval use permits.**

Planning and development services may approve revisions to administrative approval use permits; provided, that the proposed changes are within the scope and intent of the original permit. “Within the scope and intent of the original permit” shall mean the following:

(1) Lot coverage and height may be increased a maximum of 10 percent from the provisions of the original permit; provided, that revisions involving new structures not shown on the original site plan shall require a new permit; and provided further, that any revisions authorized under this subsection shall not exceed height,
lot coverage, setback or any other requirements of the regulations for the area in which the project is located; and provided further, that any revisions authorized under this subsection shall be reviewed for consistency with the relevant chapters and policies in the Comprehensive Plan;

(2) Landscaping may be added to a project without necessitating an application for a new permit; provided, that the landscaping is consistent with conditions (if any) attached to the original permit and is consistent with the regulations for the area in which the project is located;

(3) The use authorized pursuant to the original permit is not changed;

(4) No additional over-water construction will be involved for shoreline conditional use permits;

(5) No substantial increase in adverse environmental impact will be caused by the project revision.

20.84.240 Reserved. Appeals:

The hearing examiner shall have the authority to hear and decide, in conformity with this chapter, appeals from any order, requirement, permit decision or determination made by an administrative official in the administration or enforcement of this chapter where more than one interpretation is possible; provided, that such appeal shall be filed in writing within 14 days of the action being appealed. If an appellant prevails in an appeal of an administrative approval decision, the appellant’s appeal fees shall be refunded. The appeal fee on a code violation will be refunded if the appellant can prove by clear and convincing evidence that a violation did not occur. Appeals of administrative approval-use permit decisions for adult businesses shall be made directly to the county council pursuant to WCC 20.92.825, and shall not be subject to the provisions of this section.

20.84.250 Reserved. Fees:

Fees for variances, conditional uses, administrative approval uses and appeals shall be as set forth in the Whatcom County Unified Fee Schedule.

20.84.260 Reserved. Date of expiration:

Applications for conditional use permits, variances, expansions of nonconforming uses, administrative approvals, and any other permits provided for in this chapter shall expire one year after filing of the application if the applicant does not pursue completion of the appropriate process within that time by failing to take any action on the application.

The hearing examiner shall have the authority to fix a date of expiration of any or all approval or conditions attached thereto, of conditional use permits, variances or expansions of nonconforming uses.
Chapter 20.85
PLANNED UNIT DEVELOPMENT

Sections:

20.85.118 Concept plan.
20.85.200 Information submittal.
20.85.201 General provisions. Reserved.
20.85.203 Site plan and supporting maps and graphics. Reserved.
20.85.204 Supplemental information. Reserved.

20.85.301 Planned unit development procedure and approximate processing time. Reserved.
20.85.305 Preapplication conference. Reserved.
20.85.310 SEPA review. Reserved.
20.85.315 Application submittal. Reserved.
20.85.320 Application distribution and review. Reserved.
20.85.325 Technical committee. Reserved.
20.85.330 Zoning administrator. Reserved.
20.85.335 Hearing examiner. Approval Criteria.
20.85.340 County council. Reserved.
20.85.345 Burden of proof. Reserved.
20.85.350 Scope of initial planned unit development approval.
20.85.355 Initial approval time limits.
20.85.360 Installation of improvements.
20.85.365 Final review and approval.
20.85.370 Control of the development after completion.
20.85.375 Enforcement.
20.85.400 Fees.

20.85.118 Concept plan.

Where a planned unit development application represents the first project of the development of a larger site, the applicant may at his/her option submit a concept plan indicating the general development of the remainder of the site. The purpose of the concept plan is to encourage master planning of a site by demonstrating the coordinated relationship of land use activities, roads, utilities and open space for the entire site, and in concert with existing and planned off-site land uses and facilities.

(1) Plan Contents. The concept plan should contain the following elements for the portion of the site not included in the first phase PUD application: elements required in the department’s administrative manual.

(a) The approximate location of future generalized land use activities including but not necessarily limited to single-family and multifamily residential (approximate
density specified); neighborhood, general, tourist and resort commercial; light and heavy industrial, and general manufacturing; and parks including recreational areas, school sites and open space.

(b) The approximate circulation network (both vehicular and pedestrian).

(c) The approximate location of utility corridors, and drainage channels (natural and manmade) and retention/detention areas.

(d) The approximate location of all existing or planned sewer and water mains, arterial and collector roads, and drainage channels and retention/detention areas located off-site which is within 300 feet of the site or anticipated to be used for the development of the site.

(2) Plan Status. Unless otherwise provided by agreement between the applicant and zoning administrator, the concept plan shall be nonbinding, and shall not be used as a basis for approving or denying the subject PUD application. However, the plan may be used as a basis to administratively review the arrangement and design of land uses, roads, bicycle and pedestrian pathways, and drainage facilities included in the subject application. (Ord. 2004-007 § 1, 2004).

20.85.200 Information submittal.

The information required on the application, identified in the following sections in the department's administrative manual and contained within the notice of site-specific submittal requirements shall be submitted with planned unit development applications. (Ord. 2004-007 § 1, 2004; Ord. 96-056 Att. A § V2, 1996).

20.85.201 General provisions. Reserved.

(1) Information submitted for initial review is to be an approximate description indicating the general nature of the proposal. Data shall be based on the applicant's best knowledge or intent of the proposal and shall be sufficiently clear to demonstrate how the project complies with the provisions of this chapter. Information required shall be limited to the area the application includes.

(2) The zoning administrator shall have the authority to waive any portion of the information requirements herein; provided that the information has been included with a previous rezone request, approved permit or concept plan, and the present PUD application is consistent with the previous action to the extent that the subject data is applicable. (Ord. 2004-007 § 1, 2004; Ord. 96-056 Att. A § V2, 1996).

20.85.202 Textual information. Reserved.

It is anticipated that the level of detail available for individual PUD projects will vary depending on their size and the length of time anticipated for buildout. The applicant must respond to each of the items below but the response may include estimates or approximations where exact figures are not known at this time. All estimates should be based on the applicant's best knowledge or intent of the proposal. When estimates or approximations are used they must be identified as such. The applicant should be aware that any estimates or approximations provided may be used to set development conditions or thresholds.
(1) General Data:

(a) The title and location of the proposed development, together with the names, addresses and telephone numbers of the record owner or owners of the land and the application, and, if applicable, the names, addresses and telephone numbers of any architect, planner, designer or engineer responsible for the preparation of the plan, and of any authorized representative of the applicant.

(b) The legal description of the subject property.

(c) Identify, if known, all special service districts, including fire, school (for residential projects only), drainage and flood control in which the site is located.

(d) Description of the proposed PUD including:

(i) Total area of the PUD;

(ii) Total area of open space and percentage it represents of the total project area;

(iii) Total area of impervious surfacing;

(iv) Number of parcels and/or lease areas, range of parcel size and the size of the smallest parcel;

(v) Proposed ownership of land areas within the PUD both during and after construction;

(vi) Method of achieving compatibility between the PUD and off-site uses and between potentially incompatible on-site uses;

(vii) How density bonus requirements are being met including, when applicable, description of recreation facilities and the proposed method to protect adequate access to sunlight for use by each of the proposed solar energy systems; and

(viii) Development schedule indicating the approximate date when construction of the PUD or stages of the PUD can be expected to begin and be completed.

(e) Copy of all existing deeds, and existing restrictive covenants or other existing legal restrictions which apply to the project site. The applicant may submit a copy of any proposed restrictive covenants that have been drafted.

(f) The names and addresses of all property owners within 300 feet of the site taken from the latest equalized tax roles.

(2) Data for Residential Development:

(a) Proposed number of dwelling units by type and the amount of site area devoted to each type.

(b) Gross density of the dwelling units.

(c) Deleted by Ord. 96-056.

(3) Data for Nonresidential Development.
(a) Description of each type of proposed commercial and industrial use and amount of site area devoted to each type of use.

(b) The proposed number of square feet in gross floor area for each type of commercial and industrial use. (Ord. 2004-007 § 1, 2004; Ord. 96-056 Att. A § V2, 1996).

20.85.203 Site plan and supporting maps and graphics. Reserved.

An initial site plan, at a minimum scale of one inch equals 100 feet or such other scale as may be convenient based on the area covered by the proposal, with approval of the administrator, and any supporting graphics, narrative descriptions and maps, to show major details of the proposed PUD. If the initial plan is based on survey data or existing survey data of the subject site, the survey data shall be prepared by a registered land surveyor, registered civil engineer or other professional licensed to conduct surveys. The initial site plan and supporting graphics and maps in combination shall provide a level of detail appropriate to the scale and timing of the project and sufficient to demonstrate how the project complies with the provisions of this chapter.

(1) Proposed name of the development, northpoint, scale, date and address, and telephone number of the preparer of the site plan/supporting maps.

(2) Existing site conditions including water courses, wetland area, floodplains, unique natural features, native vegetation, forest cover and elevation contours of sufficient intervals to indicate the topography of the entire tract for a sufficient distance beyond the boundaries of the proposed development to depict any features within 300 feet which may affect site development. Unless otherwise approved by the administrator, contour information shall be as follows:

(a) Up to 10 percent slopes, two-foot contours.

(b) Over 10 percent to less than 20 percent slopes, five-foot contours.

(c) Twenty percent or greater slopes, 10-foot contours.

(3) Location of all existing lot lines, lease areas and easements, and the location of all proposed lot lines, lease areas, and easements, if known.

(4) The locations and identification of all existing buildings, structures and other improvements. The location or approximate location of proposed buildings including maximum height and type of use.

(5) For residential structures, provide the types and number of residential units in each structure or the range of residential structures proposed together with the range of the type and number of units per structure.

(6) For nonresidential buildings, the gross floor area of each building.

(7) The location and square footage or approximate location and square footage or acreage of all areas to be conveyed, dedicated or reserved as common open spaces, public parks, recreational areas, school sites, and similar public and semi-public uses with notations of proposed ownership included where appropriate.
(9) Landscaping and open space improvements plan or concept.

(9) The existing and proposed circulation system of arterial, collector and/or local streets, including right-of-way street widths, off-street parking areas, service areas, loading areas and major points of access to public rights-of-way (including major point of ingress and egress to the development). Notations of proposed ownership, public or private, shall be included where appropriate.

(10) Location and width of existing and proposed sidewalks and trails.

(11) The proposed treatment of the perimeter of the PUD, including materials and techniques used such as screens, fences and walls.

(12) The location of adjacent utilities including sanitary sewers, water lines and storm drainage facilities intended to serve the development, and a layout of the existing and proposed utilities within the development; if utility plans have been completed. Otherwise indicate the general location of utilities, i.e., roadways, easements, etc.

(13) Existing zoning and Comprehensive Plan boundaries for the site and adjacent property.

(14) Information of contiguous properties within 300 feet of the proposed PUD including:

(a) Existing and, if known, proposed land use and streets; and

(b) Existing structures excluding accessory buildings, ownership tracts and unique natural features of the landscape, if readily accessible.

(15) A vicinity map showing the location of the site and its relationship to surrounding areas, including existing streets, major physiographic and cultural features such as railroads, lakes, streams, shorelines, schools, parks or other prominent features.

(16) If the applicant wishes to incorporate renewable energy features into the PUD, information shall be submitted which will describe the long-term usability of the energy-source including:

(a) Solar:

(i) Solar site survey including solar sun chart;

(ii) Shadow diagrams including schematic elevations of pertinent vegetation and structures, and existing major topographical features;

(iii) General description of the solar system identifying type (passive or active), location and size (surface area);

(b) Wind:

(i) Wind data including direction, frequency and intensity;
(ii) Wind disruption information including potential on- and off-site building construction, and major topographical features;

(iii) Wind machine location and visual description;

(c) Micro or small scale hydro:

(i) Estimated annual energy output using flow duration curves;

(ii) Stream data including low and average flows;

(iii) Hydro site location and design;

(iv) Status of Federal Energy Regulatory Commission (FERC) approval;


20.85.204 Supplemental information. Reserved.

(1) A completed environmental checklist; provided, that if the applicant has agreed in writing to the preparation of an environmental impact statement, no checklist shall be required.

(2) Where water and/or sanitation service is to be obtained from an existing public system, including a water association, a letter from the service purveyor indicating the availability and requirements for the service shall be included.

(3) Where a new water system is proposed, include the source of the water, the estimated amount of water available from a ground water or surface water source, the status of water rights application, and the general location and size of the proposed pipe and other major appurtenances for development of community or public systems. The description shall also include improvements for fire protection.

(4) A description of the sanitation facilities which shall include the method of sanitation and, where applicable, the location of community on-site sewage waste disposal systems, location of soil log holes, percolation rate data, and the general location and size of proposed pipe and other major appurtenances. Where on-site sanitation systems are proposed, the applicant shall provide evidence demonstrating the suitability therefore of all lots or any single lot. Percolation tests shall be performed by a licensed perc tester.

(5) One copy of the water and sanitation information, particularly the soil log hole and percolation rate data, is recommended to be submitted directly to the health department prior to submittal of the planned unit development.

(6) A preliminary drainage study consistent with the requirements of the Whatcom County Development Standards. A traffic study if required by the department of public works at the preapplication conference. The traffic study does not need to be submitted with the application if an environmental impact statement is being prepared for the project and a traffic study will be completed for the EIS.
(7) The proposed method of providing long-term maintenance of improvements or facilities, including roads and sidewalks, drainage, on-site fire protection improvements, water and sanitation systems, and community or public open space. The purpose of this paragraph is to generally identify the method of maintenance and not to require detailed agreements.

(a) If to be maintained by a governmental jurisdiction or existing water association, a letter from the jurisdiction or association shall be submitted specifying acceptance of maintenance responsibility and indicating the conditions, if any, upon which the acceptance is contingent.

(b) If the maintenance is to be provided privately, the developer shall indicate the organization to provide the maintenance and the method and approximate amount of funding required therefor.

(8) Additional information, in the form of detailed studies or surveys, may be reasonably required by the county if any portion of the site of a proposed PUD is within an unsuitable land area as defined by WCC 20.97.443. This information should be identified to the applicant at a preapplication conference. (Ord. 2004-007 §1, 2004; Ord. 96-056 Att. A § V2, 1996).

20.85.300 Planned unit development procedure.

Planned unit development applications shall be processed in accordance with WCC 22.05.

20.85.301 Reserved. Planned unit development procedure and approximate processing time:

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<th>Step</th>
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<td>Preapplication Conference</td>
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<td>(9)</td>
<td>Installation of Improvements</td>
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<td>Up to 3 Years</td>
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<td>(12)</td>
<td>Items #9—#10</td>
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(10) — Final Review and Approval  
Up to 7 Years  
or Pre-Agreed Schedule  
Items #10—#11

(11) — Project Development

20.85.305 **Reserved. Preapplication conference.**

(1) An applicant shall request a preapplication conference to be held prior to submission of an application and which should take place prior to any detail work. The developer or his representative shall be prepared to present to the technical committee and the SEPA official conceptual sketches which contain in rough and approximate manner adequate information to describe the proposal in relation to topics listed below. The conference shall be held 14 days after the land use division of planning and development services receives sufficient copies of information from the applicant to distribute to the technical committee and the SEPA official. All information presented by the developer shall be considered confidential.

The purpose of the conference is to enable the developer to consult with the technical committee and SEPA official as to the intent, standards and provisions of this title, other applicable land use controls, and SEPA as they apply to the proposed project.

It is also the purpose of this conference to identify as many potential problems and opportunities as possible in order for the application to be processed without delay or undue expense. Discussion will include the following topics:

(a) County Comprehensive Plan;
(b) Zoning;
(c) Shoreline Master Program;
(d) Any adopted street and road plan and/or program;
(e) Availability of water and sanitation;
(f) Storm drainage;
(g) Development and design concepts, including phasing and open space;
(h) Sidewalk requirements;
(i) Bike paths and internal pedestrian system;
(j) Public transportation requirements;
(k) Off-site requirements such as sidewalks, street lights, traffic signals, utilities or improvements of adjacent streets;
(l) Fire protection;
(m) Maintenance provisions;

(n) Known hazards and additional information as required by WCC 20.85.204(8) including any required approvals by Department of Ecology for projects located within flood-control zones;

(o) Environmental impact to the development and other issues related to SEPA requirements;

(p) Other county requirements and permits;

(q) Identification of other local, state and federal agencies which may also have jurisdiction; and

(r) Identification of adjacent lands owned by the applicant and possible future development thereof.

(2) The applicant may request the zoning administrator to forward the information to the county council for review and discussion purposes. The council review shall take place within 21 days after the preapplication conference with staff. Upon receiving said request, the zoning administrator shall obtain from the applicant:

(a) Sufficient copies of the information submitted pursuant to subsection (1) of this section to distribute to all members of the county council; and

(b)(i) For sites within urban growth areas: Stamped envelopes with typed addresses for each property owner within 300 feet of the external boundaries of the subject property as shown by the records of the county assessor;

(ii) For sites outside urban growth areas: Stamped envelopes with typed addresses for each property owner within 1,000 feet of the external boundaries of the subject property as shown by the records of the county assessor.

The zoning administrator shall then forward the submitted information and summary of the comments and concerns made by staff to the clerk of the council. The clerk shall schedule an open meeting with the planning and development committee of the council, and mail a notification to the applicant and property owners no less than 10 days prior to the meeting's occurrence. The meeting may address any of the issues identified in subsections (1)(a) to (r) of this section or any other pertinent issues. It is the purpose of this meeting to identify potential concerns in order to assist the applicant to ascertain the general feasibility of his/her proposal for the particular area the proposal would be located.

(3) Preapplication reviews as provided by this section shall not be construed to bind either the applicant or the county in any respect. Further, the information requested at the preapplication conference for application submittal shall not preclude the county from requiring additional information or clarification of materials after submittal.

20.85.310 Reserved. SEPA review.
The SEPA official shall process all planned unit developments consistent with the requirements of Chapter 43.21C RCW and Chapter 197-11 WAC as well as the Whatcom County SEPA Ordinance. The SEPA process shall be integrated as part of the project review process. The SEPA official shall make the threshold determination at the earliest time when the principal features of a proposal and its environmental impacts can be reasonably identified. (Ord. 2004-007 § 1, 2004).

20.85.315 Reserved. Application submittal.
The applicant shall submit required fees, and sufficient copies of the maps, written data and supplemental information required by WCC 20.85.200 to the zoning administrator in order to distribute copies to pertinent agencies. No application shall be accepted unless it complies with the requirements of this chapter and the applicant attests by his signature to the correctness of the information submitted. Applications which are found to be seriously deficient shall be returned to the applicant within 10 days of submittal and the application fee refunded.

20.85.320 Reserved. Application distribution and review.
The zoning administrator shall mail a notice to agencies potentially having interest, jurisdiction or expertise relevant to the application within five days after receipt of the application. Such agencies receiving applications for review shall be given up to 30 days to respond, or the zoning administrator, SEPA official, and the technical committee shall conclude that the reviewing agency has no interest in the application, and may make such findings, conclusions or requirements as deemed reasonable, consistent with the requirements of this title.

20.85.325 Reserved. Technical committee.
Upon the issuance of a declaration of nonsignificance (DNS) or draft environmental impact statement (DEIS), or, if a DNS or DEIS is completed, after receipt of all agency comments pursuant to WCC 20.85.320, the technical committee shall convene in an open meeting to discuss with the applicant and any other interested persons each committee member’s recommendation to the zoning administrator. Each member shall recommend either approval, approval with conditions, denial, or further modifications or corrections to the application. The recommendation from each member shall be written and submitted to the zoning administrator within seven days, and shall clearly address those factors to be considered by the hearing examiner as identified in WCC 20.85.335 which are within the expertise and responsibility of such member and, where appropriate, proposed conditions for approval; or shall clearly indicate all deficiencies of the application requiring modification or correction.

Within 14 days after receiving all written input from the technical committee and verifying its sufficiency, the administrator shall forward the application and staff report to the hearing examiner to schedule for public hearing, and shall assemble a recommendation based on the contributions of the technical committee, and other county and noncounty agencies. The recommendation shall be in writing and contain relevant data and proposed findings. Upon submission of the report to the examiner, copies shall be mailed to the applicant and made available to any interested party.
20.85.335 Hearing-examiner Approval Criteria.
The hearing-examiner shall hold the public hearing on behalf of the county council in the manner required by WCC 20.82.300 and provide written public notice consistent with the requirements for major project permits as provided in WCC 20.88.215. Pursuant to WCC 22.120 the hearing examiner shall recommend to the county council project approval, approval with conditions, or denial, based upon written findings and conclusions supported by the evidence of record. The recommendation shall determine the adequacy of a planned unit development application based on the following criteria:

(1) Conservation of natural elements and features;

(2) Harmony of selected uses to each other;

(3) Grouping and design of buildings, service, parking areas, circulation and open space as an integrated unit such that a safe, efficient and convenient PUD is created;

(4) Harmony of the proposed PUD with the existing and proposed characteristics of its surroundings, with emphasis and due consideration given to air, water and soil pollution, flood protection, and aesthetics;

(5) Conformance with the policies, goals and objectives of the Comprehensive Plan;

(6) Adequate provision of utilities and circulation to serve the project and, where appropriate, contribute to the overall development of urban areas;

(7) The exceptions granted by this chapter are warranted by creative design utilizing good design principles and provision of amenities incorporated in the planned unit development and its program;

(8) That the system of ownership, and means of developing, preserving and maintaining open space and other common facilities is acceptable to the county; and

(9) Where expanded land uses as allowed by WCC 20.85.053 are requested for an application, the criteria of WCC 20.85.054 are met, and where a phasing plan is proposed, the criteria of WCC 20.85.117(3) are met; and

(10) Promotion of creativity and affordability in residential, commercial and industrial development.

20.85.340 Reserved County-council.
The county council shall meet to consider the hearing-examiner’s recommendation within 21 days of receipt thereof, at which time it may:

(1) Approve or disapprove the recommendation, or remand the matter to the hearing-examiner with instructions; or

(2) In the event the council wishes to consider enacting a significant change that does not arise from the record, the council may hold its own public hearing, after
giving notice thereof, and approve or deny the planned unit development based
upon its own findings and conclusions. A public hearing before the county council
may be limited in scope to particular issues or problems at the discretion of the
council. The council’s decision shall be based upon the official record, WCC
20.85.335 and other applicable law.

20.85.345 Reserved. Burden of proof.
With respect to any finding of fact required for planned unit development approval
by this title, the burden of proof for submitting to the public hearing record
evidence, studies and plans sufficient to support an affirmative finding of fact lies
with the applicant.

(1) Prior to public hearing, any deficiency within the application with regard to
necessary data or compliance with design requirements shall be brought to the
notice of the applicant, in writing, by the zoning administrator, who shall request
that the required information be submitted within a reasonable period of time.
Failure to make a timely response may result in a return of application.

(2) If the hearing examiner determines after public hearing that the record
established by the applicant does not support an affirmative finding of fact with
respect to any element necessary for PUD approval, he shall do one of the
following:

(a) Recommend denial of the planned unit development;

(b) Recommend partial approval of a phased planned unit development;

(c) Recommend PUD approval, subject to conditions sufficient to mitigate any
problems created by the absence of a material finding; or

(d) With the consent of the applicant, remand the application to the technical
committee for further review.

(3) If the county council concludes that the record before it is deficient with respect
to any finding of fact necessary to support PUD approval, it may take final action in
the manner provided in subsections (2)(a) through (e) of this section, remand the
matter to the technical committee or the hearing examiner, or hold its own public
hearing to receive new evidence, studies or plans.

20.85.350 Scope of initial planned unit development approval.
(1) Once the planned unit development receives initial approval pursuant to WCC
20.85.340 22.05, all persons and parties, their successors, heirs, or assigns, who
own, have, or will have by virtue of purchase, inheritance or assignment, any
interest in the real property within the proposed PUD, shall be bound by the
conditions attending the approval of the development and the provisions of this
chapter.

(2) Minor adjustments may be made and approved by the zoning administrator,
upon consultation with the technical committee, and are those adjustments which
may affect the dimensions, location and type of improvements of facilities;
provided, the amendment maintains the basic character of the PUD application approved by the county council including general type and location of dwellings and other land use activities, arrangement of buildings, density of the development, and provisions of the project to meet density bonus and open space requirements; and provided further, the standards of this chapter are met.

(3) Major adjustments are those which, in the opinion of the zoning administrator, upon consultation with the technical committee, substantially change the basic design, density, open space or other requirements of the planned unit development. When a change constitutes a major adjustment, no building or other permit shall be issued without prior review and approval by the county council of such adjustment.

20.85.400 Fees:

Fees for planned unit developments shall be as set forth in the Whatcom County Unified Fee Schedule. (Ord. 2004-007 § 1, 2004; Ord. 96-056 Att. A § V5, 1996).

Chapter 20.88
MAJOR PROJECT PERMITS

Sections:
20.88.010 Purpose.
20.88.100 Major project permits.
20.88.200 Procedure.

.130 The major project permit shall be issued by the county council when the applicant has established that the proposed major development: Pursuant to WCC 22.120 the hearing examiner shall recommend to the county council project approval, approval with conditions, or denial, based upon written findings and conclusions supported by the evidence of record. The recommendation shall determine the adequacy of a planned unit development application based on the following criteria:

(1) Will comply with the development standards and performance standards of the zone in which the proposed major development will be located; provided where a proposed major development has obtained a variance from the development and performance standards, standards as varied shall be applied to that project for the purposes of this act.
(2) Where the project is conditionally permitted in the zone in which it is located, the project must satisfy the standards for the issuance of a conditional use permit for the zone in which the project is located.

(3) Will be consistent with applicable laws and regulations.

(4) Will not substantially interfere with the operation of existing uses.

(5) Will be served by, or will be provided with essential utilities, facilities and services necessary to its operation, such as roads, drainage facilities, electricity, water supply, sewage disposal facilities, and police and fire protection. Standards for such utilities, facilities and services shall be those currently accepted by the state of Washington, Whatcom County, or the appropriate agency or division thereof.

(6) Will not impose uncompensated requirements for public expenditures for additional utilities, facilities and services, and will not impose uncompensated costs on other property owned.

(7) Will be appropriately responsive to any EIS prepared for the project.

.140 In addition, the hearing examiner may recommend or county council may impose any reasonable conditions precedent to the establishment of the major development as may be required to mitigate impacts of the proposal on the natural environment of the county, and to protect the health, safety and general welfare of the people of the county consistent with the policies for environmental protection set forth in the Comprehensive Plan.

.150 The hearing examiner may recommend or county council may also approve alternative mitigation plans for major project permits in accordance with WCC 16.16.260(E) which may be used to satisfy the requirements of Chapter 16.16 WCC and provide relief from the specific standards and requirements thereof. (Ord. 2005-068 § 2, 2005; Ord. 98-083 Exh. A § 66, 1998; Ord. 96-056 Att. A § A2, 1996; Ord. 91-075, 1991).

20.88.200 Procedure.

.205 If a major project permit is determined to be required, an application shall be completed and filed along with the appropriate fees, with the land use division of planning and development services and the application shall be processed in accordance with WCC 22.05. A master plan is required as part of the application for a major project permit. The master plan document shall include all elements required per the department’s administrative manual.

at a minimum the following elements:

(1) General statement—a narrative description that in general terms identifies the purpose and intended use(s) for the site.
(2) Conceptual site development plan—showing to the appropriate level of detail, buildings and other structures, existing mature trees and landscaping, the pedestrian and vehicle circulation system, parking areas, open space and critical areas, buffers, and other required items. This information must cover the following:

(a) All existing improvements that will remain after the development of the proposed site;

(b) All improvements planned in conjunction with the proposed use;

(c) Conceptual plans for possible future uses; and

(d) General locations of usable open space; any land proposed to be dedicated for open space; pedestrian and transit connection between the site and public or private streets serving the development and connecting to off-site open space; internal circulation (both auto and pedestrian), location of proposed gates and fencing.

(3) Land Use. The master plan must include proposed functions, uses and boundaries of uses by phase. The description must include information as to the general amount and type of functions of the use, hours of operation and the approximate number of members, employees, visitors and special events. For projects which include residential units, proposed minimum and maximum floor area densities, number of units and building heights must be indicated. For office/commercial and light impact industrial projects, minimum and maximum floor area ratios must be indicated.

(4) Phasing Plan. The master plan must include the proposed development phases, probable sequence for proposed developments, estimated dates, and interim uses of the property awaiting development. In addition, the plan should address any proposed temporary uses or location of uses during construction periods.

(5) Circulation, Transportation and Parking. The master plan must include but is not limited to projections by phase of traffic impacts, probable safety concerns, internal circulation layout, parking requirements, ingress/egress locations and proposed road standards for each phase. Specific requirements for transportation and parking include:

(a) The expected number of trips (peak daily), an analysis of the impact of those trips on the adjacent street system, and proposed mitigation measures to limit any projected negative impacts. Mitigation measures may include improvements to the street system or specific programs to reduce traffic impacts such as encouraging the use of public transit, carpools, vanpools, and other alternatives to single-occupancy vehicles.

(b) Projected peak parking demand, an analysis of this demand compared to proposed on-site and off-site supply, potential impacts to the no-street parking system and adjacent land uses, and mitigation measures.
(6) Utilities. The master plan must include evidence of service availability from primary service providers (water, sewer, power, cable, natural gas, telephone) and address stormwater-drainage management both on and off-site.

(7) Environment. The master plan must identify critical areas as defined in Chapter 16.16 WCC and areas of special concern as defined by WCC 24.05.230. Mitigating measures for all environmental impacts identified by the applicant through a SEPA checklist, or EIS process and/or identified by agency staff, including but not limited to special development standards, modification of site layout, dedicated open space and mitigation replacement areas must be identified. Identification of any hazardous wastes anticipated, special handling techniques and/or site designs required for containment must also be addressed. If an EIS is required, the EIS and master plan may, upon approval by the director, be combined into a joint document.

(8).210 Development Standards. The master plan may propose standards that will control development of the possible future uses that are in addition to, or substitute for, requirements of this chapter. These may be such things as height limits, setbacks, frontage, landscaping requirements, parking requirements, signage, view corridors or facade treatments. Proposed standards that do not meet the minimum county standards must obtain the appropriate variance prior to county approval of the proposed standards. If the proposed design standards will apply to property located partially or totally within an urban growth area, concurrence of the affected city will be required.

(9).215 Procedures. Master plan review shall be conducted under current review procedures. Other land use reviews may be conducted concurrently with the master plan review.

(a) Any modifications, additions or changes to an approved master plan are subject to the following:

(i) Minor changes shall be reviewed for compliance and compatibility with the approved master plan. A determination is made by the director.

(ii) Major changes shall be subject to the original procedural application type, subject to the fees as contained in the unified fee schedule.

(iii) Master plans may include, as a condition of their approval, a requirement for periodic progress reports and mandatory updates on a predetermined interval.

.210 The hearing examiner shall hold one public hearing in accordance with Chapter 20.02 WCC and the requirements set below. This shall be an open record hearing and, per RCW 36.70B.050(2), the county shall hold no subsequent open record hearings. [the 'no more than one hearing' provision is covered in the proposed 22.05.110]
.215 .220 through .265 Reserved. [moved to 22.05.145]
A written notice of the scheduled public hearing shall be mailed not less than 10 working days prior to the hearing as follows:

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

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

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

.220 The recommendation of the hearing examiner shall be based upon the criteria set forth in WCC 20.88.130(1) through (7).

.225 Within 45 calendar days after the hearing examiner’s recommended decision has been filed, the county council shall do one of the following:

(1) Refer the project to the planning commission for a recommendation.

(2) Hold a public meeting to deliberate on the project application and, within 20 calendar days of the meeting, issue a final written decision.

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

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

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

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

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

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

.265 The deliberation and decision of the county council shall be based solely upon consideration of the record, the recommendations of the hearing examiner and the planning commission (when applicable), and the criteria set forth in WCC 20.88.130(1) through (7).

.270 Where a project requires a major project permit, that project shall be exempt from the requirement of obtaining a conditional use permit.

.275 Major project permits: Where an applicant has applied for a planned unit development, that project shall be exempt from the requirement to obtain a major project permit.

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**Chapter 20.90**

**AMENDMENTS**

[Note: Chapter 20.90 is proposed to be deleted in its entirety. Amendment procedures are proposed to be moved to new Chapter 22.10]

**Sections:**

- 20.90.010—Purpose.
- 20.90.020—Types of zoning amendments defined.
- 20.90.030—Initiation of amendments.
- 20.90.040—Application, excluding site-specific rezones.
- 20.90.041—The docket.
- 20.90.045—Notice for quasi-judicial rezones.
- 20.90.050—Processing of initiated amendments.
- 20.90.060—Special provisions.
- 20.90.070—Transmittal of amendments to the state.
- 20.90.080—Repealed.

20.90.010 Purpose:
The purpose of this chapter is to define the types of zoning amendments and establish timelines and procedures to be followed when proposals are made for amending or revising the county zoning ordinance.

20.90.020 Types of zoning amendments defined:
(1) "Standard map amendment" means a proposed change or revision to the official county zoning map that affects a single parcel or a number of properties under a single or various ownerships.
(a) Rezone agreements may be required if, from the facts presented, and the findings, report and recommendations of the planning commission as required by this chapter, the council determines that the public health, safety and general welfare will be best served by a proposed change of zone. The council may indicate its general approval, in principle, of the proposed rezoning by the adoption of a “resolution of intent to rezone” for the area involved. This resolution shall include any conditions, stipulations or limitations which the council may feel necessary to require in the public interest as a prerequisite to final action. The fulfillment of all conditions, stipulations and limitations contained in said resolution, on the part of the applicant(s), shall make such a resolution a binding commitment on the council. Such a resolution shall not be used to justify spot zoning, to create unauthorized zoning categories by excluding uses otherwise permitted in the proposed zoning, or by imposing setback, area coverage restrictions not specified in the code for the zoning classification, or as a substitute for a variance. Upon completion of compliance action by the applicant, the council shall, by ordinance, adopt such rezoning. The failure of the applicant to meet any or all conditions, stipulations or limitations contained in the resolution, including the time limit placed in the resolution, shall render the resolution of intent to rezone null and void, unless an extension is granted by the council upon recommendation of the planning commission. The time limitations shall be one year. The council may grant up to five one-year extensions, based on demonstration of hardship or significant progress toward completion, after which the resolution becomes null and void if all conditions, stipulations and limitations have not been met by the applicant.

(2) “Site-specific rezone” means a proposed change or revision to the official county zoning map affecting a limited number of acres and must be composed of a single parcel or contiguous parcels that are under one or a limited number of ownerships and are requested to allow a specific project not allowed under the current zoning designation. A rezone that requires a Comprehensive Plan amendment does not qualify as a site-specific rezone.

(3) “Concomitant rezone” is a standard map amendment or a site-specific rezone which uses a concomitant agreement to impose conditions on, or limitations on uses and may also require performance by the applicant(s) which is are directly related to mitigation of probable on- and off-site impacts to adjacent uses, public services and the environment. The agreement may be in the form of a covenant running with the land. The provisions of the agreement will be in addition to all other pertinent Whatcom County Code requirements.

(4) “Text amendments” means a proposed change or revision in the text of WCC Title 20, the zoning ordinance.

20.90.030 Initiation of amendments:
Amendments to this title and/or to the official Whatcom County zoning map may be initiated as follows:

(1) The department of planning and development services may initiate an amendment(s) by placing the proposed amendment(s) on the docket.
(2) The Whatcom County planning commission may initiate an amendment(s) by majority vote of its members to place an amendment proposal on the docket.

(3) The county council may initiate an amendment by approving a resolution to place a proposed amendment(s) on the docket. Amendments by the county council may be initiated at any time, subject to county council review of ongoing staff resources and legislative priorities.

(4) A citizen may initiate an amendment(s) to this title and/or to the official Whatcom County zoning map by making application on forms provided by the department of planning and development services and paying a processing fee. A complete application and payment of the fee places the amendment on the docket, except as provided in subsection (5) of this section.

(5) Amendments to this title or the official county zoning map that also require an amendment to the Comprehensive Plan shall be initiated only if the accompanying Comprehensive Plan amendment is initiated as provided in Chapter 2.160 WCC. The payment of the processing fee for the zoning amendment as required by this section shall occur within 15 days of the approval of the resolution initiating the Comprehensive Plan amendment or the zoning amendment will be withdrawn.

20.90.040 Application, excluding site-specific rezones.
(1) Applications for WCC Title 20 map and text amendments, excluding site-specific rezones, shall include at least the following information:

(a) A description of the amendment being proposed including proposed map or text changes;

(b) A complete State Environmental Policy Act (SEPA) environmental checklist; and

(c) Name, address, phone number of the applicant, and, if applicable, assessor’s parcel number, section, township, and range.

(2) The department of planning and development services may prescribe additional information requirements and provide forms for the proposed amendments.

(3) Completed applications for WCC Title 20 amendments must be received by planning and development services by December 31st to be considered during the next calendar year. Applications submitted by planning and development services or the county council are not subject to the December 31st deadline.

(4) Interested persons may suggest revisions to WCC Title 20 or the official Whatcom County zoning map by completing and submitting a suggestion form provided for that purpose by the department of planning and development services. These suggestions require no payment of a fee, are not initiated amendments, and will not be processed as an amendment unless they have first been initiated in the manner provided under WCC 20.90.030. None of the parties with authority to initiate amendments under WCC 20.90.030 are under any obligation to initiate
suggested revisions as amendments. All suggested revisions shall be forwarded to the county council for review.

20.90.041 The docket:
(1) The docket shall consist of initiated Comprehensive Plan amendments and initiated WCC Title 20 and official zoning map amendments. Together with their supporting application files, the docket shall be maintained by the department of planning and development services and made available for public review during normal business hours.

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

20.90.045 Notice for quasi-judicial rezones:
Notice of quasi-judicial hearings conducted by the planning commission for zoning map amendments shall be issued in accordance with all of the following provisions:

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

(2) Notice shall be mailed to property owners as follows:

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

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

(c) For zoning map amendments that involve rezoning property to an Airport Operations District: At least 10 days prior to the scheduled hearing date, hearing notice shall be mailed to all property owners within 1,500 feet of the external boundaries of the subject property as shown by the records of the county assessor. The applicant shall submit a stamped envelope with a typed address for each of the above-referenced property owners.
(d) For zoning map amendments that involve rezoning property to a Mineral Resource Land designation: At least 10 days prior to the scheduled hearing date, hearing notice shall be mailed to all property owners within 2,000 feet of the external boundaries of the subject property as shown by the records of the county assessor. The applicant shall submit a stamped envelope with a typed address for each of the above referenced property owners.

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

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

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

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

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

20.90.050 Processing of initiated amendments.
Initiated amendments are reviewed by the department of planning and development services as listed below:

(1) For citizen initiated amendments, the department of planning and development services will evaluate each application for completeness and may request additional information of the applicant prior to requesting the appropriate hearing body to schedule a public hearing.

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

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

(3) The appropriate hearing body (planning commission or hearing examiner) shall receive the staff’s findings and recommendations for the initiated amendment and shall establish a public comment period during which a public hearing(s) on the amendment shall be scheduled. If the proposed amendment includes land within a city’s urban growth area, it shall be processed in accordance with the adopted interlocal agreement with that city.

(4) At the conclusion of the public comment period, the appropriate hearing body shall evaluate the merits of each amendment in relationship to the goals, policies and objectives of the Comprehensive Plan for compliance with any other special provisions as provided by WCC 20.90.060 and shall make a recommendation as to whether the amendment should be approved, approved with modifications or denied. The appropriate hearing body shall then cause written findings and a recommendation to the county council to be prepared for each amendment. The written findings and recommendation shall be forwarded to the county council in the form of an agency report which shall include a draft ordinance to implement the appropriate hearing body’s recommendation, if applicable. No draft ordinance is required if the recommendation is to not approve the initiated amendment proposal.

(5) (a) The county council shall receive the appropriate hearing body’s findings, recommendations and copy of the proposed amendment of the initiated amendment within 14 days of formal hearing body decision.

(b) Upon receipt of the findings, recommendation and a copy of the proposed amendment, the county council shall, at its next regular public meeting, set the date for a public meeting where it shall consider the appropriate hearing body’s findings and recommendations, and may:

(i) By ordinance, adopt; or

(ii) By motion, reject; or

(iii) By resolution, remand the recommendation back, with instructions, to the appropriate hearing body for reconsideration of the official control or amendment; or

(iv) If, after deliberating, the council believes the public interest may be better served by departing from the recommendation of the appropriate hearing body on an initiated amendment, the council shall conduct their own public hearing.

20.90.060 Special provisions.

.061 Deleted by Ord. 2008-060.
.062 Deleted by Ord. 2008-060.

.063 Site-Specific Rezones. Site-specific rezones are processed as "development applications" as prescribed by Chapter 2.33 WCC, Permit Review Procedures, and are reviewed by the hearing examiner in accordance with WCC 20.92.205. The final decisions regarding a site-specific rezone is made by the county council. All site-specific rezones are processed within the timelines as required by Chapter 2.33 WCC except for projects that are exempted by WCC 2.33.020(B) through (D).

(1) Site-specific rezones are initiated by making application on forms provided by the department of planning and development services. Site-specific rezone applications must satisfy the following criteria to be accepted for review:

(a) Does not require a Comprehensive Plan amendment;

(b) Requires a discretionary development permit or building permit;

(c) Includes concurrent submittal of the discretionary development permit or, if a discretionary development permit is not required, a narrative statement shall be included with the conceptual site plan which provides a detailed description of the project proposal and includes a project completion date.

(d) Includes evidence that all property owners included within the proposed rezone boundary concur with the rezone and project proposal as submitted for county review.

(e) Includes a completed environmental checklist.

(f) Includes payment of all permit and zoning-related fees.

(g) If required as a conditional approval, includes evidence that transfer of development rights can be transferred pursuant to the procedures and requirements in Chapter 20.89 WCC, Density Transfer Procedure, and WCC 20.90.064.

(2) Approval of site-specific rezone proposals must be supported by written findings and conclusions showing specifically that all of the following conditions exist:

(a) That the proposed amendment to the zoning map is consistent with the Comprehensive Plan;

(b) That the proposed amendment to the zoning bears a substantial relationship to public health, safety, morals, general welfare or community needs, and will not adversely affect the surrounding neighborhood as a whole;

(c) That there are changed conditions since the previous zoning became effective to warrant the proposed amendment to the zoning map;

(d) That the proposed amendment is consistent and compatible with the current uses and zoning of the surrounding land. Proposed uses shall:
(i) Be serviced adequately by necessary public facilities such as highways, streets, public and fire protection, drainage structures, refuse disposal, water and sewers, and schools; or that persons or agencies responsible for the establishment of the proposed use shall be able to provide adequately any such services;

(ii) Not create excessive additional requirements at public cost for public facilities and services, and will not be detrimental to the economic welfare of the community; or

(iii) If located within a nonindustrial urban growth area, the site shall:

   (A) Be serviced by full urban services or be capable of receiving urban services in time to serve the development;

   (B) Shall be done in a manner which will not preclude development at urban levels of density when the area is annexed into the city; and

   (C) Must be five acres or more in size.

(3) The proposed project is provisionally approved, and will revert to the original zoning designation if project completion is not in compliance with schedules as included with the discretionary development permit, or if no discretionary development permit is needed, within a reasonable time to be set by the hearing examiner. Bonds may be required as a condition of approval if deemed appropriate by the hearing examiner.

(4) Notwithstanding other language to the contrary, irregular boundaries that would result from a site-specific rezone proposal would not preclude the adoption of an otherwise satisfactory site-specific rezone.

(5) Site-specific rezones may be processed as concomitant rezones and may be processed concurrent with other land-use approvals.

(6) Concomitant rezone shall not be used for a rezone to agriculture, commercial forestry, and rural forestry zoning districts. It may, however, be used for any situation where extraordinary potential adverse impacts from a proposed rezone may be mitigated by the agreement. The concomitant rezone process may be employed for rezones in sensitive geographic areas such as critical transportation corridors. Concomitant rezones shall generally be used when normal review and approval procedures are not adequate to resolve the specific issues involved in the rezone proposal.

(7) The concomitant rezone agreement may include mitigation measures such as access control, landscaping, screening, buffering, improvements to public services including drainage, sewer, water and roads, lot coverage restrictions and phasing of development.
(8) A conceptual site plan shall be required. The conceptual site plan shall be drawn at not less than one inch to 100 feet (unless mutually agreed to be the proponent and administrative official) and shall also include, but not be limited to:

(a) General location of the structures.

(b) Location and number of access points.

(c) Approximate gross floor area of structures.

(d) Name of the proposal.

(e) Identification of areas requiring special treatment due to their sensitive nature.

(f) North directional arrow.

(g) Names and locations of all public streets or roads boarding the site.

(h) General legal description(s) for the site.

.064 Transfer of Development Rights (TDRs):

(1) Designated Receiving Areas. Such additional areas may be approved through the process established for amendments to the official Whatcom County zoning map and pursuant to the procedures and requirements in this chapter.

(2) Rezone requests to increase residential density that have been submitted pursuant to this chapter shall be required to transfer development from a designated TDR sending area to obtain the requested density as a condition of approval.

(a) In order to obtain the requested density, one development right shall be transferred for every three additional dwelling units obtained through rezones within a designated urban growth area. The county council may modify this requirement if a development agreement has been entered into that specifies the elements of development within the rezone area. The development agreement should include, but not be limited to, affordable housing, density, allowed uses, bulk and setback standards, open space, parks, landscaping, buffers, critical areas, transportation and circulation, streetscapes, design standards and mitigation measures.

(b) Exceptions from requiring TDRs: rezones initiated by a government agency, correction of map errors, establishing one zoning district on a property with two or more zoning districts, zoning revisions that intended to make a nonconforming use a conforming use or rezones where the public interest is served.

(3) Rezones initiated by the county, cities or other agencies shall be subject to review by county and city planning staff, and the appropriate administrative bodies;
to determine whether the subject site is appropriate for designation as a TDR receiving area.

20.90.070 Transmittal of amendments to the state.
Pursuant to RCW 36.70A.106(3), the department of planning and development services shall notify and transmit copies of initiated amendments to this title and the official Whatcom County zoning map to the Washington State Department of Commerce at least 60 days prior to final adoption. The department of planning and development services shall also transmit a complete and accurate copy of zoning amendments to Commerce within 10 days after the enacting ordinance is signed by the county executive.

20.90.080 Maintenance of dockets and public review.
Repealed by Ord. 2008-060.

Chapter 20.92
HEARING EXAMINER RESERVED

[Note: Chapter 20.92 is proposed to be deleted in its entirety. Hearing Examiner authority and duties provisions are proposed to be moved to new Chapter 22.11, and hearing procedures are to be moved to a new Chapter 22.05]

Sections:

20.92.010 Purpose.
20.92.100 Hearing examiner office.
20.92.110 Creation and purpose.
20.92.120 Pro tempore hearing examiner.
20.92.130 No interference with the hearing examiner.
20.92.140 Qualifications.
20.92.150 Appointment and removal.
20.92.200 Hearing examiner—Duties and powers.
20.92.205 Recommended decisions.
20.92.210 Final decisions.
20.92.211 Administrative appeals—Appeal period.
20.92.215 Open record hearing notice.
20.92.220 Open record hearing.
20.92.221 Combined county and agency hearing.
20.92.225 Rules and regulations.
20.92.230 Department reports.
20.92.235 Changes in legislation.
20.92.240 Additional powers.
20.92.245 Limited jurisdiction.
20.92.250 Permit revocation procedure.
20.92.255 Permit revocation hearing.
20.92.260 Permit revocation or grace period.
20.92.300 Recommended decisions to county council.
20.92.010 Purpose.

The purpose of this chapter is to provide a system of considering and applying regulatory devices which will best satisfy these three basic needs:

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

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

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

20.92.100 Hearing-examiner office.
20.92.110 Creation and purpose.

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

20.92.120 Pro-tempore hearing-examiner.

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

20.92.130 No interference with the hearing-examiner.

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

20.92.140 Qualifications.

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

20.92.150 Appointment and removal.

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

20.92.200 Hearing-examiner Duties and powers.

20.92.205 Recommended decisions.

The hearing-examiner shall conduct an open record hearing and prepare a record thereof, and make recommendations to the county council for approval or disapproval of:

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

(2) Planned unit developments;

(3) Site-specific rezones, including those processed as major project permits, PUDs and/or concomitant rezones;

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

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

20.92.210 Final decisions;

The hearing examiner shall conduct open record hearings and prepare a record
thereof, and make a final decision upon the following matters:

(1) Appeals from any orders, requirements, permits, decisions or determinations
made by an administrative official or committee in the administration of this title;
WCC Title 16, Environment, WCC Title 21, Land Division Regulations, or WCC Title
24, Health Regulations;

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

(3) Applications for zoning ordinance conditional-use permits;

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

(5) Applications for shoreline management substantial development permits not
accompanied by a major project permit when an open record hearing is required;

(6) Applications for variances from the terms of the Whatcom County Shoreline
Management Program;

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

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

(9) Applications for Shoreline Management Program conditional-use permits;

(10) Applications for flood damage prevention variances;

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

(12) Preliminary subdivisions and subdivision variances;

(13) Preliminary binding site plan proposals;

(14) Application for variances from the provisions of WCC Title 22;

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

(16) Applications to continue operations of nonconforming adult businesses
pursuant to WCC 20.83.015.
(17) Appeals of decisions relating to water service issues under Section 9.2 of the Coordinated Water System Plan.

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

20.92.211 Administrative appeals—Appeal period.

Appeals to the hearing examiner on the subjects listed in WCC 20.92.210(1) and (2) must be filed within 14 calendar days of the date of administrative determination.

20.92.215 Open-record hearing notice.

Notice of the time and place of the open-record hearing shall be given pursuant to WCC 2.33.060 and 2.33.070.

20.92.220 Open-record hearing.

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

20.92.221 Combined county and agency hearing.

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

20.92.225 Rules and regulations.

The hearing examiner shall have the power to prescribe rules and regulations for the conduct of hearings before him, subject to approval by the county council; and also to issue summons for and compel the appearance of witnesses, to administer oath and preserve order. The opportunity of cross-examination of witnesses shall be afforded all interested parties or their counsel in accordance with the rules of the hearing examiner.

20.92.230 Department reports.

The hearing examiner may request reports from appropriate staff. See WCC 2.33.080 for details.

20.92.235 Changes in legislation.

The hearing examiner may recommend changes in legislation to the planning department or county council.
20.92.240 Additional powers.
The hearing examiner may also exercise administrative powers and such other quasi-judicial powers as may be granted by county ordinance.

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

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

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

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

20.92.310 Recommended conditions.
The hearing examiner’s recommendations may be to grant or deny any subdivision, major development or site-specific rezone application, or the hearing examiner may recommend that the county council approve the application with such conditions, modifications or restrictions as the hearing examiner finds necessary to make the application compatible with its environment and carry out the objectives and goals of the Comprehensive Plan, the zoning code, the subdivision code, or any other official policies and objectives of Whatcom County.

20.92.320 Recommended decision—Findings and conclusions.
Each recommended decision of the hearing examiner, for major developments, site-specific rezones and subdivisions, shall be in writing and shall include findings and conclusions, based upon the record, to support the decision. Such findings and conclusions shall also set forth the manner in which the decision carries out and conforms to the county’s Comprehensive Plan and complies with the applicable statutes, ordinances or regulations.

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

20.92.400 Final decisions.

20.92.410 Final decision conditions—Applications and appeals.
The hearing examiner’s final decision on all applications or appeals shall either grant or deny the application or appeal. The hearing examiner may grant the application or appeal subject to conditions, modifications or restrictions that the hearing examiner finds necessary to make the application compatible with its environment, and carry out the objectives and goals of the Comprehensive Plan, the zoning code, the subdivision code, the critical areas ordinance, or other official policies and objectives of Whatcom County. Performance bonds or other security, acceptable to the prosecuting attorney, may be required to ensure compliance with the conditions, modifications and restrictions.

20.92.420 Final decision—Findings and conclusions.
Each final decision of the hearing examiner shall be in writing and shall include findings and conclusions, based on the record, to support the decision.

20.92.430 Time limitation on decision.
Except for major project permits, each final decision and recommended decision of the hearing examiner shall be rendered within 10 calendar days following the conclusion of all testimony and hearings. For major project permits, the hearing
examiner shall render recommendations within 45 calendar days following the conclusion of the open-record hearing.

20.92.440 Review limited.

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

20.92.500 Process for subdivision application and major project permits.

20.92.510 Subdivisions.

The county council shall process each recommended decision for subdivisions, consistent with the procedure set forth in WCC Title 21.

20.92.520 Major project permits.

The county council shall, upon receipt of the recommended decision on a major project permit, process that recommendation in the manner set forth in the major project permit chapter of this title (Chapter 20.88 WCC).

20.92.530 Site-specific rezones.

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

20.92.600 Appeal to county council.

20.92.610 Applicant appeal.

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

20.92.620 Fee.

A fee, as established in the Unified Fee Schedule, shall be paid to the county council office upon filing of any appeal. This fee shall not apply to appeals initiated by a county department.

20.92.630 Transcript.

(1) The appellant shall obtain a copy of the electronic recording of the hearing examiner’s hearing from the hearing examiner’s office. The appellant shall make arrangements for the preparation of the verbatim transcript of the hearing
examiner's hearing by a professional transcriptionist who will include a signed transcript certification with the verbatim transcript. The appellant shall forward the transcript to the county council office within 30 days of filing the appeal. Upon request of the council office, the hearing examiner's office shall prepare and transmit to the council office the hearing examiner's file, together with exhibits.

(2) A copy of the record shall be made available by the county council office to parties upon request submitted to the county council office:

20.92.640 Written argument:

(1) Within two working days after receipt of the transcript of the hearing conducted by the hearing examiner, the county council office shall send a letter of notification to the appellant that a statement containing the appellant's basis for appeal and argument is due. The statement and argument, and a proof of service (affidavit of mailing) upon those parties who have registered with the county council, must be filed in writing, along with 10 copies, with the clerk of the county council within 15 calendar days after the postmark date of the letter of notification.

(2) Any argument or response by any registered party of record opposing the appeal must be filed in writing, along with 10 copies, within 14 calendar days after the date of filing the appellant's argument with the council office.

20.92.642 Time limits:

The county council shall dismiss an appeal for failure of the appellant to abide by any of the time limits contained in WCC 20.92.600 through 20.92.640, unless an extension has been granted pursuant to WCC 20.92.645.

20.92.645 Time extension:

Extensions of timelines established hereinabove may be granted by the council chair upon demonstration of good cause. Requests for extensions and proof of service (affidavit of mailing) upon those parties who have registered with the county council shall be presented to the clerk of the council in writing prior to the expiration of the pertinent time limit. Any registered party who wishes to object to the requested extension shall file a written objection with the council office no later than two weeks following the council's receipt of the request.

20.92.650 Time limitation on county council:

Within 35 days after the filing of the opponents' written arguments, the county council shall render a decision. Thereafter the county council will issue findings of fact and conclusions of law no later than 30 days following the decision. This time limitation shall not apply when a remand procedure is initiated.

20.92.660 Appeal on record:

The decision of the county council shall be based solely upon the record and the written argument that has been submitted by the parties.

20.92.700 Remand to hearing examiner.
20.92.710 Findings:
The county council may, within its discretion, remand the case back to the hearing examiner, if the council finds:

(1) That new evidence is available that could affect the outcome of the case and was not available at the first hearing;

(2) That the record, in whole or in part, is not sufficient for the council to make a reasoned decision on the appeal;

(3) That the decision of the hearing examiner should be reversed and that additional information is necessary before a final decision can be made.

20.92.720 Remand order:
The remand shall be in the form of a written order and shall state the specific areas to be considered by the hearing examiner at the remand hearing. The remand hearing shall be limited to the specific areas of concern stated in the remand order from the county council.

20.92.730 Notice of remand hearing:
Notice of the remand hearing shall take place in accordance with WCC 2.33.070.

20.92.740 Filing of information:
The hearing examiner shall file the information requested in the remand order with the clerk of the county council as soon as possible but not to exceed 15 business days from the date of the hearing.

20.92.750 Final decision of county council:
The county council shall, within 30 days of filing of the information from the remand hearing, issue their final written decision together with findings of fact and conclusions of law.

20.92.800 County council—Function in hearing examiner process:

20.92.810 Reversal of hearing examiner decisions:
The county council shall affirm the decision of the hearing examiner unless a majority of the entire county council finds that the decision of the hearing examiner is:

(1) Based upon an error of law; or

(2) Clearly erroneous on the entire record.

20.92.820 Conditions:
The county council may, where their decision results in project approval, impose, modify or delete conditions upon the license, permit approval, variances or appeal, consistent with WCC 20.92.310, and may exercise the powers granted therein.
20.92.825 Adult business appeals.

Appeals of administrative approval-use permits for adult businesses shall be made directly to the county council and shall be subject to the following procedures:

(1) The applicant or any party of record may appeal an administrative approval-use permit decision relating to an adult business to the county council.

(2) The appellant shall file a written notice of appeal at the county council office within 10 calendar days of the administrative approval-use permit decision. A fee, as established in the Unified Fee Schedule for appeals to the county council, shall be paid to the county council office upon filing of any appeal.

(3) The county council office shall mail written notice to the administrative approval-use permit applicant within five calendar days of receiving the appeal, if the appeal was not submitted by the applicant.

(4) The council office shall request the written record from planning and development services within five calendar days of receiving the appeal. The written record shall be forwarded by planning and development services within five calendar days of the request from the county council office.

(5) Within five calendar days after receipt of the appeal, the county council office shall send a letter of notification to the appellant that a statement containing the appellant’s basis for appeal and argument is due. The statement and argument, and a proof of service (affidavit of mailing) upon the administrative approval-use permit applicant (if different from the appellant), must be filed in writing, along with 10 copies, with the clerk of the county council within 10 calendar days after the postmark date of the letter of notification.

(6) An argument or response from the administrative approval-use applicant (if different than the appellant) shall be filed in writing along with 10 copies, within 10 calendar days after the date of filing the appellant’s argument with the council office.

(7) The county council shall decide the appeal and issue written findings of fact and conclusions of law within 40 calendar days of the date the appeal was filed.

(8) The county council shall affirm the decision of planning and development services unless a majority of the entire county council finds that the decision is:

(a) Based upon an error of law; or

(b) Clearly erroneous on the entire record.

(9) The county council may, where their decision results in project approval, impose, modify or delete conditions based solely on the criteria of WCC 20.84.235(7).

(10) The procedures of WCC 20.92.600, 20.92.700, 20.92.810 and 20.92.820 shall not apply to appeals relating to adult businesses.

20.92.830 No interference with the county council.
No individual or county official shall interfere with or attempt to interfere with the individual councilmembers of the county council in the execution of the quasi-judicial duties they have assumed pursuant to this chapter.

20.92.840 Appeal of county council decision.
The decision of the county council shall be final unless appealed within 21 days of the issuance of the written decision, in the same manner as provided in RCW 36.70C.040.

20.92.850 Public hearing process for development agreements under the Growth Management Act.

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

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

Chapter 20.94
ENFORCEMENT AND PENALTIES

20.94.070 Permit revocation.
The zoning administrator, and/or designee, is authorized to suspend or revoke a permit issued under the provisions of this code in instances where the hearing examiner does not otherwise have authority pursuant to WCC 22.05.150 20.92.250. The county may suspend or revoke a permit whenever the permit is issued in error or on the basis of incorrect, inaccurate or incomplete information, and/or when a substantial or a continued violation of the terms and/or conditions of a permit have not been met.

WCC 20.94.060 Appeals.
The hearing examiner shall have the authority to hear and decide, in conformity with this title, appeals pursuant to WCC 20.84.240, unless as specifically noted differently under this chapter. Any party of record may appeal any order, final permit decision, or final administrative determination in the administration or enforcement of this title. The hearing examiner shall have the authority to hear and decide appeals pursuant to WCC 22.05.160. The appeal fee on a code violation will be refunded if the appellant can prove by clear and convincing evidence that a violation did not occur.
Chapter 20.97
DEFINITIONS

20.97.175 Hearing examiner.
“Hearing examiner” means the hearing examiner of Whatcom County (refer to WCC Chapter 20.92 2.11-WCC).

20.97.293 Party of record.
“Party of record” means the applicant, the owner of the property and any person who has testified at a required hearing. (Ord. 96-031 § 2, 1996). any person, agency or entity entitled to receive notice of application or decision under this title, or any person, agency or entity providing written comments on any application received under this title or notified local government of their desire to receive a copy of the final decision on a permit and who have provided an address for delivery of such notice by mail or email.

20.97.321 Project permit – Project permit application.
“Project permit” or “project permit application” means any land use or environmental permit or license required from Whatcom County for a project action, including but not limited to building permits, subdivisions, binding site plans, planned unit developments, subdivisions, binding site plans, planned unit developments, conditional uses, shoreline substantial project development permits, variance, lots consolidation relief, site plan reviews, permits or approvals required by critical area ordinances, site specific rezones authorized by a Comprehensive Plan or subarea plan, but excluding the adoption or amendment of a comprehensive plan, subarea plan, or development regulations except as otherwise specifically included in this subsection.

[Proposed amendment aligns with RCW 36.70B.020(4) definition.]
**TITLE OF DOCUMENT:**
Res. requesting Executive draft legislation re Cherry Point UGA permits

**SUMMARY STATEMENT OR LEGAL NOTICE LANGUAGE:** (If this item is an ordinance or requires a public hearing, you must provide the language for use in the required public notice. Be specific and cite RCW or WCC as appropriate. Be clear in explaining the intent of the action.)
Resolution requesting the County Executive direct staff to draft legislation relating to processing and approval of major project permits in the Cherry Point Urban Growth Area

**COMMITTEE ACTION:**

**COUNCIL ACTION:**

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**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).
RESOLUTION NO. ____________

REQUESTING THE COUNTY EXECUTIVE DIRECT STAFF TO DRAFT
LEGISLATION RELATING TO PROCESSING AND APPROVAL OF MAJOR PROJECT
PERMITS IN THE CHERRY POINT URBAN GROWTH AREA

WHEREAS, on August 9, 2016, the Whatcom County Council adopted Ordinance 2016-031, an emergency ordinance imposing a sixty day moratorium on the filing, acceptance, and processing of new applications for conversion of land or water, new building or structure permits, or other County permits or authorizations in the Cherry Point Urban Growth Area for new or expanded facilities whose purpose is to facilitate the increased shipment of unrefined fossil fuels not to be processed or consumed at Cherry Point; and

WHEREAS, on September 27, 2016, March 21, 2017, and September 26, 2017, the Whatcom County Council adopted interim measures (Ordinance 2016-039, Ordinance 2017-011, and Ordinance 2017-049) prohibiting the filing, acceptance, and processing of new applications for conversion of land or water, new building or structure permits, or other County permits or authorizations in the Cherry Point Urban Growth Area for new or expanded facilities whose purpose is to facilitate the increased shipment of unrefined fossil fuels not to be processed or consumed at Cherry Point; and

WHEREAS, on February 27, 2018, Whatcom County Council extended the interim moratorium on the acceptance and processing of applications and permits for new or expanded facilities in the Cherry Point Urban Growth area the primary purpose of which would be the shipment of unrefined fossil fuels not to be processed at Cherry Point; and

WHEREAS, the interim moratoria are intended to provide time for the County to assess how to improve the acceptance and processing of applications and permits for new or expanded facilities in the Cherry Point Urban Growth to better protect public health, safety, transportation, and the environment; and

WHEREAS, the County Council previously adopted Title 20-Zoning of Whatcom County Code which regulates land use within unincorporated areas of Whatcom County; and

WHEREAS, the County Council adopted the Whatcom County Comprehensive Plan on May 20, 1997, which contains goals, objectives, and policies regarding land use compatibility and environmental considerations; and

WHEREAS, the Whatcom County Council recently updated the Whatcom County Comprehensive Plan as required by Revised Code of Washington (RCW) 36.70A; and

WHEREAS, during the Comprehensive Plan review process the Whatcom County Council received many individual public comments on fossil fuel transshipment, transport, and transfer from Cherry Point related to the protection of the safety and health of Whatcom County’s environment, economy, and residents; and
WHEREAS, the County recognizes that the existing refineries have for decades been
significant shippers of refined fossil fuels such as jet fuel and calcined coke used in
manufacture of aluminum while providing substantial local employment; and

WHEREAS, multiple trains carrying crude oil from the Bakken formation moving
through the United States and Canada have derailed and exploded causing damage to
property and the environment; and

WHEREAS, on July 6, 2013, a single derailment in Quebec caused 47 fatalities and
destroyed half of the downtown of Lac-Mégantic, leaving a town heavily contaminated with
benzene, which are major reasons that local zoning regulations must be improved; and

WHEREAS, a unit train carrying Bakken crude traveling through Mosier, Oregon, on
June 3, 2016, derailed and exploded causing damage to property and to the Columbia River,
demonstrating that recently adopted state and federal policies and corporate investment
intended to reduce the risks associated with oil by rail have proven insufficient to protect
communities along the rail corridor; and

WHEREAS, the Washington State Department of Natural Resources has designated
waters adjacent to the Cherry Point Urban Growth Area as an aquatic reserve to ensure
long-term protection of this unique aquatic environment; and

WHEREAS, the United States recently lifted a ban on the export of crude oil from
the country, increasing pressure on deep water ports such as Cherry Point to develop to
increase the amount of fuels transported through Whatcom County that arrive at Cherry
Point; and

WHEREAS, existing refineries at Cherry Point have recently increased their ability to
accept crude oil by rail by constructing new rail offloading facilities to serve the refineries;
and

WHEREAS, existing and proposed pipeline facilities have increased, or proposed to
increase, their capacity to move crude oil, diluted bitumen, and natural gas to Cherry Point; and

WHEREAS, expansion of existing facilities for purposes receiving and shipping fossil
fuels into and out of Cherry Point will increase the transport of dangerous fuels through our
community and increase the risk of possible harmful emissions, train derailment, spills,
explosions, and the fallout of these will pose serious threats to the community’s public
health and safety, and to the local environment; and

WHEREAS, pursuant to the Washington State Constitution, the general police
powers granted to counties empower and authorize Whatcom County to adopt land use
controls to provide for the regulation of land uses within the County and to provide that
such uses shall be consistent with applicable law; and

WHEREAS, in 2017, the Whatcom County Council entered into a contract with
Cascadia Law Group for assistance in examining existing County laws and developing
recommendations for recommendations about how the County may further limit the
negative impacts on public safety, transportation, the economy, and environment from
crude oil, coal, liquefied petroleum gases, natural gas, and other fuels transported through
Whatcom County to Cherry Point and shipped from the Cherry Point UGA above levels in
existence as of March 1, 2017; and
WHEREAS, in 2018, a Cascadia Law Group study provided guidance 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; and

WHEREAS, the above study will assist in developing proposed Comprehensive Plan amendments and associated code and rule amendments for Council consideration, and

WHEREAS, Whatcom County Council finds the public interest is best protected by a permitting process for major projects at Cherry Point that provides the County clear authority for requiring mitigation of project impacts on the community and the environment, and that provides clear requirements that project proponents assume financial responsibility for potentially hazardous activities that present risks to the community; and

WHEREAS, the Cascadia study determined that zoning codes of other local jurisdictions provide examples of discretionary decision-making criteria; and

WHEREAS, in RCW 90.58.020 the legislature found that the shorelines of the state are among the most valuable and fragile of its natural resources and that there is great concern relating to their utilization, protection, restoration, and preservation. In addition it found that increasing pressures of additional uses are being placed on the shorelines, and that that unrestricted construction on the privately owned or publicly owned shorelines of the state is not in the best public interest, and that local governments play a role in preventing harm to the state’s shorelines; and

WHEREAS, WAC 173-27-160 states that conditional use permits provide local governments flexibility in the application of use regulations in a manner consistent with the policies of RCW 90.58.020, and that special conditions may be attached to the permit by local government to prevent undesirable effects of the proposed use; and

WHEREAS, WAC 197-11-660 states that proposals may be conditioned or denied under the State Environmental Protection Act to mitigate the environmental impact, subject to limitations, and that proposal can be denied if they are likely to result in significant adverse environmental impacts that cannot be mitigated.

NOW, THEREFORE, BE IT RESOLVED by the Whatcom County Council that the Council requests the County Executive have Planning staff draft code amendments to the County’s Major Project Permit Review Process, and other related zoning code, that strengthen the discretionary authority of County staff, and the County Council, with respect to processing and approving major project permits, and with respect to mitigating the impacts of proposed major projects, and with respect to mitigating changes in existing uses, in the Cherry Point UGA.

BE IT FURTHER RESOLVED that Whatcom County Council requests proposals for code and SMP amendments that protect public health, safety, and the environment, and that provide clear discretionary standards for accepting and rejecting permits. These include:

1) Require Conditional Use Permits. Require conditional land use permits, and conditional shoreline permits (per WAC 173-27-160), for certain heavy industry uses, such as new petroleum tank farms, new fossil fuel distribution facilities, additional piers, new on-site rail yards, new facilities that transfer fuel from rail cars, new rail car storage facilities, new coal storage facilities, new coal transfer facilities, and new facilities that transfer fuels
from permitted or proposed facilities across existing or proposed piers. The purpose of such conditional use permits is:

a) To provide a process that allows flexibility in the application or regulations, consistent with RCW 90.58.020, and to allow that conditions be attached by the County to prevent undesirable effects of the propose use and to assure consistency of the project with the goals in the County Comprehensive Plan, County SMP, and with treaty rights, policies of Washington State DNR, the Army Corps of Engineers, and the Cherry Point Aquatic Reserve Plan, and

b) To ensure the project will cause no significant adverse effects to the shoreline, to the environment, to air emissions, to traffic patterns, and that, broadly, the public suffers no substantial detrimental effect of the cumulative impact of the proposed project, and

c) To ensure that any use must demonstrate that it is adequately served by essential public facilities such as highways, roads, police and fire protection, drainage facilities, water, sewer, bridges required for rail crossings, and waste disposal, and that the agents proposing the use shall be able to adequately provide such services.

d) To ensure the proposed facility will not create excessive additional requirements, at public cost, for public facilities and services and that the applicant provide mitigation for added public costs, including investment into emergency response capacity, and that commit the applicant to compensate Whatcom County and associated jurisdictions for costs associated with emergency responses, clean-up, mitigation, and such events that are associated with transporting materials, by the applicant and by third parties, to and from the permitted facility.

2) Require Master Site Planning provisions for major project permits. This would include
   a) requirements that applicants submit a fee (up front or in increments) covering the County’s EIS review costs;
   b) requiring a Development Agreement that obligates the developer to pay costs (given a rational nexus) of all traffic, public safety, and environmental impact mitigation identified in the SEPA review; and identified in the discretionary project review by staff and County Council, should a Master Site Plan or conditional use be approved;
   c) requiring mitigating conditions proportional with the impact of the EIS;
   d) amending code to give the Planning Department and County Council the discretion to require a bond or insurance policy (or combination of) to ensure that all development commitments for transportation mitigation, public safety mitigation, environmental mitigation, and other mitigation are followed through to completion and that safety hazards to the community are insured against.

3) Review and revise SEPA policy. Review, and if needed to accomplish code changes to advance the goals of conditional use and enhanced discretionary authority of the county staff and County Council. SEPA provides that a project may be denied after an EIS is completed where it is decided that adverse impacts cannot be mitigated. Code and/or SMP and / or Comp. Plan language must provide a clear basis for accepting proposals with conditional requirements, and a clear basis for denial.
4) **Review and Revise Provisions for Change of Use and Occupancy.** Changes in use of existing facilities should be consistent with current code, and with code revisions requested above. Changes in use or occupancy should not result in a substantive functional change in the initial permitted use of an existing facility without being subject to discretionary authority and conditional requirements per, points 1, 2 & 3 as listed above. Code should allow staff approval of changes or occupancy or use where new uses remain consistent with current and with code adopted per this resolution. Code should also provide for a clear obligation to review and properly address, and mitigate, impacts of changes in use or occupancy of existing facilities.

**BE IT FURTHER RESOLVED** that staff proposals resulting from this resolution will be reviewed in by a Committee of the Whole of the Whatcom County Council in no fewer than two meetings that will provide for public comment, and, after this, a public hearing will be held on the matter.

**APPROVED** this _____ day of _____________, 2018.

ATTEST: WHATCOM COUNTY COUNCIL

WHATCOM COUNTY, WASHINGTON

________________________________________

Dana Brown Davis, Clerk of the Council

Rud Browne, Council Chair

**APPROVED AS TO FORM:**

________________________________________

Civil Deputy Prosecutor
CALL TO ORDER
Council Chair Rud Browne called the meeting to order at 1:21 p.m. in the Council Conference Room, 311 Grand Avenue, Bellingham, Washington.

ROLL CALL
Present: Tim Ballew, Barbara Brenner, Rud Browne, Barry Buchanan, Tyler Byrd, Todd Donovan, and Satpal Sidhu
Absent: None

COMMITTEE DISCUSSION
1. CONSIDERATION OF AN APPEAL OF A PENALTY ASSESSMENT REMISSION DECISION BY PLANNING AND DEVELOPMENT SERVICES, FILE NO. ENF2017-00063, FILED BY KYLE COSTON (AB2018-104)
   Attorney Present: Karen Frakes

Browne stated that discussion of agenda item one may take place in executive session pursuant to RCW 42.30.110(1)(i). Executive session will conclude no later than 1:30 p.m. If the meeting extends 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 1:30 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: Brenner, Browne, Buchanan, Byrd, Donovan, and Sidhu (6)
Nays: None (0)
Absent: Ballew (out of the room) (1)

OTHER BUSINESS

ADJOURN
The meeting adjourned at 1:30 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
Special Committee of the Whole

April 10, 2018

CALL TO ORDER

Council Chair Rud Browne called the meeting to order at 3:04 p.m. in the Council Chambers, 311 Grand Avenue, Bellingham, Washington.

ROLL CALL


Absent: None.

COMMITTEE DISCUSSION

1. DISCUSSION OF SPECIFIC SECTIONS OF THE PROPOSED 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)

B. Council discussion and preliminary direction on sections of proposed Title 22 addressing Final Decision, Recommended Decisions to County Council, Permit Review Timeframes, Expiration of Project Permits, Permit Revocation Procedures, Appeals, Annual Report, Interpretation, Conflict, and Severability (proposed 22.05.110 through 22.05.180)

The following staff submitted and read from a presentation (on file) and answered questions:

• Amy Keenan, Planning and Development Services Department
• Royce Buckingham, Prosecutor’s Office
• Nick Smith, Planning and Development Services Department

Councilmembers and staff discussed the impact to the Superior Court caseload, the impact of a process that bypasses the Council review and goes straight to Superior Court, the timeline for expiration of project permits, the policy reasons for creating timelines, how the staff moved around the appeal section language, the process for a closed record hearing, and limits on the number of public hearings on appeals.
A. Audience members are invited to comment on sections of proposed Title 22 addressing Final Decision, Recommended Decisions to County Council, Permit Review Timeframes, Expiration of Project Permits, Permit Revocation Procedures, Appeals, Annual Report, Interpretation, Conflict, and Severability (proposed 22.05.110 through 22.05.180)

Linda Twitchell, Building Industry Association, spoke about problems with the requirement for a determination of completeness before applying for a building permit.

Roger Almskaar submitted handouts on agenda items AB2018-129 and AB2018-114, scheduled later in the meeting, and spoke about removing the Council from the appeals process, the need for more flexibility on timelines and extensions, and old subdivision applications that are still pending.

Wendy Harris spoke about the impact of vested rights on the public interest, creating stronger enforcement procedures, and transferring power from the legislative branch to the administrative branch.

Kathy Sable spoke about the appeal process, the Hearing Examiner’s public hearing process, and the criteria used to determine whether a one-year extension is allowed.

Doug Campbell, Associated Project Consultants Engineer, spoke about vesting provisions for short subdivisions, binding site plans, and long-plats.

Councilmembers and staff discussed the natural resource assessment purpose and requirements, recent Supreme Court cases that have addressed vesting timelines, providing clear guidance on permit and vesting requirements and timeframes, and the vesting changes to binding site plans.

2. DISCUSSION OF RECOMMENDATIONS OUTLINED IN CASCADIA LAW GROUP REPORT ENTITLED REDUCING IMPACTS FROM FOSSIL FUEL PROJECTS (AB2018-076A)

Donovan spoke about four items of direction he would like to give staff related to the report’s recommendations:
1. Require conditional use permit for certain uses in the Cherry Point heavy industrial district for land use and shoreline permits
2. Review State Environmental Policy Act (SEPA) policy so they have a clear basis for when mitigation is expected
3. Provisions for changes in use or occupancy for facilities in Cherry Point, including provisions to address change in occupancy
4. New provisions for major project permits that the development agreements would pay for traffic and environmental impacts

He will write a resolution asking staff to move forward on these four recommendations.

Jack Louws, County Executive, answered questions and stated they need to consider moving forward with regulations regarding the moratorium on the export of fossil fuels.
Councilmembers and staff discussed inviting the industry to comment on the report and these recommendations in terms of the issues, which are public safety, liability, and transportation; a recent public hearing on the entire report; the language of the current moratorium on certain facilities at Cherry Point; and the process for the Council to write a draft resolution.

(Discussion continued later in the meeting.)

3. DISCUSSION OF A PROPOSED ORDINANCE REPEALING ORDINANCE NOS. 2018-001 AND 2018-005 AND ADOPTING AMENDMENTS TO THE WHATCOM COUNTY COMPREHENSIVE PLAN AND THE WHATCOM COUNTY CODE TITLE 15 BUILDINGS AND CONSTRUCTION, TITLE 20 ZONING, TITLE 21 LAND DIVISION REGULATIONS, AND TITLE 24 HEALTH CODE, RELATING TO WATER RESOURCES AND IMPLEMENTING ESSB 6091 (THIS ITEM IS SCHEDULED FOR INTRODUCTION THIS EVENING) (AB2018-129)

Byrd moved to hold in committee for two weeks this item and the last agenda item.

The motion was seconded.

Mark Personius, Planning and Development Services Department Director, stated it can be withdrawn from the evening meeting and held for two weeks.

Brenner suggested a friendly amendment to allow public discussion today.

Byrd accepted the friendly amendment.

The motion carried by the following vote:

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

The following people spoke:

• Ellen Baker stated staff made many changes after the Planning Commission review that need to be discussed.

Karen Frakes, Prosecutor’s Office, spoke about the compliance deadline.

2. DISCUSSION OF RECOMMENDATIONS OUTLINED IN CASCADE LAW GROUP REPORT ENTITLED REDUCING IMPACTS FROM FOSSIL FUEL PROJECTS (AB2018-076A)

(Discussion continued from earlier in the meeting.)

The following people spoke:

• Brett Bonner, Whatcom Business Alliance, spoke about inviting the industry to the table to speak on this issue.

• Wendy Harris spoke about air quality risks to public health and regulating train traffic.
• Linda Twitchell, Building Industry Association, stated she supports having a public meeting.
• Eddie Ury, ReSources for Sustainable Communities, spoke about having a special joint meeting with the industry and other stakeholders and the County requiring conditions on project permits.

Councilmembers discussed the process for getting input from the industry.

COMMITTEE DISCUSSION AND RECOMMENDATION TO COUNCIL

1. RESOLUTION RECOGNIZING THE ROLES AND DUTIES OF WHATCOM COUNTY, THE WRIA 1 PLANNING UNIT, AND THE WRIA 1 INITIATING GOVERNMENTS REGARDING WATER RESOURCES PLANNING UNDER RCW 90.82 AND ESSB 6091 (AB2018-114)

This item was held in committee.

OTHER BUSINESS

There was no other business.

ADJOURN

The meeting adjourned at 5:07 p.m.

The Council approved these minutes on ____________, 2018.

ATTEST: WHATCOM COUNTY COUNCIL
WHATCOM COUNTY, WASHINGTON

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

______________________________
Jill Nixon, Minutes Transcription
WHATCOM COUNTY COUNCIL
Regular County Council Meeting

April 10, 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 A PENALTY ASSESSMENT REMISSION DECISION BY PLANNING AND DEVELOPMENT SERVICES, FILE NO. ENF2017-00063, FILED BY KYLE COSTON (AB2018-104)

Donovan moved to cut the fee in half.
The motion was seconded.
Councilmembers discussed the option of applying the fee to a program for underprivileged children and the background of the appeal.

Donovan amended his motion and moved to waive the fee entirely, and ask Mr. Coston to voluntarily provide his services valued at $300 as scholarships to underprivileged children in his program.
The motion carried by the following vote:
Ayes: Ballew, Brenner, Browne, Buchanan, Byrd, Donovan, and Sidhu (7)
Nays: None (0)

MINUTES CONSENT
1. SPECIAL COMMITTEE OF THE WHOLE FOR FEBRUARY 13, 2018

Donovan moved to approve Minutes Consent items one through five.
The motion was seconded.
2. REGULAR COUNTY COUNCIL FOR FEBRUARY 13, 2018

See Minutes Consent item one.

3. SURFACE WATER WORK SESSION FOR FEBRUARY 20, 2018

See Minutes Consent item one.

4. SPECIAL COMMITTEE OF THE WHOLE FOR FEBRUARY 27, 2018

See Minutes Consent item one.

5. REGULAR COUNTY COUNCIL FOR FEBRUARY 27, 2018

See Minutes Consent item one.

6. BOARD OF HEALTH FOR MARCH 6, 2018

Donovan moved to approve Minutes Consent items six.

The motion was seconded.

The motion carried by the following vote:

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

7. COMMITTEE OF THE WHOLE FOR MARCH 13, 2018

Donovan moved to approve Minutes Consent items seven and eight.

The motion was seconded.

The motion carried by the following vote:

Ayes: Ballew, Brenner, Buchanan, Byrd, and Donovan (5)
Nays: None (0)
Abstains: Sidhu and Browne (2)

8. SPECIAL COMMITTEE OF THE WHOLE FOR MARCH 13, 2018

See Minutes Consent item seven.

9. REGULAR COUNTY COUNCIL FOR MARCH 13, 2018

Buchanan moved to approve Minutes Consent items nine.
The motion was seconded.

The motion carried by the following vote:

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

10. SURFACE WATER WORK SESSION FOR MARCH 20, 2018

Byrd moved to approve Minutes Consent items ten.

The motion was seconded.

The motion carried by the following vote:

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

11. SPECIAL COMMITTEE OF THE WHOLE - EXECUTIVE SESSION FOR MARCH 27, 2018

Donovan moved to approve Minutes Consent items 11 through 13.

The motion was seconded.

The motion carried by the following vote:

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

12. SPECIAL COMMITTEE OF THE WHOLE - OPEN SESSION FOR MARCH 27, 2018

See Minutes Consent item 11.

13. REGULAR COUNTY COUNCIL FOR MARCH 27, 2018

See Minutes Consent item 11.

PUBLIC HEARINGS

1. ORDINANCE REGARDING TEMPORARY INSTALLATION OF A STOP SIGN ON ROBERTS ROAD AT CENTRAL ROAD DURING CONSTRUCTION OF THE ROBERTS ROAD ANDERSON CREEK BRIDGE #249 REPLACEMENT PROJECT 113 (AB2018-113)

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

Donovan moved to adopt the ordinance.
The motion was seconded.

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

OPEN SESSION

The following people spoke:
- Molly Crocker spoke about the Planning Unit process.
- Jim Peterson, HomesNOW, spoke about the HomesNOW homeless housing project.
- Paul Isaacson, Whatcom Well Group, spoke about his newly-formed collaborative group to address well issues in the county.
- Max Perry spoke about the need for a new county jail.
- Carole Perry stated she agrees with the comments from Mr. Isaacson and Mr. Max Perry and spoke about the Planning Unit.
- Dave Bachman stated he agrees with the comments from Mr. Perry and spoke about the need for a new county jail.

CONSENT AGENDA

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

Brenner withdrew item two.

Byrd withdrew item four.

The motion to approve Consent Agenda items one, three, five, and six carried by the following vote:
Ayes: Ballew, Brenner, Browne, Buchanan, Byrd, Donovan, and Sidhu (7)
Nays: None (0)

1. REQUEST APPROVAL FOR THE COUNTY EXECUTIVE TO AWARD BID #18-07 AND ENTER INTO A CONTRACT FOR 2018 HOT MIX ASPHALT PRELEVEL AT VARIOUS LOCATIONS TO LOW BIDDER, LAKESIDE INDUSTRIES INC., IN AN AMOUNT NOT TO EXCEED $1,302,998 (AB2018-119)

2. REQUEST AUTHORIZATION FOR THE COUNTY EXECUTIVE TO ENTER INTO A CONTRACT AMENDMENT BETWEEN WHATCOM COUNTY AND FCS GROUP TO CONDUCT PHASE 2 OF ESTABLISHING A FUNDING MECHANISM FOR THE LAKE WHATCOM STORMWATER UTILITY IN THE AMOUNT OF $77,420 FOR A TOTAL CONTRACT AMOUNT OF $111,952 (AB2018-105A)

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

The motion was seconded.

Councilmembers discussed that this is only to make a recommendation on funding, not to make a final decision.

The motion carried by the following vote:

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

**Nays:** Byrd (1)

3. REQUEST AUTHORIZATION FOR THE COUNTY EXECUTIVE TO ENTER INTO A CONTRACT BETWEEN WHATCOM COUNTY AND TETRA TECH TO PROVIDE ENGINEERING DESIGN SERVICES AND PREPARATION OF CONSTRUCTION DOCUMENTS FOR THE REROUTE AND UPGRADE OF A FAILING OUTFALL ON BIRCH BAY DRIVE, IN THE AMOUNT OF $58,508 (AB2018-120)

4. REQUEST APPROVAL FOR THE COUNTY EXECUTIVE TO HAVE PUBLIC WORKS PURCHASE A REPLACEMENT STREET SWEEPER USING THE WASHINGTON STATE CONTRACT #02613 FROM VENDOR OWEN EQUIPMENT CO., IN THE AMOUNT OF $292,470.94 (AB2018-121)

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

The motion was seconded.

Councilmembers discussed the time value of money and replacement of equipment when they begin to fail.

Jon Hutchings, Public Works Department Director, gave a staff report on mileage, hours operated, and longevity.

The motion carried by the following vote:

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

**Nays:** None (0)

5. REQUEST AUTHORIZATION FOR THE COUNTY EXECUTIVE TO ENTER INTO ONE YEAR RESIDENTIAL LEASE AGREEMENT BETWEEN WHATCOM COUNTY AND DOUGLYS MADDUX AND KEMARON KAALAND-MADDUX TO RESIDE AT 7981 BLAINE ROAD, BLAINE, WA, IN THE AMOUNT OF $1320 PER MONTH (AB2018-122)

6. REQUEST AUTHORIZATION FOR THE COUNTY EXECUTIVE TO ENTER INTO AN INTERGOVERNMENTAL AGREEMENT BETWEEN WHATCOM COUNTY AND WHATCOM COUNTY FIRE PROTECTION DISTRICT NO. 14 FOR FIRE PROTECTION SERVICES ON COUNTY PARK PROPERTIES (AB2018-123)

OTHER ITEMS
1. REQUEST AUTHORIZATION FOR THE COUNTY EXECUTIVE TO SIGN AN ATTORNEY ENGAGEMENT AND CONTINGENCY FEE AGREEMENT BETWEEN WHATCOM COUNTY AND KELLER ROHRBACK L.L.P. (AB2018-116)

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

   Karen Frakes, Prosecutor’s Office, answered questions.

   Councilmembers and staff discussed going after doctors, not pharmaceutical companies; people with end-of-life and serious health issues; and the history of drug claims and the rise of addiction in the United States.

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

2. RESOLUTION IN THE MATTER OF THE SALE OF SURPLUS PROPERTY AND SETTING A DATE FOR PUBLIC HEARING THEREON PURSUANT TO WHATCOM COUNTY CODE 1.10 (AB2018-118)

   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. RESOLUTION RECOGNIZING THE ROLES AND DUTIES OF WHATCOM COUNTY, THE WRIA 1 PLANNING UNIT, AND THE WRIA 1 INITIATING GOVERNMENTS REGARDING WATER RESOURCES PLANNING UNDER RCW 90.82 AND ESSB 6091 (AB2018-114)

   Browne reported for the Special Committee of the Whole and stated this item is held in committee.

**INTRODUCTION ITEMS**

   Donovan moved to accept Introduction Items one and three through six. Items two and seven were withdrawn from 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)

4. RECEIPT OF APPLICATION(S) FOR THE WHATCOM COUNTY WILDLIFE ADVISORY COMMITTEE, APPLICANT: SHANNON CROSSEN (COMMITTEE
ADVISES THE WHATCOM COUNTY PLANNING AND DEVELOPMENT SERVICES DEPARTMENT STAFF AND THE WHATCOM COUNTY COUNCIL ON THE VALUE OF WILDLIFE AND HABITAT MANAGEMENT ISSUES AS THEY RELATE TO THE WHATCOM COUNTY COMPREHENSIVE PLAN (APPLICATION DEADLINE FOR ANY OTHER APPLICANTS TO THIS VACANCY IS 10 A.M. APRIL 17, 2018) (AB2018-115)

2. ORDINANCE CREATING A “GOLF CART ZONE” ON CERTAIN ROADS IN THE BIRCH BAY AREA (AB2018-125)

This item was withdrawn from the agenda.

3. ORDINANCE AMENDMENT NO. 2 TO ORDINANCE NO. 2014-081 ESTABLISHING THE AGATE HEIGHTS/ESTATE BAY LANE STORM WATER IMPROVEMENT FUND AND ESTABLISHING A PROJECT BASED BUDGET FOR AGATE HEIGHTS ESTATE/BAY LANE STORM WATER IMPROVEMENTS (AB2018-126)

4. ORDINANCE AMENDING THE WHATCOM COUNTY BUDGET, SIXTH REQUEST, IN THE AMOUNT OF $2,836,591 (AB2018-127)

5. RESOLUTION AMENDING THE 2018 WHATCOM COUNTY FLOOD CONTROL ZONE DISTRICT AND SUBZONES BUDGET, SECOND REQUEST, IN THE AMOUNT OF $750,000 (COUNCIL ACTING AS THE WHATCOM COUNTY FLOOD CONTROL ZONE DISTRICT BOARD OF SUPERVISORS) (AB2018-128)

6. RESOLUTION AUTHORIZING THE SALE OF WHATCOM COUNTY SURPLUS PROPERTY PURSUANT TO WHATCOM COUNTY CODE 1.10 (AB2018-118A)


This item was withdrawn from the agenda and held in committee.

COMMITTEE REPORTS, OTHER ITEMS, AND COUNCILMEMBER UPDATES

Committee chairs reported on their committee discussions.

Councilmembers gave updates on recent activities and upcoming events.

ADJOURN

The meeting adjourned at 8:06 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
**TITLE OF DOCUMENT:** Executive Louws to present “State of the County”

**ATTACHMENTS:** No 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.)

County Executive Jack Louws to present the “State of the County” address

**COMMITTEE ACTION:**

**COUNCIL ACTION:**

Please Note: Once adopted and signed, ordinances and resolutions are available for viewing and printing on the County’s website at: [www.co.whatcom.wa.us/council](http://www.co.whatcom.wa.us/council).
TITLE OF DOCUMENT: Adopt a resolution to sell surplus property

ATTACHMENTS: Resolutions & list of property to be declared surplus

SEPA review required? ( ) YES ( x ) NO
SEPA review completed? ( ) YES ( x ) NO

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

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

The attached list of equipment has been determined to be surplus and available for disposal by public auction. The Council may find by resolution, following a public hearing that it is in the public interest to sell the property.

COMMITTEE ACTION:

COUNCIL ACTION:

4/10/2018: 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.
RESOLUTION NO. __________________________

A RESOLUTION AUTHORIZING
THE SALE OF WHATCOM COUNTY SURPLUS PROPERTY
PURSUANT TO WCC 1.10

WHEREAS, a public hearing was held on _____________, 2018 to discuss the sale of Whatcom County property; and

WHEREAS, it was determined to be in the best interest of Whatcom County to sell the property listed in Exhibit “A” and such property shall be sold by public auction after April 2018, subsequent to compliance with the notice requirements of WCC 1.10.200: and

NOW THEREFORE BE IT RESOLVED that the property listed in Exhibit "A" be sold at public auction after April 2018 pursuant to the notice requirements of WCC 1.10.200.

APPROVED this ____________ day of ____________, 2018

WHATCOM COUNTY COUNCIL
WHATCOM COUNTY, WASHINGTON

__________________________
Rud Browne, Council Chair

ATTEST:

__________________________
Dana Brown-Davis, Council Clerk

APPROVED AS TO FORM:

__________________________
Civil Deputy Prosecuting Attorney
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<th>MODEL</th>
<th>DEPT</th>
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**DESCRIPTION**

(3) 275 gallon bulk oil tanks

Miscellaneous obsolete hydraulic cylinders

Miscellaneous obsolete vehicle parts

**GENERAL FIXED ASSETS – SURPLUS EQUIPMENT**

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<th>UNIT</th>
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<th>MAKE/MODEL</th>
<th>DESCRIPTION</th>
<th>DEPT</th>
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<td>172004</td>
<td>2003</td>
<td>Hewlett Packard/C6074B</td>
<td>Plotter</td>
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<td>14937</td>
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### TITLE OF DOCUMENT:
Appointment vacancy on Wildlife Advisory Committee - Applicant Shannon Crossen

### ATTACHMENTS:
Application

### 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.)

Appointment of Shannon Crossen to fill vacancy on the WILDLIFE ADVISORY COMMITTEE
1 Vacancy – Term ending December 31, 2022.
The committee will advise the Whatcom County Planning and Development Services Department staff and the Whatcom County Council on the value of wildlife and habitat management issues as they relate to the Whatcom County Comprehensive Plan, with the goal of integrating wildlife management and protection into the community planning process.

### COMMITTEE ACTION:

### COUNCIL ACTION:
4/10/2018: Introduced 7-0

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

Step 1

Application for Appointment to Whatcom County Boards and Commissions

Public Statement
THIS IS A PUBLIC DOCUMENT: As a candidate for a public board or commission, the information provided will be available to the County Council, County Executive, and the public. All board and commission members are expected to be fair, impartial, and respectful of the public, County staff, and each other. Failure to abide by these expectations may result in revocation of appointment and removal from the appointive position.

First Name	Shannon
Last Name	Crossen
Date	3/28/2018
Street Address	2945 Cedar Lane
City	Sedro Woolley (Glenhaven)
Zip	98284
Do you live in & are you registered to vote in Whatcom County? Yes
Do you have a different mailing address? Field not completed.
Primary Telephone	714-675-5183
Secondary Telephone	360-255-2921
Email Address	shannoncrossen@gmail.com

Step 2
1. Name of Board or Committee
Wildlife Advisory Committee

2. Do you meet the residency, employment, and/or affiliation requirements of the position for which you’re applying?
Yes

3. Which Council district do you live in?
District 3

4. Are you a US citizen?
Yes

5. Are you registered to vote in Whatcom County?
Yes

6. Have you declared candidacy (as defined by RCW 42.17A.055) for a paid elected office in any jurisdiction within the county?
No

7. Have you ever been a member of this Board/Commission?
No

8. Do you or your spouse have a financial interest in or are you an employee or officer of any business or agency that does business with Whatcom County?
No

You may attach a resume or detailed summary of experience, qualifications, & interest in response to the following questions

9. Please describe your occupation (or former occupation if retired), qualifications,
See attached resume for details

Shannon Crossen Resume 2018.pdf
professional and/or community activities, and education

10. Please describe why you’re interested in serving on this board or commission

I am excited for the opportunity to apply for a position that would allow me to share my experience and knowledge with the County on topics related to wildlife and habitat management, meaningfully contribute to the County’s goal of protecting and enhancing ecosystems, provide valuable insight into current and emerging issues, and work collaboratively with an outstanding group of local citizens.

References (please include daytime telephone number):
Melissa Habenicht (423) 237-2820, Tania Asef (310) 927-0007, Jill Carpenter (949) 337-6103

Signature of applicant:
Shannon Crossen

Place Signed / Submitted:
Sedro Woolley, WA

Email not displaying correctly? View it in your browser.
Shannon Crossen  
2945 Cedar Lane  
Sedro Woolley, WA 98284  
(714) 675-5183  
shannoncrossen@gmail.com

Qualifications and Skills
Ten years of experience in the field of environmental planning and natural resource management conducting the following:

- Wildlife, plant, wetland, and habitat surveys, assessments, reporting, and management
- Conservation planning development and implementation
- Wildlife connectivity planning, modeling, and mitigation
- Environmental regulatory implementation and management including Endangered Species Act, National and State Environmental Policy Acts (NEPA & SEPA), Clean Water Act, and local code

Professional Experience
Senior Biologist 2014-Present  
ICF

- Prepares biological resource technical studies and reporting for Environmental Documents (NEPA/SEPA/CEQA)
- Prepares endangered species reporting and consultations
- Develops conservation plans and implementation guidelines
- Conducts assessments and analyses for wildlife movement corridors, design of wildlife crossings, and transportation-wildlife mitigation
- Performs project management and proposal development

Associate Biologist 2011-2014  
California Department of Transportation (Caltrans)

- Prepared and oversaw preparation of biological resource technical studies for Environmental Documents
- Conducted and oversaw biological resource surveys, impact assessments, biological resource monitoring, project development and design, and mitigation for state projects
- Conducted interagency consultation and coordination for biological resource impact assessments, including mitigation plans, Endangered Species Act Section 7 consultations, and obtained regulatory permits for state projects. Agencies included U.S. Fish and Wildlife Service, U.S. Army Corps of Engineers, and local agencies
- Served as National Marine Fisheries Service anadromous fish, conducting section 7 consultations for impacts on federally listed species including anadromous fish species and migration corridors

Biologist 2011-2012  
Environmental Intelligence

- Performed pre-construction biological surveys and habitat assessments biological resources including bats, birds (including nesting birds), reptiles, amphibians, mammals, and plants
• Performed biological resource construction monitoring and report writing

Assistant Field Biologist 2008-2011
Subcontractor Biologist
• Assisted in conducting biological surveys and assessments of bat population both pre and post-construction in Orange and Los Angeles Counties
• Experienced in species identification, colony density estimates, presence/absence surveys, pre and post-construction population assessments, acoustic equipment set-up and use, and training new assistants

Student Researcher 2009-2011
National Science Foundation Environmental Biology Research Program
California State University, Fullerton
• Served as project manager and lead researcher in an Olympia oyster, Ostrea lurida, restoration (compensatory mitigation) project in Newport Bay, Newport Beach, CA
• Conducted and oversaw project permitting, interactions with regulatory agencies (i.e. USFWS, CDFG, California Coastal Commission, and RWQCB), water quality sampling, marine epifaunal and infaunal biodiversity assessments, data collection, training of employees and volunteers, advanced statistical data analysis, and technical report writing

Education
Montana State University, Bozeman, Montana
Master of Science, Environmental Science
Thesis Topic: Animal-Vehicle Collisions in Orange County, California, Exploring Influences of Land Cover, Spatial, and Species Effects

California State University, Fullerton, Fullerton, California
Bachelor of Science, Biology
Concentration: Biodiversity, Ecology, and Conservation Biology

Publications

Presentations

Exploring Restoration Methods for the Olympia Oyster Ostrea lurida Carpenter, 1864: Effects of Shell Bed Thickness and Shell Deployment Methods on Shell Cover, Oyster Recruitment, and Oyster Density


Professional Affiliations
2017-Present  Washington Native Plant Society (WNPS)
2011-Present  The Wildlife Society
2010-Present  Bat Conservation International

Community Volunteer Activities
2017-Present  WNPS Native Plant Steward
2017-Present  Whatcom Land Trust
2017-Present  Whatcom Beaver Partners
2009-Present  Southern California Bat Working Group
**CLEARANCES**

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<tr>
<td>Executive:</td>
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**TITLE OF DOCUMENT:**
Appointment to Whatcom County Planning Commission - Applicant: Tony Freeland

**ATTACHMENTS:**
Application

**SUMMARY STATEMENT OR LEGAL NOTICE LANGUAGE:** (If this item is an ordinance or requires a public hearing, you must provide the language for use in the required public notice. Be specific and cite RCW or WCC as appropriate. Be clear in explaining the intent of the action.)
Applicant to fill 1 Vacancy, Partial term ending 1/31/2021
Applicant: Tony Freeland.
Applicants must be a resident of District 1. The Planning Commission shall assist the Planning & Development Services Department in carrying out its duties, including assistance in the preparation and execution the comprehensive plan and recommendations to the department for the adoption of official controls and/or amendments. The Commission shall conduct hearings as required under RCW 36.70, and shall make findings and conclusions that shall be transmitted to the Planning and Development Services Department and County Council.

**COMMITTEE ACTION:**

**COUNCIL ACTION:**

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

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

Step 1

Application for Appointment to Whatcom County Boards and Commissions

Public Statement
THIS IS A PUBLIC DOCUMENT: As a candidate for a public board or commission, the information provided will be available to the County Council, County Executive, and the public. All board and commission members are expected to be fair, impartial, and respectful of the public, County staff, and each other. Failure to abide by these expectations may result in revocation of appointment and removal from the appointive position.

First Name Tony
Last Name Freeland
Date 4/16/2018
Street Address 1403 Harris Avenue
City Bellingham
Zip 98225
Do you live in & are you registered to vote in Whatcom County? Yes
Do you have a different mailing address? Field not completed.
Primary Telephone 360-739-1589
Secondary Telephone Field not completed.
Email Address tfreeland@freelandengineering.com

Step 2
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<td>2. Do you meet the residency, employment, and/or affiliation requirements of the position for which you’re applying?</td>
<td>Yes</td>
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<td>3. Which Council district do you live in?</td>
<td>District 1</td>
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<td>4. Are you a US citizen?</td>
<td>Yes</td>
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<tr>
<td>5. Are you registered to vote in Whatcom County?</td>
<td>Yes</td>
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<tr>
<td>6. Have you declared candidacy (as defined by RCW 42.17A.055) for a paid elected office in any jurisdiction within the county?</td>
<td>Yes</td>
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<tr>
<td>7. Have you ever been a member of this Board/Commission?</td>
<td>No</td>
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<td>8. Do you or your spouse have a financial interest in or are you an employee or officer of any business or agency that does business with Whatcom County?</td>
<td>Yes</td>
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<td>If yes, please explain</td>
<td>Freeland &amp; Associates, Inc. has provided consulting engineering services to Whatcom County as a sub-consultant to architects. The firm does not directly contract with Whatcom County.</td>
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<tr>
<td>You may attach a resume or detailed summary of experience, qualifications, &amp; interest in response to the following questions</td>
<td>Field not completed.</td>
</tr>
<tr>
<td>9. Please describe your occupation (or former)</td>
<td>Professional Civil Engineer Bachelor of Science, Civil Engineering, University of Tennessee, with Honors Owner of</td>
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Consulting Engineering Company in Whatcom County Employ 10 professionals Former Commissioner of Water District No. 10 President of Whatcom County Building Services Appeals Board Former Trustee of American Water Works Association Chapter Former President of American Society of Civil Engineers Active with Brigid Collins and Domestic Violence and Sexual Assault Services

10. Please describe why you’re interested in serving on this board or commission

My professional background with community planning and technical expertise on land use issues will be an asset to the Commission. My views are balanced and I’m not associated with any political community organizations nor bring an agenda to the Commission.

References (please include daytime telephone number):

Jim Ackerman, Mayor of Nooksack (360) 961-2375 John Mutchler, Mayor of Ferndale (360) 685-2350 Michael Jones, Planning Director of Blaine (360) 332-8311 Ext. 3317 Rollin Harper, Planning Director of Everson (360) 733-6033 Steve Sundin, City of Bellingham Planner (360) 778-8359 Ron Cowdan, Assistant Superintendent of Bellingham School District (360) 676-6531

Signature of applicant: Tony Freeland

Place Signed / Submitted: Bellingham, Washington

Email not displaying correctly? View it in your browser.
**WHATCOM COUNTY COUNCIL AGENDA BILL**

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**TITLE OF DOCUMENT:**

**ATTACHMENTS:**
- Staff Memorandum
- Draft Ordinance 2018-
- Exhibit A, showing the proposed amendment to the Whatcom County Comprehensive Plan and development regulations
- Table 1: Conditions Under Which Water is Considered Legally Available for Purposes of Development in Whatcom County Pursuant to ESSB 6091 and Ordinance 2018-
- ESSB 6091

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

Should Clerk schedule a hearing? (x) Yes ( ) NO  
Requested Date: 4/24/2018

**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.)


**COMMITTEE ACTION:**
4/10/2018: Held in SCOTW for two weeks

**COUNCIL ACTION:**
4/10/2018: Withdrawn from the agenda and held in Comm.

**Related County Contract #:**  
**Related File Numbers:**

**Ordinance or Resolution Number:**

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

THROUGH: Mark Personius, Director

FROM: Cliff Strong, Senior Planner

DATE: April 13, 2018

SUBJECT: Proposed Whatcom County Comprehensive Plan and Development Regulation Amendments to Enact the Streamflow Restoration Act (ESSB 6091)

Background
The State Legislature recently passed, and the Governor signed into law, the Streamflow Restoration Act (ESSB 6091), which amends the state water and watershed management regulations, providing a resolution to the Washington Supreme Court’s Hirst Decision. Whatcom County must now amend its Comprehensive Plan and development regulations to incorporate the new state law into our code so as to be consistent with it and our Comprehensive Plan Policy SR-1:

Building permit applicants, new subdivisions, short plats, and binding site plans will be required to provide evidence that adequate and legal (in consultation with the Department of Ecology) supplies of water are available prior to their approval by the County.

Mr. Almskaar’s Suggested Edits
At your 4/10/18 workshop, Mr. Almskaar provided suggested edits to 21.04.090. Below are staff’s recommendations on those suggestions:

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

(2) For residential short subdivisions and/or a boundary line adjustment, private water supplies may be used under the following circumstances:

Staff Response: Adding a reference to BLAs here is not necessary, as this section deals with Short Subdivisions. Furthermore, while state subdivision code requires us to ensure water is available for new created parcels, BLAs do not create new parcels (they only rearrange existing parcel boundaries). Parcels involved in a BLA would fall under the rules for existing lots.

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

Staff Response: The addition of “legal lots of record” is not necessary, as any lots involved in a short subdivision must be a legal lot of record. The addition would only be redundant.

However, the clause “because of clustering” can be deleted, as it is redundant, having already been stated in the first sentence. Staff has updated Exhibit A to reflect this.
(b) The withdrawal is not from a defined portion of an aquifer of known regional groundwater contamination that exceeds state standards and that has been identified by the director of the Whatcom County Health Department and confirmed by the Health Board; and

(c) The water source is groundwater; and

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

(e) The short subdivision is not located within nor within one-half mile of the designated retail water service area of a public water purveyor (as shown on the coordinated water system plan map); or

Staff Response: This may be a little harder to track as the staff proposed language clarifying when private water supplies may be authorized by the Health Department, consistent with the CWSP, has changed from that shown in Mr. Almskaar’s comments (and here) (see attached Exhibit A for revised language).

There are three possibilities of a property’s location in relation to a public water service area:

1. Within the service area;
2. Outside the service area but within 1/2-mile of it; or
3. Outside the service area and not within 1/2-mile of it.

Each location has its own set of rules under the Council-adopted Coordinated Water System Plan (CWSP), Health Code (WCC 24.11), and state law.

If in location (1), which is covered by subsection (g), one must connect to the water system unless the purveyor says they cannot provide water or they don’t respond to an application for water service in a timely manner. Any disputes over the conditions of service are a civil matter between the applicant and water purveyor with the appeal venue being Superior Court.

If in location (2), which is covered by subsection (f), the Health Department requires that the applicant have a discussion about service with the purveyor but one is not required to connect to the water system (i.e., the applicant can install a well if s/he so desires). Thus, if any one of the 3 conditions is met (the purveyor says they cannot provide water, they don’t respond to an application for water service in a timely manner, or the purveyor and applicant are unable to achieve an agreement) then the Health Department can permit a well.

If in location (3), covered by subsection (e), one does not have to deal with the purveyor and can directly apply for a private well with the Health Department.

Staff recommends that the “one-half mile” designation be retained, but included in new section (f) to better clarify the three areas described above; otherwise it introduces a gap in the locational determination. (See revised proposed language in Exhibit A.)

(f) The short subdivision is located outside but within one-half mile of the designated retail water service area of a public water purveyor (as shown on the coordinated water system plan map) and, within 120 calendar days of submitting a written request and applicable fees to the purveyor:

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

(ii) The purveyor and applicant are unable to achieve an agreement on the schedule and terms of provision of service, including the total cost of shares and off-site construction, including design, permitting, etc., to the applicant; or
**Staff Response:** This proposed insertion is not necessary, as those concepts are already covered by the phrase “agreement on the schedule and terms of provision of service.” Furthermore, PDS does not need to know why they couldn’t reach agreement, only that they didn’t.

(iii) The water purveyor fails to respond with a letter of approval or denial.

(g) The short subdivision is located within the designated retail water service area of a public water purveyor (as shown on the coordinated water system plan map) and, within 120 calendar days of submitting a written request and applicable fees to the purveyor:

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

(ii) The water purveyor fails to respond with a letter of approval or denial.

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

**Staff Recommendation**

Staff recommends that the County Council review the proposed ordinance, introduce it for consideration on April 24, 2018, and on May 8, 2018, hold a public hearing and adopt these provisions consistent with ESSB 6091 and the Coordinated Water System Plan (CWSP).

**Attachments:**

- Draft Ordinance
- Exhibit A, showing the proposed amendment to the Whatcom County Comprehensive Plan and development regulations
- Staff Report
- ESSB 6091
ORDINANCE NO. 2018-00__

AN ORDINANCE REPEALING ORDINANCE NOS. 2018-001 AND 2018-005 AND ADOPTING AMENDMENTS TO THE WHATCOM COUNTY COMPREHENSIVE PLAN AND THE WHATCOM COUNTY CODE TITLE 15 BUILDINGS AND CONSTRUCTION, TITLE 20 ZONING, TITLE 21 LAND DIVISION REGULATIONS, AND TITLE 24 HEALTH CODE, RELATING TO WATER RESOURCES AND IMPLEMENTING ESSB 6091

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

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

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

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

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

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

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

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

WHEREAS, to protect rural character and regulate groundwater withdrawals, Whatcom County adopted Ordinance 2012-032, amending its Comprehensive Plan to adopt by reference existing development regulations, adding Policy 2DD-2.C.6 which adopts by reference WCC 21.04.090 and 21.05.080, Policy 2DD-2.C.7 which adopts by reference WCC 24.11.050, Policy 2DD-2.C.8 which adopts by reference WCC 24.11.060, and Policy 2DD-2.C.9 which adopts by reference WCC 24.11.090, .100, .110, .120, .130, .160, and .170, any amendments to these WCC provisions are also amendments to the Comprehensive Plan; and,
WHEREAS, the Growth Management Hearings Board (Board) found the amended Comprehensive Plan lacked the required measures to protect water resources (GMHB Case No. 12-2-0013); and,

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

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

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

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

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

WHEREAS, ESSB 6091, Section 101(5), also provides that “[a]ny permit-exempt groundwater withdrawal authorized under RCW 90.44.050 associated with a water well constructed in accordance with the provisions of chapter 18.104 RCW before the effective date of this section is deemed to be evidence of adequate water supply under this section”; and,
WHEREAS, the amendments proposed by this ordinance are consistent with the aforementioned requirements of ESSB 6091 and are therefore consistent with the GMA, as specifically addressed in Section 102 of ESSB 6091; and,

WHEREAS, adoption of this ordinance is necessary to complete the GMA compliance proceedings before the Western Washington Growth Management Hearings Board (GMHB Case No. 12-2-0013); and,

WHEREAS, a determination of non-significance (DNS) (SEPA 2018-00013) was issued under the State Environmental Policy Act (SEPA) on February 20, 2018; and,

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

WHEREAS, with the enactment of ESSB 6091 and this ordinance, Ordinance Nos. 2018-001 and 2018-005 are no longer necessary to ensure that Whatcom County is in compliance with state law; and,

WHEREAS, in accordance with RCW 36.70A.106, Whatcom County Planning and Development Services notified the Department of Commerce of the proposed amendments contained herein on February 14, 2018, and no comments were received from state agencies; and,

WHEREAS, The Planning Commission held a public hearing on this ordinance on March 8, 2018, notice of which was published in the Bellingham Herald on February 23, 2018; and,

WHEREAS, the County Council held a duly noticed public hearing on this ordinance on May 8, 2018; and,

WHEREAS, the proposed amendments to the Whatcom County Comprehensive Plan and development regulations would affirm the County’s intent to work cooperatively with the Department of Ecology, WRIA 1 Initiating Governments, and the Planning Unit to update the WRIA 1 Watershed Management Plan pursuant to the Streamflow Restoration Act (ESSB 6091), as well as implement the Act’s requirements for allowing the conditioned use of permit-exempt wells (RCW 90.44.050) as a legal source of water for domestic use, and are consistent with the Comprehensive Plan goals and policies listed in Section III of the staff report; and,

WHEREAS, the amendments are in the public interest; and,

WHEREAS, the amendments are consistent with the Whatcom County Comprehensive Plan.

NOW, THEREFORE, BE IT ORDAINED that the Whatcom County Council adopts the above “WHEREAS” recitals as findings of fact and conclusions in support of its action as required by RCW 36.70A.390.

BE IT FURTHER ORDAINED that Ordinance Nos. 2018-001 and 2018-005 are hereby repealed in their entirety upon the effective date of this ordinance.
BE IT FURTHER ORDAINED by the Whatcom County Council that the Whatcom County Comprehensive Plan and the Whatcom County Code are hereby amended as shown in Exhibit A.

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

ADOPTED this _______ day of ____________, 2018.

WHATCOM COUNTY COUNCIL
WHATCOM COUNTY, WASHINGTON

ATTEST:

__________________________________________    ________________________________________
Dana Brown-Davis, Council Clerk               Rud Brown, Chairperson

APPROVED as to form:

__________________________________________    ________________________________________
Civil Deputy Prosecutor                        Jack Louws, Executive

( ) Approved     ( ) Denied

Date:   ____________________________
EXHIBIT A
Whatcom County Code
AMENDMENTS
(Note: Planning Commission recommended changes shown in yellow highlight. Post Planning Commission changes recommended by staff are shown in gray highlight.)

TITLE 15 BUILDINGS AND CONSTRUCTION
CHAPTER 15.04 BUILDING CODES

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

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

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

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

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

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

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

5. State the valuation of the proposed work.

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

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

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

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

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

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15.04.030 Amendments to the International Residential Code.

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

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

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

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

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

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

5. State the valuation of the proposed work.

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

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

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

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

10. Provide additional data and information in the designated sequence, as required by the Building Official.
TITLE 20 ZONING

CHAPTER 20.84 VARIANCES, CONDITIONAL USES, ADMINISTRATIVE APPROVAL USES AND APPEALS

20.84.200 Conditional uses.

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

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

CHAPTER 20.97 DEFINITIONS

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

TITLE 21 LAND DIVISION REGULATIONS

CHAPTER 21.04 SHORT SUBDIVISIONS

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

(2) For a residential short subdivisions, private water supplies may be utilized under the following circumstances:

(a) All lots served by the private water supplies are five acres or larger, unless smaller because of clustering. If the lots are smaller because of clustering, the gross density of the short subdivision shall not exceed one dwelling per five acres; and
(b) The withdrawal is not from a defined portion of an aquifer of known regional groundwater contamination that exceeds state standards and that has been identified by the director of the Whatcom County Health Department and confirmed by the Health Board; and

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

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

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

(e)(f) If the short subdivision is located outside but within or within one-half mile of the designated retail water service area of a public water purveyor, (as shown on the coordinated water system plan map), or within one-half mile of an existing water purveyor’s water lines and, within 120 calendar days of submitting a written request and applicable fees to the purveyor:

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

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

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

(iii) The water purveyor fails to respond with a letter of approval or denial.

(g) The short subdivision is located within the designated retail water service area of a public water purveyor (as shown on the coordinated water system plan map) and, within 120 calendar days of submitting a written request and applicable fees to the purveyor:

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

(ii) The water purveyor fails to respond with a letter of approval or denial.

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

CHAPTER 21.05 PRELIMINARY LONG SUBDIVISIONS

21.05.080 Water supply.

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

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

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

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

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

(d) The long subdivision is not located within nor within one-half mile of the designated retail water service area of a public water purveyor, (as shown on the coordinated water system plan map); or not within one-half mile of an existing water purveyor’s water lines; or

d(e) The subdivision is located outside but within or within one-half mile of the designated retail water service area of a public water purveyor that is as shown on the coordinated water system plan map or within one-half mile of an existing water purveyor’s water lines and within 120 calendar days of submitting a written request and applicable fees to the purveyor:

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

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

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

(iv) The water purveyor fails to respond with a letter of approval or denial.

(f) The subdivision is located within the designated retail water service area of a public water purveyor (as shown on the coordinated water system plan map) and, within 120 calendar days of submitting a written request and applicable fees to the purveyor:

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

(v) The water purveyor fails to respond with a letter of approval or denial.

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

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

(5) If a public water supply is required, all the requirements of Chapter 246-290 WAC, Group A Public Water Systems, or Chapter 246-291 WAC, Group B Public Water Systems, must be met prior to final plat approval.
TITLE 24 HEALTH CODE
CHAPTER 24.11 DRINKING WATER

24.11.050 General requirements.
A. Applicants must submit all required forms, letters, and documents to the director.

B. The director will consider applications for water availability proposing to use groundwater, spring water, surface water, sea water or rainwater.

C. The director shall evaluate the availability of a public water system prior to approving the use of a private water system. If it is determined that a public water system is available and willing to provide water, the applicant must connect to that public water system when:
   1. The applicant proposes to use surface water, spring water, rainwater, or contaminated groundwater; or
   2. The applicant proposes to build on a lot located in a short subdivision or long subdivision that Whatcom County approved based on the availability of public water; or
   3. The existing public water system has water lines adjacent to the property line of the applicant and connection is consistent with RCW 36.70A.110(4); or
   4. The existing public water system has defined a "service area boundary" in accordance with the Whatcom County Coordinated Water System Plan which includes the property of the applicant.

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

E. Purveyors of public water systems and private water system applicants must comply with Washington State Department of Ecology water right requirements and must demonstrate that they have an adequate water supply for their proposed service per WCC 24.11.060. Compliance will include at a minimum, possession of a water right permit or certificate for:
   1. All surface water sources excluding seawater.
   2. All groundwater sources using more than 5,000 gallons per day.
   3. Irrigating more than one-half acre of lawn or noncommercial garden.

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

B. The applicant must provide evidence of legal availability in the form of:
   1. A water right permit from the Department of Ecology; or,
2. A letter from an approved public water purveyor with sufficient water rights, stating the ability to provide water; or,

3. Evidence that a permit-exempt groundwater withdrawal (authorized under RCW 90.44.050) is associated with a well constructed (in accordance with the provisions of RCW Chapter 18.104) prior to January 19, 2018; or,

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

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

6. If the well site is located in those Limited Coastal Areas (that may or may not be in hydraulic continuity with regulated surface waterbodies) as shown on Figure 24.11.060, documentation that water for domestic use will be supplied by a new withdrawal exempt from permitting under RCW 90.44.050 and:
   a. A study prepared by a qualified hydrogeologist licensed in the State of Washington demonstrating a proposed groundwater withdrawal would not impair a senior water right, including instream flows established in Chapter 173-501 WAC where applicable, in accordance with current statutes and case law. Such documentation must be verified by the County either through consultation with the Department of Ecology, or a qualified technical review team appointed by the County. The County may require a third party review by an independent qualified hydrogeologist if the County determines additional technical expertise is needed. The cost of the third party review shall be borne by the County; or,
   b. A mitigation plan prepared by a qualified hydrogeologist licensed in the State of Washington, and approved by Whatcom County. The plan shall include:
      i. Evidence that the proposed withdrawal with mitigation in place will not impair a senior water right, including instream flows established in Chapter 173-501 WAC where applicable, in accordance with current statutes and case law. Such documentation must be verified by the County either through consultation with the Department of Ecology, or a qualified technical review team appointed by the County. The County may require a third party review by an independent qualified hydrogeologist if the County determines additional technical expertise is needed. The cost of the third party review shall be borne by the County.
      ii. A monitoring and reporting plan, including a quality assurance/quality control plan.
      iii. Documentation adequate to demonstrate that the mitigation will remain in place for the duration of the impact, including, for example, financial assurances or documentation of permanent dedication of water for mitigation purposes.

7. Except in Point Roberts, Eliza Island, or Lummi Island, for new permit-exempt groundwater withdrawals for domestic use per RCW 90.44.050 within WRIA 1 (Nooksack) or within those Limited Coastal Areas where the applicant chooses not to use subsection (B)(6), the applicant may obtain approval for a withdrawal exempt from permitting pursuant to RCW 90.44.050 under the following conditions:
   a. Water shall be for domestic uses only shall be subject to, with a maximum annual average withdrawal of 3,000 gallons per day per connection.
b. The applicant shall record with the property title any relevant restrictions or limitations associated with water supply; and

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

C. A water availability notification is not required for:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

24.11.110 Determining adequacy of water supply for building permit applications proposing to use a spring to serve one single-family dwelling unit or one single-family living unit.

A. Prior to director approval of evidence of an adequate water supply where the applicant proposes to use a spring source, the applicant must:

1. Notify the director of the intent to use a spring.
2. Provide information to the director showing that they cannot drill an adequate well on their property.
3. Request that the director conduct a site inspection and approve the proposed location of the spring.
B. Upon request from the applicant, the director will conduct a site inspection for the purpose of approving the location. If the director does not approve the location the director will deny the application and give the reason for denial.

C. If the director approves the location of the spring the applicant must submit a completed Water Availability Notification Private – 1 Home Spring form (as amended) and all required documents for approval by the director.

D. The director will review the completed form and required documents for approval. The director will approve the application if:
   1. The applicant met all the criteria listed on the form.
   2. The applicant submitted all of the required documents.
   3. The applicant has provided evidence of legal availability of water for the proposed project per WCC 24.11.060. The spring site proposed by the applicant does not fall within the boundaries of an area where DOE has determined by rule that water for development does not exist.

24.11.20 Determining adequacy of water supply for building permit applications proposing to use a spring to serve two single-family dwelling units or two single-family living units.
A. Prior to director approval of evidence of an adequate water supply where the applicant proposes to use a spring source, the applicant must:
   1. Notify the director of the intent to use a spring.
   2. Provide information to the director showing that an adequate well cannot be drilled on their property.
   3. Request that the director conduct a site inspection and approve the proposed location of the spring.

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

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

D. The director will review the completed form and required documents for approval. The director will approve the application if:
   1. The applicant met all the criteria listed on the form.
   2. The applicant submitted all of the required documents.
   3. The applicant has provided evidence of legal availability of water for the proposed project per WCC 24.11.060. The spring or spring sites proposed by the applicant does not fall within the boundaries of an area where DOE has determined by rule that water for development does not exist.
24.11.130 Determining adequacy of water supply for building permit applications proposing to use surface water, sea water, or rainwater for one or two single-family dwelling units or two single-family living units.

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

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

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

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

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

3. Meet all other state and local regulations.

4. Sign and have recorded with the Whatcom County auditor’s office the following documents:
   a. A document stating which contaminate the untreated source water exceeded.
   b. A document stating that the applicant has had a water treatment system designed that meets Whatcom County health and human services Water Availability Approval for a Surface Water Source (as amended), and secures a potable water supply for the building.
   c. A document stating that the applicant has installed a treatment system according to the design reviewed by the director and treated water sample results that verify system performance.
   d. A document stating that the applicant agrees to adhere to the operation, maintenance, and monitoring plan for the designed treatment system.
   e. A document stating that the applicant understands that the obligation to comply with treatment system design, installation, operation and monitoring lies with the applicant and not Whatcom County.
   f. When the public system is available, any person obtaining water from contaminated source must provide current test results showing water treatment is adequately maintaining water quality below maximum contaminant levels (MCL). If the quality does not meet the MCL, the applicant is required to hook up to a public system.

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

A. Prior to director approval of availability of an adequate water supply where the applicant proposes to obtain water from an existing public water supply to service lots of a short subdivision, long subdivision, or a binding site plan the applicant must:
1. Provide to the director an Availability Notification for Public Water (as amended) form or a letter signed by an authorized representative of the water system proposing to serve water to each lot. The authorized representative of the public water system:
   a. Must indicate that the water system will provide water to each proposed lot.
   b. Must sign a statement that they have reviewed the system records and ensures that the water system is in compliance with Chapters 246-290 and 246-291 WAC and department requirements.

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

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

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

3. The applicant has provided evidence of legal availability of water for the proposed project per WCC 24.11.060.

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

A. Provisions of the Whatcom County Coordinated Water System Plan.

B. Chapters 246-290 and 246-291 WAC, and all other applicable local and state regulations for public water supplies.

C. The applicable sections of this chapter pertaining to public water supplies and water availability.

24.11.160 Determining adequacy of water supply for short subdivisions or long subdivisions proposing to use a private well or private wells to serve one single-family dwelling or one single-family living unit.
A. Prior to director approval of availability of an adequate water supply where the applicant proposes to use a private well or private wells to service lots of a short subdivision or long subdivision the applicant must:
   1. Notify the director of the intent to use a private well or wells.
   2. Request that the director conduct a site inspection and approve the proposed well sites.

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

C. If the director approves the well locations the applicant shall submit a completed Subdivision Water Availability form (as amended) and all required documents for each well to the director for approval.
D. The director will review each completed form and required documents for approval. The director will approve the availability of adequate water when:

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

24.11.170 Determining adequacy of water supply for short subdivisions or long subdivisions proposing to use a well to serve two single-family dwellings or two single-family living units.
A. The applicant shall create a Group B Public water supply as defined in Chapter 246-291 WAC when WCC Title 21 requires the applicant to provide public water service to each lot. This includes a water system where one well services two lots.
B. Prior to director approval of availability of an adequate water supply where the applicant proposes to use one well to service two lots of a short subdivision or long subdivision when public water is not required the applicant must:

1. Notify the director of the intent to use a well or wells.
2. Request that the director conduct a site inspection and approve the proposed well sites.
C. Upon request from the applicant, the director will conduct a site inspection for the purpose of approving the location. If the director cannot approve a well location the director will deny the application and give the reasons for denial.
D. If the director approves the well locations the applicant shall submit a completed Subdivision Water Availability form (as amended) and all required documents for each well to the director for approval.
E. The director will review each completed form and required documents for approval. The director will approve the availability of adequate water when:

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

Chapter 10, Environment

So as to explain changes to the WRIA 1 management structure and processes that have occurred since the last update to the Comprehensive Plan, amend the section "WRIA 1 Watershed Management Project" as follows:

WRIA 1 Watershed Management Project
The WRIA 1 Watershed Management Project is the result of the 1998 Washington State Watershed Management Act, which required all participating local governments to address water quantity, with the option of addressing water quality, instream flows, and fish habitat. The WRIA 1 Watershed Management Project has brought together citizens, local governments, tribes, and state and federal agencies to address these issues.

The framework for watershed management in the state is based on geographic areas known as Water Resource Inventory Areas (WRIAs). WRIA 1 includes the Nooksack River basin and several adjoining smaller watersheds, such as the coastal drainages of Dakota and California Creeks, as well as Lake Whatcom.

Watershed planning in WRIA 1 started in 1998 with the signing of a Memorandum of Agreement (MOA) between the Initiating Governments. In WRIA 1 the Initiating Governments are Whatcom County, City of Bellingham, Public Utility District No. 1, Lummi Nation, and Nooksack Tribe (the latter joining slightly later through a Letter of Agreement). The role of the Initiating Governments was to review a recommended Watershed Plan and take it to their governments’ councils for adoption.

Historical Organization (1999-2016)

WRIA 1 Joint Board
In 1999, an Interlocal Agreement further formalized the government-to-government relationship essential to the tribes’ participation in the process by creating a Joint Board. The Joint Board is comprised of the Initiating Governments, including the mayor of the City of Bellingham, executive for Whatcom County, manager of Public Utility District No. 1, and designated policy representatives of Lummi Nation and Nooksack Tribe. The Board manages the project’s administrative functions such as contracts and budgets. Members of the Joint Board also sit on the Joint Policy Boards.

WRIA 1 Joint Policy Boards
The WRIA 1 Joint Policy Boards are comprised of members of the WRIA 1 Joint Board and Salmon Recovery Board. This organizational level interacts with federal, state, and regional organizations at a policy-level to coordinate the implementation and management of the WRIA 1 Watershed Management Plan – Phase 1, the WRIA 1 Salmonid Recovery Plan and other related activities.

Local Integrating Organization (LIO)
The Whatcom Local Integrating Organization (LIO) is a function of the WRIA 1 Watershed Joint Board and WRIA 1 Salmon Recovery Board (Joint Policy Boards). Local integrating organizations are designated
by the Puget Sound Partnership. The two WRIA 1 Boards accepted the function of the Whatcom LIO in October 2010 under the integrated program structure, and was officially recognized by the Puget Sound Partnership’s Leadership Council in November 2010. The purpose of the Whatcom LIO is to coordinate implementation of Puget Sound Action Agenda priorities that are consistent with or complement local priorities. One of its functions is to provide a local update to the Action Agenda for Puget Sound. Local updates are intended to identify local priorities in the form of near-term actions (NTAs), which are priority actions with measurable outcomes that can be implemented in the next two years and that align with strategies in the Action Agenda for Puget Sound.

WRIA 1 Planning Unit
The Initiating Governments established the Planning Unit to ensure representation of a broad range of water resource interests. The Planning Unit’s role is to recommend actions for a Watershed Plan and to contribute knowledge, interests, technical expertise, and other resources to its development. The Planning Unit is made up of representatives from the Initiating Governments, other governments, and various caucuses. There are 16 total caucuses on the WRIA 1 Planning Unit.

Organizational Update (2016)
Through an interlocal agreement entered into in 2016, the Watershed Management Project Joint Board and the WRIA 1 Salmon Recovery Board were dissolved and the duties and functions of those boards were assumed by the new WRIA 1 Watershed Management Board, consisting of one representative from the Lummi Nation, the Nooksack Tribe, the Washington State Department of Fish and Wildlife, Whatcom County, Whatcom County PUD No. 1, and the cities of Bellingham, Blaine, Everson, Ferndale, Lynden, Nooksack, and Sumas.

The primary functions of the WRIA 1 Watershed Management Board are to:

- Facilitate implementation and adaptive management of the WRIA 1 Watershed Management Plan-Phase 1 as currently constituted or subsequently amended;
- Coordinate the implementation and adaptive management of the WRIA 1 Salmonid Recovery Plan and associated implementation documents,
- Serve as the Lead Entity for WRIA 1,
- Coordinate participation in Puget Sound salmon recovery efforts,
- Coordinate the development, implementation and adaptive management of WRIA 1 watershed chapters of recovery plans for ESA listed salmonids and other salmonid species as warranted;
- Coordinate planning, implementation, monitoring and adaptive management of ecosystem recovery actions in WRIA 1 consistent with agreed local goals and objectives,
- Serve as the WRIA 1 Local Integrating Organization and a partner in the Puget Sound Partnership in representing WRIA 1 goals and priorities; and
- Participate in other related activities as agreed to by the Board.

The roles of the Local Integrating Organization and Planning Unit did not change.
2005 WRIA 1 Watershed Management Plan – Phase 1

The 2005 WRIA 1 Watershed Management Plan was approved in 2005 by the Joint Administrative Board, Planning Unit (by consensus), and the County Council. Pursuant to subsequent state requirements, a WRIA 1 Watershed Detailed Implementation Plan was approved by the Joint Administrative Board, Planning Unit, and County Council in 2007. It provides a roadmap for addressing water quantity, water quality, instream flow, and fish habitat challenges. The goals of the WRIA 1 Watershed Management Project are: water of sufficient quantity and quality to meet the needs of current and future human generations; restoration of salmon, steelhead, and trout populations to healthy harvestable levels; and the improvement of habitats on which fish and shellfish rely. These goals are addressed more specifically below:

- **Water Quantity** – To assess water supply and use, and develop strategies to meet current and future needs. The strategies should retain or provide adequate amounts of water to protect and restore fish habitat, provide water for future out-of-stream-uses, and ensure adequate water supplies are available for agriculture, energy production, and population and economic growth under the requirements of the state’s Growth Management Act.

- **Water Quality** – To ensure the quality of our water is sufficient for current and future uses, including restoring and protecting water quality to meet the needs of salmon and shellfish, recreational uses, cultural uses, protection of wildlife, providing affordable and safe domestic water supplies, and other beneficial uses. The initial objectives of the water quality management strategy will be to meet the water quality standards.

- **Instream Flow** – To supply water in sufficient quantities to restore salmon, steelhead, and trout populations to healthy and harvestable levels and improve habitats on which fish rely.

- **Fish Habitat** – To protect or enhance fish habitat in the management area and to restore salmon, steelhead, and trout populations to healthy and harvestable levels and improve habitats on which fish rely.

In 2010, the WRIA 1 Joint Board adopted a work plan, budget, and financing strategy, called the Lower Nooksack Strategy, to advance a negotiated settlement of Tribal and state instream flow water rights on the mainstem of the Nooksack River, while maximizing the economic and environmental benefits of out-of-stream water use in the Lower Nooksack sub-basin. The Joint Board adopted the Lower Nooksack Strategy consistent with WRIA 1 Watershed Management Plan priorities.

Lower Nooksack Strategy Objectives:

- Develop and implement a process for negotiating settlement of water rights on the Mainstem Nooksack River.

- Update and verify the Lower Nooksack River sub-basin water budget and develop a groundwater model.

- Determine out-of-stream water user needs:
  - Public water system needs determined by updated the Whatcom County Coordinated Water System Plan (CWSP).
  - Other out-of-stream user needs (e.g., agriculture, private domestic wells, industrial, etc.) determined through a regional water supply planning process.
• Continue and, if appropriate, enhance targeted streamflow and water quality sampling.
• Advance work on tools that foster water resource allocations consistent with long-term economic and environmental land-use goals for implementation in five years.

Streamflow Restoration Act (ESSB 6091)
The Streamflow Restoration Act (ESSB 6091), enacted by the Washington State Legislature on January 18, 2018 and effective on January 19, 2018, directs the Department of Ecology to work with the initiation governments (i.e., the WRIA 1 Watershed Management Board), in collaboration with the planning unit established pursuant to chapter 90.82 RCW, on updating the WRIA 1 Watershed Management Plan for approval by the Whatcom County Council by February 1, 2019.

The Act requires that the updated plan 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. Such recommendations may include, but are not limited to, acquiring senior water rights, water conservation, water reuse, stream gaging, groundwater monitoring, and developing natural and constructed infrastructure, which includes, but is not limited to, such projects as floodplain restoration, off-channel storage, and aquifer recharge. Qualifying projects must be specifically designed to enhance streamflows and not result in negative impacts to ecological functions or critical habitat.

At a minimum, the watershed plan must include those actions determined to be necessary to offset potential impacts to instream flows associated with permit-exempt domestic water use. The highest priority recommendations must include replacing the quantity of consumptive water use during the same time as the impact and in the same basin or tributary. Lower priority projects include projects not in the same basin or tributary and projects that replace consumptive water supply impacts only during critical flow periods. The watershed plan may include projects that protect or improve instream resources without replacing the consumptive quantity of water where such projects are in addition to those actions determined to be necessary to offset potential consumptive impacts to instream flows associated with permit-exempt domestic water use.

Until the updated watershed plan is approved and rules are adopted by the Department of Ecology, the County, in issuing building permits under RCW 19.27.097(1)(c) or approving subdivisions under chapter 58.17 RCW in WRIA 1, will comply with all of the specific requirements of ESSB 6091.

So as to indicate Whatcom County’s commitment to working with the Watershed Management Board on updating the Watershed Management Plan pursuant to ESSB 6091, add the following policy:

Policy 10F.11 Pursuant to ESSB 6091, Whatcom County will work through the WRIA 1 Watershed Management Board and its established processes to update the WRIA 1 Watershed Management Plan, consistent with ESSB 6091, for approval by the Whatcom County Council by February 1, 2019. The updated plan shall 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.

At a minimum, the watershed plan must include those actions determined to be necessary to offset potential impacts to instream flows associated with permit-exempt domestic water use. The highest priority recommendations must include replacing the quantity of consumptive water use during the same time as the impact and in the same basin or tributary. Lower priority projects include projects not in the same basin or tributary and projects that replace consumptive water supply impacts only during critical flow periods. The watershed plan may include projects that protect or improve instream resources without replacing the consumptive quantity of water where such projects are in addition to those actions determined to be necessary to offset potential consumptive impacts to instream flows associated with permit-exempt domestic water use.

Watershed plan recommendations may include, but are not limited to, acquiring senior water rights, water conservation, water reuse, stream gaging, groundwater monitoring, and developing natural and constructed infrastructure, which includes, but is not limited to, such projects as floodplain restoration, off-channel storage, and aquifer recharge. Qualifying projects must be specifically designed to enhance streamflows and not result in negative impacts to ecological functions or critical habitat.

Until the updated watershed plan is approved and rules are adopted, the County, in issuing building permits under RCW 19.27.097(1)(c) or approving subdivisions under chapter 58.17 RCW in WRIA 1 will comply with all of the specific requirements of ESSB 6091.
Staff Report to the County Council

Whatcom County Comprehensive Plan and Development Regulation Amendments to Enact the Streamflow Restoration Act (ESSB 6091)

Date: April 13, 2018

File # PLN2016-00013

File Name: Whatcom County Comprehensive Plan and Development Regulation Amendments to Enact the Streamflow Restoration Act (ESSB 6091)

Applicants: Whatcom County Planning and Development Services (PDS)

Summary of Request: An ordinance amending (a) the Whatcom County Comprehensive Plan, adding text and policies to indicate the County’s intention to work through the WRIA 1 Watershed Management Board and it’s agreed upon process to update the Watershed Management Plan; and (b) WCC Titles 15, 20, 21, and 24, adopting procedures and standards for permit exempt groundwater withdrawals in WRIA 1, consistent with the Washington State Streamflow Restoration Act (ESSB 6091).

Location: Countywide.

Staff Recommendation: Staff recommends that the County Council review the proposed ordinance, introduce it for consideration on April 24, 2018, and on May 8, 2018, hold a public hearing and adopt these provisions consistent with ESSB 6091 and the Coordinated Water System Plan (CWSP).

I. BACKGROUND

The State Legislature recently passed, and the Governor signed into law, ESSB 6091, which amends the state water and watershed management regulations, providing a resolution to the Washington Supreme Court’s Hirst Decision. Whatcom County must now amend its regulations to incorporate the new state law into our code so as to be consistent with it and our Comprehensive Plan Policy 5R-1:

Building permit applicants, new subdivisions, short plats, and binding site plans will be required to provide evidence that adequate and legal (in consultation with the Department of Ecology) supplies of water are available prior to their approval by the County.

The use of exempt wells for residential development was put on hold, statewide, for the last year due to a Growth Management Hearings Board decision, which was subsequently upheld by the State Supreme Court (known as the “Hirst Decision”).

In it, “The Board found that [county policies] result in water withdrawals from closed basins and senior instream flows – flows that the record indicated drop below the minimum levels 100 days out of the year. The Board properly held that this conflicts with the requirement placed on counties to protect water availability under the GMA...”

In defending our policies and procedures, the County, with support from the Department of Ecology, argued those restrictions did not apply to wells that are exempt from water rights permitting rules (RCW 90.44.050). However, though we (and many if not all other counties) relied on Ecology’s regulations, the
Court found that, “The fact that the County’s provisions are wholly consistent with Ecology’s regulations does not, by itself, render them consistent with the GMA’s requirements,” stating that, “The GMA places an independent responsibility to ensure water availability on counties, not on Ecology. To the extent that there is a conflict between the GMA and the Nooksack Rule,1 the later-enacted GMA controls.” “The GMA places the burden on counties to protect groundwater resources, and requires counties to assure that water is both factually and legally available before issuing permits.” Thus, the Court found that, “The County’s comprehensive plan does not protect water availability because it allows permit-exempt appropriations to impede minimum flows.” “In order to comply with the GMA, counties must receive sufficient evidence of an adequate water supply from applicants for building permits and subdivisions before the county can authorize development.”

Interim Solution
This decision put counties in a bind as we could no longer rely on the exempt well rule to allow new groundwater withdrawals in all but a few areas of the County2 without proof that the withdrawals wouldn’t affect senior water rights (including instream flows). Therefore, the County Council enacted a series of interim ordinances that allowed someone proposing a new well to either: (a) prepare a hydrological report proving that the withdrawal would not impinge on an adopted instream flow, or (b) propose mitigation that would basically put the same amount of water used back into the ground.3

State’s Response (ESSB 6091)
Though the Hirst Decision was specific to Whatcom County, it had statewide ramifications as it dealt with a process and rule used statewide to allow rural development using private water supplies. So counties turned to their state legislators to develop a statewide fix by amending the RCW. Several bills were proposed over the year, but it wasn’t until January 19, 2018, that one finally got passed and signed into law. This was ESSB 6091 (attached).

It requires the Department of Ecology to work with the initiating governments and the planning unit, including the Tribes (§202(3)), to review existing watershed plans to identify the potential impacts of exempt well use, identify evidence-based conservation measures, and identify projects to improve watershed health (§202(2)). We must then update the watershed plan 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. Such plan recommendations may include, but are not limited to:

- acquiring senior water rights,
- water conservation,
- water reuse, stream gaging,
- groundwater monitoring, and
- developing natural and constructed infrastructure, which includes, but is not limited to, such projects as: floodplain restoration, off-channel storage, and aquifer recharge.

Qualifying projects must be specifically designed to enhance streamflows and not result in negative impacts to ecological functions or critical habitat. (§202(4a))

At a minimum, the watershed plan must include those actions determined to be necessary to offset potential impacts to instream flows associated with permit-exempt domestic water use. The highest priority recommendations must include replacing the quantity of consumptive water use during the same time as the impact and in the same basin or tributary. Lower priority projects include projects not in the same basin or tributary and projects that replace consumptive water supply impacts only during

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1 Ecology’s 1985 “Nooksack Rule” (173-501 WAC) establishes closures and instream flows in WRIA 1 restricting new water right permits
2 Those known not to be in hydrologic continuity with the Nooksack.
3 For example, using septic water, rainwater collected in cisterns, or water trucked in and allowed to infiltrate.
critical flow periods. The watershed plan may include projects that protect or improve instream resources without replacing the consumptive quantity of water where such projects are in addition to those actions that are determined to be necessary to offset potential consumptive impacts to instream flows associated with permit-exempt domestic water use. (§202(4b))

The watershed plan may also include:

- Standards for water use quantities that are less than authorized under RCW 90.44.050 or more or less than 3,000 gpd (see below);
- Recommendations for modification to fees established (see below);
- Specific conservation requirements for new water users to be adopted by local or state permitting authorities; or
- Other approaches to manage water resources. (§202 (4d))

Prior to adoption of the updated watershed plan, Ecology must determine that the actions identified in the plan—after accounting for new projected uses of water over the subsequent twenty years—will result in a net ecological benefit to instream resources within the water resource inventory area. (Section 202 (4c)) If a plan that meets these requirements is not adopted by February 1, 2019, Ecology must adopt rules for WRIA that meet the bill’s requirements by August 1, 2020. (§202 (7a))

Until the watershed plan is updated, ESSB 6091 does allow jurisdictions to once again rely on Ecology rules regarding permit-exempt wells to comply with GMA requirements for protecting surface and ground water resources, as long as certain conditions are met. These conditions include:

- Withdrawals can be for domestic use only, with a maximum annual average withdrawal of three thousand gallons per day per connection.
- Applicants must pay a fee of $500 dollars ($350 of which the County must forward to the Department of Ecology).
- Applicants must record any relevant restrictions or limitations associated with water supply with their property’s title.

**What is Legal Availability?**

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

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

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

The ways of showing the legal water availability in Whatcom County for development purposes (where Whatcom County has to issue a permit for a use requiring water) are listed in proposed WCC 24.11.060(B). Staff has created the attached Table 1 to help the public better understand under what conditions water is considered legally available to use pursuant to ESSB 6091 and the proposed ordinance.

II. PROPOSED AMENDMENTS

On January 30th, 2018, Council adopted Emergency Interim Ordinance 2018-001 effecting ESSB 6091. As emergency ordinances can only last for 60 days, they also introduced an interim ordinance reading the same as 2018-001, for which a public hearing was held and adopted by Council on February 13th. An interim ordinance can last for six months. However, to make the amendments enduring, a permanent (standard, non-interim, non-emergency) ordinance is necessary and is required to go through our standard public review process. The passing of ESSB 6091 and our incorporation of its provisions into our Comprehensive Plan and development regulations is necessary to complete our GMA compliance proceedings before the Growth Management Hearings Board.

Thus, staff is requesting that the County Council review the proposed ordinance, introduce it for consideration on April 24, 2018, and on May 8, 2018, hold a public hearing and adopt these provisions consistent with ESSB 6091.

This ordinance would amend both the Whatcom County Code (building, zoning, land division, and health regulations) and the Comprehensive Plan in the following ways:

A. Proposed Code Amendments (see attached Exhibit A to the draft ordinance for exact language)

- Building Code – Amend 15.04.020 (Amendments to the International Building Code) and 15.04.030 (Amendments to the International Residential Code) to require that evidence of an adequate water supply be provided by the applicant.

- Zoning Code –
  - Amend 20.84.220 (approval criteria for issuing conditional use permits) to ensure that such a use will have an adequate water supply.

- Land Division Regulations – Amend 21.04.090 (Short Subdivisions, Water Supply) and 21.05.080 (Long Subdivisions, Water Supply) clarifying when private water supplies (wells) may be used to supply water to a subdivision or short plat.

- Health Regulations –
  - Amend 24.11.050 (Drinking Water, General requirements), adding that applicants for water systems “must demonstrate that they have an adequate water supply for their proposed service.”
  - Amend 24.11.060 (Water availability required) to list the various forms of “evidence of legal availability” the County can accept as valid. (Note: These changes are the most noteworthy, and are further explained below.)
  - Amend 24.11.070, .080, .090, .100, .110, .120, .130, .140, .150, .160, and .170 (all having to do with determining adequacy of water supply for various uses) to state that the applicant
must provide evidence of an adequate water supply and for Single Family Residences, request an inspection of the well location prior to obtaining Health Department approval.

**Evidence of Legal Availability**

As mentioned above, amendments to WCC 24.11.060 (Water availability required) comprise the bulk of the substantive changes to enact ESSB 6091 (the rest of the amendments basically just saying you have to show you have water prior to obtaining a permit). Explanations for the various forms are provided in the following table:

<table>
<thead>
<tr>
<th>Section</th>
<th>Explanation</th>
</tr>
</thead>
<tbody>
<tr>
<td>24.11.060 Water availability required.</td>
<td>Water availability must be ascertained and certified by the Whatcom County Health Department Director, who provides a &quot;water availability notification&quot; to the applicant and provides a copy to PDS for their permit application.</td>
</tr>
<tr>
<td>A. Prior to issuance of a building or other project permit, and unless exempt pursuant to subsection (C), the applicant must provide Whatcom County Planning and Development Services evidence of adequate water supply as documented by a water availability notification signed by the director. The water availability notification shall document a supply of potable water adequate to serve a land use associated with a project permit in terms of quality, quantity, and legal availability.</td>
<td></td>
</tr>
<tr>
<td>B. The applicant must provide evidence of legal availability in the form of:</td>
<td></td>
</tr>
<tr>
<td>1. A water right permit from the Department of Ecology; or,</td>
<td>If one has a certified water right from Ecology no other evidence is required (though there are still rules about how wells are constructed and maintained). One can put to beneficial use an amount of water up to the amount the right is for.</td>
</tr>
<tr>
<td>2. A letter from an approved public water purveyor with sufficient water rights, stating the ability to provide water; or,</td>
<td>If one proposes to obtain their water from a public water purveyor with sufficient water rights no other evidence is required.</td>
</tr>
<tr>
<td>3. Evidence that a permit-exempt groundwater withdrawal (authorized under RCW 90.44.050) is associated with a well constructed (in accordance with the provisions of RCW Chapter 18.104) prior to January 19, 2018; or,</td>
<td>If one had an exempt well that was constructed prior to ESSB 6091 being approved, one can still use it and no other evidence is required.</td>
</tr>
<tr>
<td>4. Documentation that water can be supplied by a rainwater catchment system approved by the Whatcom County Health Department, per Department of Ecology Policy 1017; or,</td>
<td>One can still propose to obtain water via a rainwater catchment system.</td>
</tr>
<tr>
<td>5. Documentation that water will be supplied by a new withdrawal exempt from permitting under RCW 90.44.050 and the well site is located in WRIA 3 (Lower Skagit-Samish) or in Point Roberts, Eliza Island, or Lummi Island, as shown in Figure 24.11.060.</td>
<td>ESSB 6091 does not apply to areas that are not in hydraulic continuity to the Nooksack. Thus, wells in WRIA 3 or in Point Roberts, Eliza Island, or Lummi Island can still use exempt wells under the rules of RCW 90.44.050 with a limit of 5,000 gal/day.</td>
</tr>
<tr>
<td>Section</td>
<td>Explanation</td>
</tr>
<tr>
<td>---------</td>
<td>-------------</td>
</tr>
</tbody>
</table>
| 6. | Documentation that water will be supplied by a new withdrawal exempt from permitting under RCW 90.44.050 and the well site is located in those Limited Coastal Areas that may not be in hydraulic continuity with regulated surface waterbodies, as shown on Figure 24.11.060, and:  
   a. A study prepared by a qualified hydrogeologist licensed in the State of Washington demonstrating a proposed groundwater withdrawal would not impair a senior water right, including instream flows established in Chapter 173-501 WAC where applicable, in accordance with current statutes and case law. Such documentation must be verified by the county either through consultation with the Department of Ecology, or a qualified technical review team appointed by the county. The county may require a third party review by an independent qualified hydrogeologist if the county determines additional technical expertise is needed. The cost of the third party review shall be borne by the County; or,  
   b. A mitigation plan prepared by a qualified hydrogeologist licensed in the State of Washington, and approved by Whatcom County. The plan shall include:  
      i. Evidence that the proposed withdrawal with mitigation in place will not impair a senior water right, including instream flows established in Chapter 173-501 WAC where applicable, in accordance with current statutes and case law. Such documentation must be verified by the county either through consultation with the Department of Ecology, or a qualified technical review team appointed by the county. The county may require a third party review by an independent qualified hydrogeologist if the county determines additional technical expertise is needed. The cost of the third party review shall be borne by the County.  
      ii. A monitoring and reporting plan, including a quality assurance/quality control plan.  
      iii. Documentation adequate to demonstrate that the mitigation will remain in place for the duration of the impact, including, for example, financial assurances or documentation of permanent dedication of water for mitigation purposes. |
<p>| 7. | Except in Point Roberts, Eliza Island, or Lummi Island, for new permit-exempt groundwater withdrawals per RCW 90.44.050 within WRIA 1 (Nooksack) or within those Limited Coastal Areas where the applicant chooses not to use subsection (B)(6), the applicant may obtain approval for a withdrawal exempt from permitting pursuant to RCW 90.44.050 with a limit of 5,000 gal/day. |
|        | Similarly, there are certain Limited Coastal Areas (see Figure 24.11.60 in Exhibit A to the draft ordinance) wherein groundwater may or may not be in hydraulic continuity to the Nooksack. If one can prove that their water source is not, or if they proposed mitigation, then they can still use an exempt well under the rules of RCW 90.44.050 with a limit of 5,000 gal/day. |</p>
<table>
<thead>
<tr>
<th>Section</th>
<th>Explanation</th>
</tr>
</thead>
<tbody>
<tr>
<td>90.44.050 under the following conditions:</td>
<td>Areas also have the option of choosing to use a permit-exempt well under subsection (B)(7), subject to the 3,000 gallon/day condition.</td>
</tr>
<tr>
<td>a. Water shall be for domestic use only, with a maximum annual average withdrawal of 3,000 gallons per day per connection.</td>
<td>ESSB 6091 requires the County to collect a $500 fee, $350 of which must be forwarded to Ecology to be used for mitigation projects, and $150 of which the County can use to cover administrative costs of implementing this bill.</td>
</tr>
<tr>
<td>b. The applicant shall record with the property title any relevant restrictions or limitations associated with water supply; and</td>
<td></td>
</tr>
<tr>
<td>c. The applicant shall pay to the permitting authority any applicable fees for each project permit.</td>
<td></td>
</tr>
<tr>
<td><strong>C. A water availability notification is not required for:</strong></td>
<td><strong>Conditions under which a water availability notification is not required.</strong></td>
</tr>
<tr>
<td>1. A project permit that does not require potable water.</td>
<td></td>
</tr>
<tr>
<td>2. A project permit relying on either a permit-exempt groundwater withdrawal per RCW 90.44.050 or a surface water withdrawal for potable water for (a) a remodel of an existing building or (b) replacement of a demolished or removed building but not proposing a change of use, either of which would increase the floor area by no more than 50 percent over that of the existing building; however, such permits shall require documentation of current water quality and quantity, as approved by the director.</td>
<td></td>
</tr>
</tbody>
</table>

**B. Proposed Comprehensive Plan Amendments**

Due to a previous Growth Management Hearings Board decision regarding the lack of measures in our Comprehensive Plan to protect rural character, the County adopted into it by reference specific sections of the Whatcom County Code, found in Policy 2DD-2. Germaine to the matter at hand:

- Policy 2DD-2.C.6 adopts by reference WCC 21.04.090 and 21.05.080
- Policy 2DD-2.C.7 adopts by reference WCC 24.11.050
- Policy 2DD-2.C.8 adopts by reference WCC 24.11.060
- Policy 2DD-2.C.9 adopts by reference WCC 24.11.090, .100, .110, .120, .130, .160, and .170

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Page 7 of 15
CompPlan Policy 2DD-2: Protect the character of the rural area through the County’s development regulations. In addition to the policies of this plan that provide measures governing rural development, the following County’s key development regulations are incorporated into this plan by reference to assure that the plan contains measures to protect rural character:

...  
C. Measures to protect critical areas and surface and groundwater resources:

...

6. Limit water withdrawals resulting from land division through the standards in the following Whatcom County Land Division regulations, adopted herein by reference:
   a. WCC 21.04.090 Water supply, Short Subdivisions.
   b. WCC 21.05.080 Water supply, Preliminary Long Subdivisions.

7. Regulate groundwater withdrawals by requiring purveyors of public water systems and private water system applicants to comply with Washington State Department of Ecology water right requirements per WCC 24.11.050, adopted herein by reference.

8. Require evidence of an adequate water supply prior to issuance of any building permit, per WCC 24.11.060, adopted herein by reference.

9. Determine adequacy of water supply for building permit applications proposing to use a well, spring, or surface water, per WCC 24.11.090, .100, .110, .120, .130, .160, and .170, adopted herein by reference.

...

Because of this, each time we amend any of these referenced code sections we are also amending the Comprehensive Plan, and have to advertise as such. No further action is required on this portion.

However, in the Comprehensive Plan, Chapter 10 (Environment), under the heading “WRIA 1 Watershed Management Project,” staff recommends that we insert new text explaining the 2016 reorganization of the WRIA 1 structure, as well as a new policy 10F-11 indicating our intention to participate in updating the WRIA 1 Watershed Management Plan pursuant to ESSB 6091. These amendments are shown in Exhibit A, beginning on page 16.

III. COMPREHENSIVE PLAN EVALUATION

Below are listed all the pertinent Comprehensive Plan goals and policies regarding domestic water supply, protection of instream flows, water quantity, and watershed planning:

Chapter 2, Land Use

Goal 2A: Ensure designation of sufficient land and densities, with consideration of water availability, to accommodate the growth needs of Whatcom County and protect the local economy, rural lifestyle, habitat, fish, and wildlife, which are the cornerstone qualities that make the county a desirable place to live.

Policy 2A-15: Strive to improve predictability to property owners regarding the connection between legal water use, and land use and development by:

- Supporting completion of groundwater studies that provide a better understanding of water quantities available and the connection between groundwater use and instream flow levels.
- Supporting the efforts of water purveyors to develop new legal water sources and the infrastructure and systems necessary to transport that water to existing water users that lack safe potable water or sufficient water rights.
• Encouraging a negotiated water rights quantification and settlement between the Lummi Nation, Nooksack Indian Tribe and other water users in the Nooksack River basin.
• Encouraging the Department of Ecology to protect instream flows, particularly in times of extremely low summer flows.
• Coordinating with the Department of Ecology to find solutions to provide adequate water for out-of-stream users while protecting instream flows. Potential solutions may include consideration of recycling, conservation, water banking, public water system interties, stream recharge augmentation, change in place of use, desalinization and other alternative water supply measures.
• Requesting the Department of Ecology to create a water management plan for exempt wells in closed water basins that better aligns instream flows with current water rights and legal decisions on hydraulic continuity.

Goal 2DD: Retain the character and lifestyle of rural Whatcom County.

Policy 2DD-2: Protect the character of the rural area through the County’s development regulations. In addition to the policies of this plan that provide measures governing rural development, the following County’s key development regulations are incorporated into this plan by reference to assure that the plan contains measures to protect rural character:

... C. Measures to protect critical areas and surface and groundwater resources:

... 6. Limit water withdrawals resulting from land division through the standards in the following Whatcom County Land Division regulations, adopted herein by reference:
   a. WCC 21.04.090 Water supply, Short Subdivisions.
   b. WCC 21.05.080 Water supply, Preliminary Long Subdivisions.
  7. Regulate groundwater withdrawals by requiring purveyors of public water systems and private water system applicants to comply with Washington State Department of Ecology water right requirements per WCC 24.11.050, adopted herein by reference.
  8. Require evidence of an adequate water supply prior to issuance of any building permit, per WCC 24.11.060, adopted herein by reference.
  9. Determine adequacy of water supply for building permit applications proposing to use a well, spring, or surface water, per WCC 24.11.090, .100, .110, .120, .130, .160, and .170, adopted herein by reference.

... Goal 2M: Protect and encourage restoration of habitat for fish and wildlife populations including adequate instream flows.

Policy 2M-7 Engage in efforts to better define groundwater resources and connection to surface water, current water usage, water rights, adequate instream flows, and policy barriers that create conflicts between these things.

Chapter 5, Utilities
Goal 5R: Ensure that potable water supplies required to serve development are available at the time the development is available for occupancy and use.

Policy 5R-1: Building permit applicants, new subdivisions, short plats, and binding site plans will be required to provide evidence that adequate and legal (in consultation with the Department of Ecology) supplies of water are available prior to their approval by the County.

Chapter 10, Environment

Goal 10F: Protect and enhance water quantity and quality and promote sustainable and efficient use of water resources.

Policy 10F-3: Work cooperatively with Federal, State, and local jurisdictions, Tribal governments, municipal corporations, and the public to implement the goals and policies of the Comprehensive Plan as well as state water resources and water quality laws.

Policy 10F-4: Participate in the coordination of all local water and land management efforts, plans, and data to ensure adequate oversight of water quantity and quality issues.

Policy 10F-5: Manage water resources for multiple instream and out-of-stream beneficial uses, including instream flows set by the State Department of Ecology.

Policy 10F-9: In conjunction with all jurisdictions, develop and adopt programs to protect water quality and quantity within watersheds, aquifers, and marine waterbodies that cross jurisdictional boundaries.

Goal 10G: Protect and enhance Whatcom County’s surface water and groundwater quality and quantity for current and future generations.

Policy 10G-3: In conjunction with the public and appropriate local, state, Tribal, and federal jurisdictions, define, identify, and develop management strategies for watershed basins and subbasins that may require special protection. These areas may include aquifers, critical aquifer recharge areas as defined under the Growth Management Act, Groundwater Management Areas, wellhead protection areas, and high priority watersheds such as those specified under WAC 400 (Local Planning and Management of Non-point Source Pollution), WRIA Watershed Management Planning, and under legislative policy direction (e.g. Nooksack Basin, Lake Whatcom, Lake Samish and Drayton Harbor).

Policy 10G-4: Management efforts should consider both water quality and quantity. Water quality efforts should help reduce the likelihood that potential contaminant sources will pollute water supplies. Water quantity efforts should include consideration and protection of recharge areas and potential effects on stream flow.

Policy 10G-5: Support the implementation of local and state Watershed Management Plans, the Lower Nooksack Strategy, the Lake Whatcom Management Program, NPDES Phase II Permitting, and the WRIA Watershed Management Projects.

Policy 10G-6: Pursue the adoption and implementation of ground and/or surface water management plans and their integration into local comprehensive plans. Designate the Lake Whatcom and Lake Samish Watersheds as high priorities in this effort.

Goal 10I: Support water conservation, reclamation, reuse measures, and education as a means to ensure sufficient water supplies in the future.

Policy 10I-2: Support efforts to establish and protect sustainable water supplies to meet existing and future demands for water in the county.
Policy 101-3: Develop and implement plans to comply with the Department of Ecology’s instream flow and water management rules and water resources management programs.

Policy 101-4: Coordinate local water and land management efforts, plans, and data to ensure adequate oversight of water quality and quantity issues.

Conclusion: The proposed amendments to the Whatcom County Comprehensive Plan and development regulations would affirm the County’s intent to work cooperatively with the Department of Ecology, WRIA 1 Initiating Governments, and the Planning Unit to update the WRIA 1 Watershed Management Plan pursuant to the Streamflow Restoration Act (ESSB 6091), as well as implement the Act’s requirements for allowing the conditioned use of permit-exempt wells (RCW 90.44.050) as a legal source of water for domestic use, and are consistent with the above listed Comprehensive Plan goals and policies.

IV. PROPOSED FINDINGS OF FACT AND REASONS FOR ACTION

Staff recommends the County Council adopt the following findings of fact and reasons for action:

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

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

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

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

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

6. WCC Chapter 20.97 provides definitions of terms used in the code; and

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

8. WCC Chapter 24.11 contains requirements for potable water; and,

9. To protect rural character and regulate groundwater withdrawals, Whatcom County adopted Ordinance 2012-032, amending its Comprehensive Plan to adopt by reference existing development regulations, adding Policy 2DD-2.C.6 which adopts by reference WCC 21.04.090 and 21.05.080, Policy 2DD-2.C.7 which adopts by reference WCC 24.11.050, Policy 2DD-2.C.8 which adopts by reference WCC 24.11.060, and Policy 2DD-2.C.9 which adopts by reference WCC 24.11.090, .100, .110, .120, .130, .160, and .170, any amendments to these WCC provisions are also amendments to the Comprehensive Plan; and,

10. The Growth Management Hearings Board (Board) found the amended Comprehensive Plan lacked the required measures to protect water resources (GMHB Case No. 12-2-0013); and,

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

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

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

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

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

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

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

18. Adoption of this ordinance is necessary to complete the GMA compliance proceedings before the Western Washington Growth Management Hearings Board (GMHB Case No. 12-2-0013); and,

19. A determination of non-significance (DNS) was issued under the State Environmental Policy Act (SEPA) on February 20, 2018; and,

20. ESSB 6091 was signed by Governor Inslee on January 19, 2018, and, pursuant to the emergency clause in Section 307, it became effective immediately as the Legislature declared that it was “necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing institutions...”; and,
21. In accordance with RCW 36.70A.106, Whatcom County Planning and Development Services notified the Department of Commerce of the proposed amendments contained herein on February 14, 2018, and no comments were received from state agencies; and,

22. The Planning Commission held a public hearing on this ordinance on March 8, 2018, notice of which was published in the Bellingham Herald on February 23, 2018;

23. The County Council held a duly noticed public hearing on this ordinance on May 8, 2018;

V. PROPOSED CONCLUSIONS

1. The proposed amendments to the Whatcom County Comprehensive Plan and development regulations would affirm the County’s intent to work cooperatively with the Department of Ecology, WRIA 1 Initiating Governments, and the Planning Unit to update the WRIA 1 Watershed Management Plan pursuant to the Streamflow Restoration Act (ESSB 6091), as well as implement the Act’s requirements for allowing the conditioned use of permit-exempt wells (RCW 90.44.050) as a legal source of water for domestic use, and are consistent with the Comprehensive Plan goals and policies listed in Section III of this staff report.

2. The amendments are in the public interest.

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

VI. PLANNING COMMISSION ACTION

The Planning Commission held a workshop on this ordinance on February 22, 2018, and a public hearing on March 8, 2018, after which they voted to recommend approval of the ordinance with the following recommendations:

1. The Planning Commission wishes to clarify that this ordinance is related to permit-exempt withdrawals for domestic uses only, and does not affect other uses that are allowed under the permit-exempt rules of RCW 90.44.050.

   Explanation: The Commission wanted it to be clear that these provisions should only apply only to domestic (household) uses that require potable water, and not to commercial, industrial, or other non-residential uses that do not require potable water.

2. The Planning Commission recommends adding to 21.04.090(2)(f) and 21.05.080(2)(e) – “(iii) The water purveyor fails to respond with a letter of approval or denial.”

   Explanation: A member of the public testified that he could not get a certain water purveyor to provide a letter either denying or agreeing to provide service within 120 days. The Planning Commission felt that if this were the case, an applicant should be able to use an exempt well. Regardless of the veracity or details of the testimony, staff agrees it is reasonable to expect a response within a certain period. Thus we have added language to this effect in both 21.04.090(2)(f)(iii) and 21.05.080(2)(e)(iii).

VII. POST-PLANNING COMMISSION STAFF EDITS

In reviewing the Planning Commission recommendation after their action, staff is proposing some additional amendments.

- In 21.04.090(2)(e), (f), and (g) and 21.05.080(2)(d), (e), and (f), change the language from “within one-half mile of a purveyor’s water lines” to “one-half mile of a purveyor’s service area.”

   Explanation: After further consideration, staff believes this language is more consistent with the adopted Coordinated Water System Plan.
• Add new subsections 21.04.090(2)(g) and 21.05.080(2)(e) to split apart subsections 21.04.090(2)(f) and 21.05.080(2)(f).

Explanation: This would separate the concepts of “within a service area” and “within one-half mile of a service area.” Staff recommends this change as it came to our attention that, per the Coordinated Water System Plan, if an applicant is within a purveyor’s service area, condition (ii) (applicant and purveyor are unable to achieve agreement) cannot not apply. Per the CWSP one would need to go to Superior Court to remedy this.

• In sections 21.04.090(2)(f) and 21.05.080(2)(e), delete “and applicable fees.”

Explanation: Based on a concern from CM Brenner, staff recommends deleting this clause since if an applicant is outside a water purveyor’s service area, but within ½-mile of it, we only require that the two get together to see whether service is an option; we don’t require someone to hook up. There should be no fee for asking such a question. Though if it turns out that it if the applicant wants that service then they can work out the details with the purveyor (who might have to update their service area and delivery system plans).

VIII. STAFF RECOMMENDATION

Staff recommends that the County Council review the proposed ordinance, introduce it for consideration on April 24, 2018, and on May 8, 2018, hold a public hearing and adopt these provisions consistent with ESSB 6091 and the Coordinated Water System Plan (CWSP).

IX. ATTACHMENTS

1) Draft Ordinance 2018-

2) Exhibit A, showing the proposed amendment to the Whatcom County Comprehensive Plan and development regulations

3) ESSB 6091
<table>
<thead>
<tr>
<th>Situation/Location</th>
<th>Legally Available?</th>
<th>Limit/Conditions</th>
<th>Legally Available?</th>
<th>Limit/Conditions</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. A water right permit from the Department of Ecology</td>
<td>Yes</td>
<td>Up to whatever amount the DOE approves the water right for</td>
<td>Yes</td>
<td>Up to whatever amount the DOE approves the water right for</td>
</tr>
<tr>
<td>2. A letter from an approved public water purveyor with sufficient water rights, stating the ability to provide water</td>
<td>Yes</td>
<td>Up to whatever amount the purveyor has adequate water rights for (as approved by the DOE) and is willing to sell, plus whatever service conditions/costs they impose</td>
<td>Yes</td>
<td>Up to whatever amount the purveyor has adequate water rights for (as approved by the DOE) and is willing to sell, plus whatever service conditions/costs they impose</td>
</tr>
<tr>
<td>3. Water supplied by a rainwater catchment system</td>
<td>Yes</td>
<td>System must be approved by the Whatcom County Health Department, per Dept. of Ecology Policy 1017</td>
<td>Yes</td>
<td>System must be approved by the Whatcom County Health Department, per Dept. of Ecology Policy 1017</td>
</tr>
<tr>
<td>4. Groundwater withdrawals (wells) exempt from permitting pursuant to RCW 90.44.050 for development requiring both potable water and approval from Whatcom County, and:</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>a. Associated with a well legally constructed prior to January 19, 2018</td>
<td>Yes</td>
<td>Up to 5,000 gallons per day</td>
<td>Yes</td>
<td>Up to 5,000 gallons per day</td>
</tr>
<tr>
<td>b. Located in Point Roberts, Eliza Island, or Lummi Island</td>
<td>Yes</td>
<td>Up to 5,000 gallons per day. Wells on Lummi Island area also subject to WCC 16.16.540.</td>
<td>N/A</td>
<td>N/A</td>
</tr>
<tr>
<td>c. Located within certain Limited Coastal Areas, as shown on Figure 24.11.060, and o Are not in hydraulic continuity with regulated surface waterbodies (as determined by a property specific hydraulic study), or o Is mitigated for</td>
<td>Yes</td>
<td>Up to 5,000 gallons per day</td>
<td>N/A</td>
<td>N/A</td>
</tr>
</tbody>
</table>
|   d. Any other well not meeting conditions a, b, or c                              | Yes               | - Water shall be for domestic use only, with a maximum annual average withdrawal of 3,000 gallons per day per connection,  
- The applicant shall record with the property title any relevant restrictions or limitations associated with water supply; and,  
- The applicant shall pay any applicable fees for each project permit. | Yes               | Up to 5,000 gallons per day                                                                       |
CERTIFICATION OF ENROLLMENT

ENGROSSED SUBSTITUTE SENATE BILL 6091

65th Legislature
2018 Regular Session

Passed by the Senate January 18, 2018
Yea 35  Nays 14

President of the Senate

Passed by the House January 18, 2018
Yea 66  Nays 30

Certificate

I, Brad Hendrickson, Secretary of the Senate of the State of Washington, do hereby certify that the attached is ENGROSSED SUBSTITUTE SENATE BILL 6091 as passed by Senate and the House of Representatives on the dates hereon set forth.

Secretary

Speaker of the House of Representatives
Approved

Secretary of State
State of Washington

GOVERNOR OF THE STATE OF WASHINGTON

360
AN ACT Relating to ensuring that water is available to support development; amending RCW 19.27.097, 58.17.110, 90.03.247, and 90.03.290; adding a new section to chapter 36.70A RCW; adding a new section to chapter 36.70 RCW; adding a new chapter to Title 90 RCW; creating a new section; providing an expiration date; and declaring an emergency.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

PART 1

Sec. 101. RCW 19.27.097 and 2015 c 225 s 17 are each amended to read as follows:

(1)(a) Each applicant for a building permit of a building necessitating potable water shall provide evidence of an adequate water supply for the intended use of the building. Evidence may be in the form of a water right permit from the department of ecology, a letter from an approved water purveyor stating the ability to provide water, or another form sufficient to verify the existence of an adequate water supply. ((In addition to other authorities, the county or city may impose conditions on building permits requiring connection to an existing public water system where the existing system is willing and able to provide safe and reliable potable water...)}
An application for a water right shall not be sufficient proof of an adequate water supply.

(b) In a water resource inventory area with rules adopted by the department of ecology pursuant to section 202 or 203 of this act and the following water resource inventory areas with instream flow rules adopted by the department of ecology under chapters 90.22 and 90.54 RCW that explicitly regulate permit-exempt groundwater withdrawals, evidence of an adequate water supply must be consistent with the specific applicable rule requirements: 5 (Stillaguamish); 17 (Quilcene-Snow); 18 (Elwha-Dungeness); 27 (Lewis); 28 (Salmon-Washougal); 32 (Walla Walla); 45 (Wenatchee); 46 (Entiat); 48 (Methow); and 57 (Middle Spokane).

(c) In the following water resource inventory areas with instream flow rules adopted by the department of ecology under chapters 90.22 and 90.54 RCW that do not explicitly regulate permit-exempt groundwater withdrawals, evidence of an adequate water supply must be consistent with section 202 of this act, unless the applicant provides other evidence of an adequate water supply that complies with chapters 90.03 and 90.44 RCW: 1 (Nooksack); 11 (Nisqually); 22 (Lower Chehalis); 23 (Upper Chehalis); 49 (Okanogan); 55 (Little Spokane); and 59 (Colville).

(d) In the following water resource inventory areas with instream flow rules adopted by the department of ecology under chapters 90.22 and 90.54 RCW that do not explicitly regulate permit-exempt groundwater withdrawals, evidence of an adequate water supply must be consistent with section 203 of this act, unless the applicant provides other evidence of an adequate water supply that complies with chapters 90.03 and 90.44 RCW: 7 (Snohomish); 8 (Cedar-Sammamish); 9 (Duwamish-Green); 10 (Puyallup-White); 12 (Chambers-Clover); 13 (Deschutes); 14 (Kennedy-Goldsborough); and 15 (Kitsap).

(e) In water resource inventory areas 37 (Lower Yakima), 38 (Naches), and 39 (Upper Yakima), the department of ecology may impose requirements to satisfy adjudicated water rights.

(f) Additional requirements apply in areas within water resource inventory area 3 (Lower Skagit-Samish) and 4 (Upper Skagit) regulated by chapter 173-503 WAC, as a result of Swinomish Indian Tribal Community v. Department of Ecology, 178 Wn.2d 571, 311 P.3d 6 (2013).

(g) In other areas of the state, physical and legal evidence of an adequate water supply may be demonstrated by the submission of a
water well report consistent with the requirements of chapter 18.104 RCW.

(h) For the purposes of this subsection (1), "water resource inventory areas" means those areas described in chapter 173-500 WAC as of the effective date of this section.

(2) In addition to other authorities, the county or city may impose additional requirements, including conditions on building permits requiring connection to an existing public water system where the existing system is willing and able to provide safe and reliable potable water to the applicant with reasonable economy and efficiency.

(3) Within counties not required or not choosing to plan pursuant to RCW 36.70A.040, the county and the state may mutually determine those areas in the county in which the requirements of subsection (1) of this section shall not apply. The departments of health and ecology shall coordinate on the implementation of this section. Should the county and the state fail to mutually determine those areas to be designated pursuant to this subsection, the county may petition the department of enterprise services to mediate or, if necessary, make the determination.

(4) Buildings that do not need potable water facilities are exempt from the provisions of this section. The department of ecology, after consultation with local governments, may adopt rules to implement this section, which may recognize differences between high-growth and low-growth counties.

(5) Any permit-exempt groundwater withdrawal authorized under RCW 90.44.050 associated with a water well constructed in accordance with the provisions of chapter 18.104 RCW before the effective date of this section is deemed to be evidence of adequate water supply under this section.

NEW SECTION. Sec. 102. A new section is added to chapter 36.70A RCW to read as follows:

For the purposes of complying with the requirements of this chapter relating to surface and groundwater resources, a county or city may rely on or refer to applicable minimum instream flow rules adopted by the department of ecology under chapters 90.22 and 90.54 RCW. Development regulations must ensure that proposed water uses are consistent with RCW 90.44.050 and with applicable rules adopted...
pursuant to chapters 90.22 and 90.54 RCW when making decisions under
RCW 19.27.097 and 58.17.110.

NEW SECTION. Sec. 103. A new section is added to chapter 36.70
RCW to read as follows:
For the purposes of complying with the requirements of this
chapter, county development regulations must ensure that proposed
water uses are consistent with RCW 90.44.050 and with applicable
rules adopted pursuant to chapters 90.22 and 90.54 RCW when making
decisions under RCW 19.27.097 and 58.17.110.

Sec. 104. RCW 58.17.110 and 1995 c 32 s 3 are each amended to
read as follows:
(1) The city, town, or county legislative body shall inquire into
the public use and interest proposed to be served by the
establishment of the subdivision and dedication. It shall determine:
(a) If appropriate provisions are made for, but not limited to, the
public health, safety, and general welfare, for open spaces, drainage
ways, streets or roads, alleys, other public ways, transit stops,
potable water supplies, sanitary wastes, parks and recreation,
playgrounds, schools and schoolgrounds, and shall consider all other
relevant facts, including sidewalks and other planning features that
assure safe walking conditions for students who only walk to and from
school; and (b) whether the public interest will be served by the
subdivision and dedication.

(2) A proposed subdivision and dedication shall not be approved
unless the city, town, or county legislative body makes written
findings that: (a) Appropriate provisions are made for the public
health, safety, and general welfare and for such open spaces,
drainage ways, streets or roads, alleys, other public ways, transit
stops, potable water supplies, sanitary wastes, parks and recreation,
playgrounds, schools and schoolgrounds and all other relevant facts,
including sidewalks and other planning features that assure safe
walking conditions for students who only walk to and from school; and
(b) the public use and interest will be served by the platting of
such subdivision and dedication. If it finds that the proposed
subdivision and dedication make such appropriate provisions and that
the public use and interest will be served, then the legislative body
shall approve the proposed subdivision and dedication. Dedication of
land to any public body, provision of public improvements to serve

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the subdivision, and/or impact fees imposed under RCW 82.02.050
through 82.02.090 may be required as a condition of subdivision
approval. Dedications shall be clearly shown on the final plat. No
dedication, provision of public improvements, or impact fees imposed
under RCW 82.02.050 through 82.02.090 shall be allowed that
constitutes an unconstitutional taking of private property. The
legislative body shall not as a condition to the approval of any
subdivision require a release from damages to be procured from other
property owners.

(3) If the preliminary plat includes a dedication of a public
park with an area of less than two acres and the donor has designated
that the park be named in honor of a deceased individual of good
character, the city, town, or county legislative body must adopt the
designated name.

(4) If water supply is to be provided by a groundwater withdrawal
exempt from permitting under RCW 90.44.050, the applicant's
compliance with RCW 90.44.050 and with applicable rules adopted
pursuant to chapters 90.22 and 90.54 RCW is sufficient in determining
appropriate provisions for water supply for a subdivision,
dedication, or short subdivision under this chapter.

PART 2

NEW SECTION. Sec. 201. The definitions in this section apply
throughout this chapter unless the context clearly requires
otherwise.

(1) "Department" means the department of ecology.

(2) "Lead agency" has the same meaning as defined in RCW
90.82.060.

(3) "Water resource inventory area" or "WRIA" means a water
resource inventory area established in chapter 173-500 WAC as it
existed on the effective date of this section.

NEW SECTION. Sec. 202. (1) Unless requirements are otherwise
specified in the applicable rules adopted under this chapter or under
chapter 90.22 or 90.54 RCW, potential impacts on a closed water body
and potential impairment to an instream flow are authorized for new
domestic groundwater withdrawals exempt from permitting under RCW
90.44.050 through compliance with the requirements established in
this section.
(2) In the following water resource inventory areas with instream flow rules adopted by the department under chapters 90.22 and 90.54 RCW that do not explicitly regulate permit-exempt groundwater withdrawals and that have completed a watershed plan adopted under chapter 90.82 RCW, the department shall work with the initiating governments and the planning units described in chapter 90.82 RCW to review existing watershed plans to identify the potential impacts of exempt well use, identify evidence-based conservation measures, and identify projects to improve watershed health: 1 (Nooksack); 11 (Nisqually); 22 (Lower Chehalis); 23 (Upper Chehalis); 49 (Okanogan); 55 (Little Spokane); and 59 (Colville).

(3) In the water resource inventory areas listed in subsection (2) of this section, the lead agency shall invite a representative from each federally recognized Indian tribe that has a usual and accustomed harvest area within the water resource inventory area to participate as part of the planning unit.

(4)(a) In collaboration with the planning unit, the initiating governments must update the watershed plan 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. Watershed plan recommendations may include, but are not limited to, acquiring senior water rights, water conservation, water reuse, stream gaging, groundwater monitoring, and developing natural and constructed infrastructure, which includes, but is not limited to, such projects as floodplain restoration, off-channel storage, and aquifer recharge. Qualifying projects must be specifically designed to enhance streamflows and not result in negative impacts to ecological functions or critical habitat.

(b) At a minimum, the watershed plan must include those actions that the planning units determine to be necessary to offset potential impacts to instream flows associated with permit-exempt domestic water use. The highest priority recommendations must include replacing the quantity of consumptive water use during the same time as the impact and in the same basin or tributary. Lower priority projects include projects not in the same basin or tributary and projects that replace consumptive water supply impacts only during critical flow periods. The watershed plan may include projects that protect or improve instream resources without replacing the consumptive quantity of water where such projects are in addition to

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those actions that the planning unit determines to be necessary to
offset potential consumptive impacts to instream flows associated
with permit-exempt domestic water use.
(c) Prior to adoption of the updated watershed plan, the
department must determine that actions identified in the watershed
plan, after accounting for new projected uses of water over the
subsequent twenty years, will result in a net ecological benefit to
instream resources within the water resource inventory area.
(d) The watershed plan may include:
(i) Recommendations for modification to fees established under
this subsection;
(ii) Standards for water use quantities that are less than
authorized under RCW 90.44.050 or more or less than authorized under
subsection (5) of this section for withdrawals exempt from
permitting;
(iii) Specific conservation requirements for new water users to
be adopted by local or state permitting authorities; or
(iv) Other approaches to manage water resources for a water
resource inventory area or a portion thereof.
(e) Any modification to fees collected under subsection (5) of
this section or standards for water use quantities that are less than
authorized under RCW 90.44.050 or more or less than authorized under
subsection (5) of this section for withdrawals exempt from permitting
may not be applied unless authorized by rules adopted under this
chapter or under chapter 90.54 RCW.
(5) Until an updated watershed plan is approved and rules are
adopted under this chapter or chapter 90.54 RCW, a city or county
issuing a building permit under RCW 19.27.097(1)(c), or approving a
subdivision under chapter 58.17 RCW in a watershed listed in
subsection (2) of this section must:
(a) Record relevant restrictions or limitations associated with
water supply with the property title;
(b) Collect applicable fees, as described under this section;
(c) Record the number of building permits issued under chapter
19.27 RCW or subdivision approvals issued under chapter 58.17 RCW
subject to the provisions of this section;
(d) Annually transmit to the department three hundred fifty
dollars of each fee collected under this subsection;
(e) Annually transmit an accounting of building permits and subdivision approvals subject to the provisions of this section to the department;

(f) Until rules have been adopted that specify otherwise, require the following measures for each new domestic use that relies on a withdrawal exempt from permitting under RCW 90.44.050:

(i) An applicant shall pay a fee of five hundred dollars to the permitting authority;

(ii) An applicant may obtain approval for a withdrawal exempt from permitting under RCW 90.44.050 for domestic use only, with a maximum annual average withdrawal of three thousand gallons per day per connection.

(6) Rules adopted under this chapter or under chapter 90.54 RCW may:

(a) Rely on watershed plan recommendations and procedures established in this section to authorize new withdrawals exempt from permitting under RCW 90.44.050 that would potentially impact a closed waterbody or a minimum flow or level;

(b) Rely on projects identified in the watershed plan to offset consumptive water use; and

(c) Include updates to fees based on the planning unit's determination of the costs for offsetting consumptive water use.

(7)(a) If a watershed plan that meets the requirements of this section is not adopted in water resource inventory area 1 (Nooksack) by February 1, 2019, the department must adopt rules for that water resource inventory area that meet the requirements of this section by August 1, 2020.

(b) If a watershed plan that meets the requirements of this section is not adopted in water resource inventory area 11 (Nisqually) by February 1, 2019, the department must adopt rules for that water resource inventory area that meet the requirements of this section by August 1, 2020.

(c) The department must adopt rules that meet the requirements of this section for any of the following water resource inventory areas that do not adopt a watershed plan that meets the requirements of this section by February 1, 2021: 22 (Lower Chehalis); 23 (Upper Chehalis); 49 (Okanogan); 55 (Little Spokane); and 59 (Colville).

(8) This section only applies to new domestic groundwater withdrawals exempt from permitting under RCW 90.44.050 in the following water resource inventory areas with instream flow rules.
adopted under chapters 90.22 and 90.54 RCW that do not explicitly
regulate permit-exempt groundwater withdrawals: 1 (Nooksack); 11
(Nisqually); 22 (Lower Chehalis); 23 (Upper Chehalis); 49 (Okanogan);
55 (Little Spokane); and 59 (Colville) and does not restrict the
withdrawal of groundwater for other uses that are exempt from
permitting under RCW 90.44.050.

NEW SECTION. Sec. 203. (1) Unless requirements are otherwise
specified in the applicable rules adopted under this chapter or
chapter 90.22 or 90.54 RCW, potential impacts on a closed water body
and potential impairment to an instream flow are authorized for new
domestic groundwater withdrawals exempt from permitting under RCW
90.44.050 through compliance with the requirements established in
this section.

(2)(a) In the following water resource inventory areas with
instream flow rules adopted by the department under chapters 90.22
and 90.54 RCW that do not explicitly regulate permit-exempt
groundwater withdrawals and that have either not adopted a watershed
plan, or adopted a partial watershed plan, under chapter 90.82 RCW,
the department shall establish watershed restoration and enhancement
committees in the following water resource inventory areas: 7
(Snohomish); 8 (Cedar-Sammamish); 9 (Duwamish-Green); 10 (Puyallup-
White); 12 (Chambers-Clover); 13 (Deschutes); 14 (Kennedy-
Goldsborough); and 15 (Kitsap).

(b) The department shall chair the watershed restoration and
enhancement committee and invite the following entities to
participate:

(i) A representative from each federally recognized Indian tribe
that has reservation land within the water resource inventory area;

(ii) A representative from each federally recognized Indian tribe
that has a usual and accustomed harvest area within the water
resource inventory area;

(iii) A representative from the department of fish and wildlife,
appointed by the director of the department of fish and wildlife;

(iv) A representative designated by each county within the water
resource inventory area;

(v) A representative designated by each city within the water
resource inventory area;

(vi) A representative designated by the largest irrigation
district within the water resource inventory area;
(vii) A representative designated by the largest publicly owned
water purveyor providing water within the water resource inventory
area that is not a municipality;
(viii) A representative designated by a local organization
representing the residential construction industry within the water
resource inventory area;
(ix) A representative designated by a local organization
representing environmental interests within the water resource
inventory area; and
(x) A representative designated by a local organization
representing agricultural interests within the water resource
inventory area.

(3) By June 30, 2021, the department shall prepare and adopt a
watershed restoration and enhancement plan for each watershed listed
under subsection (2)(a) of this section, in collaboration with the
watershed restoration and enhancement committee. Except as described
in (h) of this subsection, all members of a watershed restoration and
enhancement committee must approve the plan prior to adoption.

(a) The watershed restoration and enhancement plan should 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. Plan
recommendations may include, but are not limited to, acquiring senior
water rights, water conservation, water reuse, stream gaging,
groundwater monitoring, and developing natural and constructed
infrastructure, which includes but is not limited to such projects as
floodplain restoration, off-channel storage, and aquifer recharge.
Qualifying projects must be specifically designed to enhance stream
flows and not result in negative impacts to ecological functions or
critical habitat.

(b) At a minimum, the plan must include those actions that the
committee determines to be necessary to offset potential impacts to
instream flows associated with permit-exempt domestic water use. The
highest priority recommendations must include replacing the quantity
of consumptive water use during the same time as the impact and in
the same basin or tributary. Lower priority projects include projects
not in the same basin or tributary and projects that replace
consumptive water supply impacts only during critical flow periods.
The plan may include projects that protect or improve instream
resources without replacing the consumptive quantity of water where
such projects are in addition to those actions that the committee
determines to be necessary to offset potential consumptive impacts to
instream flows associated with permit-exempt domestic water use.
(c) Prior to adoption of the watershed restoration and
enhancement plan, the department must determine that actions
identified in the plan, after accounting for new projected uses of
water over the subsequent twenty years, will result in a net
ecological benefit to instream resources within the water resource
inventory area.
(d) The watershed restoration and enhancement plan must include
an evaluation or estimation of the cost of offsetting new domestic
water uses over the subsequent twenty years, including withdrawals
exempt from permitting under RCW 90.44.050.
(e) The watershed restoration and enhancement plan must include
estimates of the cumulative consumptive water use impacts over the
subsequent twenty years, including withdrawals exempt from permitting
under RCW 90.44.050.
(f) The watershed restoration and enhancement plan may include:
(i) Recommendations for modification to fees established under
this subsection;
(ii) Standards for water use quantities that are less than
authorized under RCW 90.44.050 or more or less than authorized under
subsection (4) of this section for withdrawals exempt from
permitting;
(iii) Specific conservation requirements for new water users to
be adopted by local or state permitting authorities; or
(iv) Other approaches to manage water resources for a water
resource inventory area or a portion thereof.
(g) After adoption of a watershed restoration and enhancement
plan, the department shall evaluate the plan recommendations and
initiate rule making, if necessary, to incorporate recommendations
into rules adopted under this chapter or under chapter 90.22 or 90.54
RCW. Any modification to fees collected under subsection (4) of this
section or standards for water use quantities that are less than
authorized under RCW 90.44.050 or more or less than authorized under
subsection (4) of this section for withdrawals exempt from permitting
may not be applied unless authorized by rules adopted under this
chapter or under chapter 90.54 RCW.
(h) If the watershed restoration and enhancement committee fails
to approve a plan by June 30, 2021, the director of the department
shall submit the final draft plan to the salmon recovery funding
board established under RCW 77.85.110 and request that the salmon
recovery funding board provide a technical review and provide
recommendations to the director to amend the final draft plan, if
necessary, so that actions identified in the plan, after accounting
for new projected uses of water over the subsequent twenty years,
will result in a net ecological benefit to instream resources within
the water resource inventory area. The director of the department
shall consider the recommendations and may amend the plan without
committee approval prior to adoption. After plan adoption, the
director of the department shall initiate rule making within six
months to incorporate recommendations into rules adopted under this
chapter or under chapter 90.22 or 90.54 RCW, and shall adopt amended
rules within two years of initiation of rule making.

(4)(a) Until a watershed restoration and enhancement plan is
approved and rules are adopted under subsection (3) of this section,
a city or county issuing a building permit under RCW 19.27.097(1)(d),
or approving a subdivision under chapter 58.17 RCW in a watershed
listed in subsection (2)(a) of this section must:

(i) Record relevant restrictions or limitations associated with
water supply with the property title;

(ii) Collect applicable fees, as described under this section;

(iii) Record the number of building permits issued under chapter
19.27 RCW or subdivision approvals issued under chapter 58.17 RCW
subject to the provisions of this section;

(iv) Annually transmit to the department three hundred fifty
dollars of each fee collected under this subsection;

(v) Annually transmit an accounting of building permits and
subdivision approvals subject to the provisions of this section to
the department;

(vi) Until rules have been adopted that specify otherwise,
require the following measures for each new domestic use that relies
on a withdrawal exempt from permitting under RCW 90.44.050:

(A) An applicant shall pay a fee of five hundred dollars to the
permitting authority;

(B) Except as provided in (b) of this subsection, an applicant
may obtain approval for a withdrawal exempt from permitting under RCW
90.44.050 for domestic use only, with a maximum annual average
withdrawal of nine hundred fifty gallons per day per connection; and
(C) An applicant shall manage stormwater runoff on-site to the extent practicable by maximizing infiltration, including using low-impact development techniques, or pursuant to stormwater management requirements adopted by the local permitting authority, if locally adopted requirements are more stringent.

(b) Upon the issuance of a drought emergency order under RCW 43.83B.405, the department may curtail withdrawal of groundwater exempt from permitting under RCW 90.44.050 and approved under this subsection (4) to no more than three hundred fifty gallons per day per connection for indoor use only. Notwithstanding the limitation to no more than three hundred fifty gallons per day per connection for indoor use only, an applicant may use groundwater exempt from permitting to maintain a fire control buffer during a drought emergency order.

(5) Rules adopted under this chapter or chapter 90.54 RCW may:

(a) Rely on watershed restoration and enhancement plan recommendations and procedures established in this section to authorize new withdrawals exempt from permitting under RCW 90.44.050 that would potentially impact a closed waterbody or a minimum flow or level;

(b) Rely on projects identified in the watershed restoration and enhancement plan to offset consumptive water use; and

(c) Include updates to fees based on the watershed restoration and enhancement committee's determination of the costs for offsetting consumptive water use.

(6) This section only applies to new domestic groundwater withdrawals exempt from permitting under RCW 90.44.050 in the following water resource inventory areas with instream flow rules adopted under chapters 90.22 and 90.54 RCW that do not explicitly regulate permit-exempt groundwater withdrawals: 7 (Snohomish); 8 (Cedar-Sammamish); 9 (Duwamish-Green); 10 (Puyallup-White); 12 (Chambers-Clover); 13 (Deschutes); 14 (Kennedy-Goldsborough); and 15 (Kitsap) and does not restrict the withdrawal of groundwater for other uses that are exempt from permitting under RCW 90.44.050.

NEW SECTION. Sec. 204. (1) The department shall initiate two pilot projects to measure water use from all new groundwater withdrawals for domestic purposes exempt from permitting under RCW 90.44.050 in the areas described in this section. The pilot projects must be conducted to determine the overall feasibility of measuring...
water use for all new groundwater withdrawals. The department must
purchase and provide meters to be used in the pilot projects. The
pilot projects must be conducted in the area under the Dungeness
water rule, chapter 173-518 WAC, within water resource inventory area
18 and the area in which the Kittitas county water bank program
operates within water resource inventory area 39.
(2) At a minimum, the pilot project must address the following:
(a) Initial and on-going costs, including costs to local
government and the department;
(b) Technical, practical, and legal considerations that must be
addressed;
(c) The costs and benefits of a water use measurement program
relying on individual meters versus a water management program that
estimates permit-exempt groundwater withdrawals; and
(d) Measures to protect the privacy of individual property owners
and ensure accurate data collection.
(3) The department shall report on the pilot project results in
the report to the legislature submitted under section 205 of this
act. The department shall include recommendations to the legislature,
including estimated program costs for expanding the pilot projects to
other basins.

NEW SECTION. Sec. 205. The department shall submit a report to
the legislature by December 31, 2020, and December 31, 2027, in
compliance with RCW 43.01.036, that includes the following elements:
(1) Progress in completing and adopting watershed plans under
section 202 of this act and watershed restoration and enhancement
plans under section 203 of this act;
(2) A description of program projects and expenditures;
(3) An assessment of the streamflow restoration and enhancement
benefits from program projects;
(4) A listing of other efforts or actions taken associated with
streamflow restoration and enhancement, projects to benefit instream
resources, and other directly related watershed improvements
conducted in coordination with the restoration and enhancement
planning process;
(5) The total number of new withdrawals exempt from permitting
under RCW 90.44.050 authorized in each water resource inventory area
under provisions of sections 202 and 203 of this act, and estimates
of consumptive water use impacts associated with the new withdrawals; and

(6) A description of potential or planned projects, including projected costs and anticipated streamflow, water supply, and watershed health benefits.

NEW SECTION. Sec. 206. (1) The watershed restoration and enhancement account is created in the custody of the state treasurer. All receipts from fees paid pursuant to sections 202 and 203 of this act must be deposited into the account. The account may also receive those moneys as may be appropriated by the legislature for the purpose of funding restoration and enhancement projects as identified in sections 202 and 203 of this act. Expenditures from the account may be used only for the costs of administering this act, including implementing watershed planning projects under section 202 of this act and watershed restoration and enhancement projects under section 203 of this act, and collecting data and completing studies necessary to develop, implement, and evaluate watershed restoration and enhancement projects under this act. Only the director or the director's designee may authorize expenditures from the account. The account is subject to allotment procedures under chapter 43.88 RCW, but an appropriation is not required for expenditures.

(2) Fee revenues collected under sections 202 and 203 of this act must be used exclusively within the water resource inventory area in which the fee originated. The restriction in this subsection does not apply to moneys in the watershed restoration and enhancement account that do not originate from fees collected under sections 202 and 203 of this act.

NEW SECTION. Sec. 207. (1) The watershed restoration and enhancement taxable bond account is created in the custody of the state treasurer. All receipts from direct appropriations from the legislature or moneys directed to the account from any other source must be deposited in the account. The account is intended to fund projects using taxable bonds. Expenditures from the account may be used only as provided for in this section. Only the director or the director's designee may authorize expenditures from the account. The account is subject to allotment procedures under chapter 43.88 RCW, but an appropriation is not required for expenditures.
(2) Expenditures from the watershed restoration and enhancement taxable bond account may be used to assess, plan, and develop projects that include acquiring senior water rights, water conservation, water reuse, stream gaging, groundwater monitoring, and developing natural and constructed infrastructure, which includes, but is not limited to, projects such as floodplain restoration, off-channel storage, and aquifer recharge, or other actions designed to provide access to new water supplies with priority given to projects in watersheds developing plans as directed by sections 202 and 203 of this act and watersheds participating in the pilot project in section 204 of this act.

NEW SECTION.  Sec. 208. (1) The watershed restoration and enhancement bond account is created in the custody of the state treasurer. All receipts from direct appropriations from the legislature or moneys directed to the account from any other source must be deposited in the account. The account is intended to fund projects using tax exempt bonds. Expenditures from the account may be used only as provided for in this section. Only the director or the director's designee may authorize expenditures from the account. The account is subject to allotment procedures under chapter 43.88 RCW, but an appropriation is not required for expenditures.

(2) Expenditures from the watershed restoration and enhancement bond account may be used to assess, plan, and develop projects that include acquiring senior water rights, water conservation, water reuse, stream gaging, groundwater monitoring, and developing natural and constructed infrastructure, which includes, but is not limited to, projects such as floodplain restoration, off-channel storage, and aquifer recharge, or other actions designed to provide access to new water supplies with priority given to projects in watersheds developing plans as directed by sections 202 and 203 of this act and watersheds participating in the pilot project in section 204 of this act.

PART 3

NEW SECTION.  Sec. 301. (1) A joint legislative task force on water resource mitigation is established to review the treatment of surface water and groundwater appropriations as they relate to instream flows and fish habitat, to develop and recommend a
mitigation sequencing process and scoring system to address such
appropriations, and to review the Washington supreme court decision
in Foster v. Department of Ecology, 184 Wn.2d 465, 362 P.3d 959

(2) The task force must consist of the following members:
(a) Two members from each of the two largest caucuses of the
senate, appointed by the president of the senate;
(b) Two members from each of the two largest caucuses of the
house of representatives, appointed by the speaker of the house of
representatives;
(c) A representative from the department, appointed by the
director of the department;
(d) A representative from the department of fish and wildlife,
appointed by the director of the department of fish and wildlife;
(e) A representative from the department of agriculture,
appointed by the director of the department of agriculture;
(f) One representative from each of the following groups,
appointed by the consensus of the cochairs of the task force:
(i) An organization representing the farming industry in
Washington;
(ii) An organization representing Washington cities;
(iii) Two representatives from an environmental advocacy
organization or organizations;
(iv) An organization representing municipal water purveyors;
(v) An organization representing business interests;
(vi) Representatives of two federally recognized Indian tribes,
one invited by recommendation of the Northwest Indian fisheries
commission, and one invited by recommendation of the Columbia river
intertribal fish commission.
(3) One cochair of the task force must be a member of the
majority caucus of one chamber of the legislature, and one cochair
must be a member of the minority caucus of the other chamber of the
legislature, as those caucuses existed as of the effective date of
this section.
(4) The first meeting of the task force must occur by June 30,
2018.
(5) Staff support for the task force must be provided by the
office of program research and senate committee services. The
department and the department of fish and wildlife shall cooperate
with the task force and provide information as the cochairs
reasonably request.

(6) Within existing appropriations, the expenses of the
operations of the task force, including the expenses associated with
the task force's meetings, must be paid jointly and in equal amounts
by the senate and the house of representatives. Task force
expenditures are subject to approval by the house executive rules
committee and the senate facility and operations committee.
Legislative members of the task force are reimbursed for travel
expenses in accordance with RCW 44.04.120. Nonlegislative members are
not entitled to be reimbursed for travel expenses if they are elected
officials or are participating on behalf of an employer, governmental
entity, or other organization. Any reimbursement for other
nonlegislative members is subject to chapter 43.03 RCW.

(7)(a) By November 15, 2019, the joint legislative task force
must make recommendations to the legislature in compliance with RCW
43.01.036.

(b) Recommendations of the joint legislative task force must be
made by a sixty percent majority of the members of the task force.
The representatives of the departments of fish and wildlife, ecology,
and agriculture are not eligible to vote on the recommendations.
Minority recommendations that achieve the support of at least five of
the named voting members of the task force may also be submitted to
the legislature.

(8) The department shall issue permit decisions for up to five
water resource mitigation pilot projects. It is the intent of the
legislature to use the pilot projects to inform the legislative task
force process while also enabling the processing of water right
applications that address water supply needs. The department is
authorized to issue permits in reliance upon water resource
mitigation of impacts to instream flows and closed surface water
bodies under the following mitigation sequence:

(a) Avoiding impacts by: (i) Complying with mitigation required
by adopted rules that set forth minimum flows, levels, or closures;
or (ii) making the water diversion or withdrawal subject to the
applicable minimum flows or levels; or

(b) Where avoidance of impacts is not reasonably attainable,
minimizing impacts by providing permanent new or existing trust water
rights or through other types of replacement water supply resulting
in no net annual increase in the quantity of water diverted or
withdrawn from the stream or surface water body and no net

detrimental impacts to fish and related aquatic resources; or

c) Where avoidance and minimization are not reasonably

attainable, compensating for impacts by providing net ecological

benefits to fish and related aquatic resources in the water resource

inventory area through in-kind or out-of-kind mitigation or a

combination thereof, that improves the function and productivity of

affected fish populations and related aquatic habitat. Out-of-kind

mitigation may include instream or out-of-stream measures that

improve or enhance existing water quality, riparian habitat, or other

instream functions and values for which minimum instream flows or

closures were established in that watershed.

(9) The department must monitor the implementation of the pilot

projects, including all mitigation associated with each pilot

project, approved under this section at least annually through

December 31, 2028.

(10) The pilot projects eligible for processing under this

section, based on criteria as of the effective date of this section,

include:

(a) A city operating a group A water system in Kitsap county and

water resource inventory area 15, with a population between 13,000

and 14,000;

(b) A city operating a group A water system in Pierce county and

water resource inventory area 10, with a population between 9,500 and

10,500;

(c) A city operating a group A water system in Thurston county

and water resource inventory area 11, with a population between 8,500

and 9,500;

(d) A nonprofit mutual water system operating a group A water

system in Pierce county and water resource inventory area 12, with

between 10,500 and 11,500 service connections; and

(e) An irrigation district located in Whatcom county and water

resource inventory area 1, solely for the purpose of processing

changes of water rights from surface water to groundwater, and

implementing flow augmentation to benefit instream flows.

(11) Water right applicants eligible to be processed under this

pilot project authority must elect to be included in the pilot

project review by notifying the department by July 1, 2018. Once an

applicant notifies the department of its intent to be processed under

this pilot project authority, subsection (8) of this section applies

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to final decisions issued by the department, even if such a final
decision is issued after the expiration of this section.

(12) By November 15, 2018, the department must furnish the task
force with information on conceptual mitigation plans for each water
resource mitigation pilot project application.

(13) To ensure that the processing of pilot project applications
can inform the task force process in a timely manner, the department
must expedite processing of applications for water resource
mitigation pilot projects. The applicant for each pilot project must
reimburse the department for the department's costs of processing the
applicant's application.

(14) The water resource mitigation pilot project authority
granted to the department does not affect or modify any other
procedural requirements of chapter 90.03, 90.44, or 90.54 RCW that
apply to the processing of such applications.


(16) This section expires January 1, 2029.

Sec. 302. RCW 90.03.247 and 2003 c 39 s 48 are each amended to
read as follows:

(1) Whenever an application for a permit to make beneficial use
of public waters is approved relating to a stream or other water body
for which minimum flows or levels have been adopted and are in effect
at the time of approval, the permit shall be conditioned to: (a)
Protect the levels or flows; or (b) require water resource mitigation
of impacts to instream flows and closed surface water bodies for
water resource mitigation pilot projects authorized under section 301
of this act.

(2) No agency may establish minimum flows and levels or similar
water flow or level restrictions for any stream or lake of the state
other than the department of ecology whose authority to establish is
exclusive, as provided in chapter 90.03 RCW and RCW 90.22.010 and
90.54.040. The provisions of other statutes, including but not
limited to (RCW 77.55.100 and) chapter 43.21C RCW, may not be
interpreted in a manner that is inconsistent with this section. In
establishing such minimum flows, levels, or similar restrictions, the
department shall, during all stages of development by the department
of ecology of minimum flow proposals, consult with, and carefully
consider the recommendations of, the department of fish and wildlife,
the department of (community, trade, and economic development)
commerce, the department of agriculture, and representatives of the
affected Indian tribes. Nothing herein shall preclude the department
of fish and wildlife, the department of (community, trade, and
economic development) commerce, or the department of agriculture
from presenting its views on minimum flow needs at any public hearing
or to any person or agency, and the department of fish and wildlife,
the department of (community, trade, and economic development)
commerce, and the department of agriculture are each empowered to
participate in proceedings of the federal energy regulatory
commission and other agencies to present its views on minimum flow
needs.

Sec. 303. RCW 90.03.290 and 2001 c 239 s 1 are each amended to
read as follows:
(1) When an application complying with the provisions of this
chapter and with the rules of the department has been filed, the same
shall be placed on record with the department, and it shall be its
duty to investigate the application, and determine what water, if
any, is available for appropriation, and find and determine to what
beneficial use or uses it can be applied. If it is proposed to
appropriate water for irrigation purposes, the department shall
investigate, determine and find what lands are capable of irrigation
by means of water found available for appropriation. If it is proposed to
appropriate water for the purpose of power development,
the department shall investigate, determine and find whether the
proposed development is likely to prove detrimental to the public
interest, having in mind the highest feasible use of the waters
belonging to the public.
(2)(a) If the application does not contain, and the applicant
does not promptly furnish sufficient information on which to base
such findings, the department may issue a preliminary permit, for a
period of not to exceed three years, requiring the applicant to make
such surveys, investigations, studies, and progress reports, as in
the opinion of the department may be necessary. If the applicant
fails to comply with the conditions of the preliminary permit, it and
the application or applications on which it is based shall be
automatically canceled and the applicant so notified. If the holder
of a preliminary permit shall, before its expiration, file with the
department a verified report of expenditures made and work done under
the preliminary permit, which, in the opinion of the department,
establishes the good faith, intent, and ability of the applicant to
carry on the proposed development, the preliminary permit may, with
the approval of the governor, be extended, but not to exceed a
maximum period of five years from the date of the issuance of the
preliminary permit.

(b) For any application for which a preliminary permit was issued
and for which the availability of water was directly affected by a
moratorium on further diversions from the Columbia river during the
years from 1990 to 1998, the preliminary permit is extended through
June 30, 2002. If such an application and preliminary permit were
canceled during the moratorium, the application and preliminary
permit shall be reinstated until June 30, 2002, if the application
and permit: (i) Are for providing regional water supplies in more
than one urban growth area designated under chapter 36.70A RCW and in
one or more areas near such urban growth areas, or the application
and permit are modified for providing such supplies, and (ii) provide
or are modified to provide such regional supplies through the use of
existing intake or diversion structures. The authority to modify such
a canceled application and permit to accomplish the objectives of
(b)(i) and (ii) of this subsection is hereby granted.

(3) The department shall make and file as part of the record in
the matter, written findings of fact concerning all things
investigated, and if it shall find that there is water available for
appropriation for a beneficial use, and the appropriation thereof as
proposed in the application will not impair existing rights or be
detrimental to the public welfare, it shall issue a permit stating
the amount of water to which the applicant shall be entitled and the
beneficial use or uses to which it may be applied: PROVIDED, That
where the water applied for is to be used for irrigation purposes, it
shall become appurtenant only to such land as may be reclaimed
thereby to the full extent of the soil for agricultural purposes. But
where there is no unappropriated water in the proposed source of
supply, or where the proposed use conflicts with existing rights, or
threatens to prove detrimental to the public interest, having due
regard to the highest feasible development of the use of the waters
belonging to the public, it shall be duty of the department to reject
such application and to refuse to issue the permit asked for.

(4) If the permit is refused because of conflict with existing
rights and such applicant shall acquire same by purchase or
condemnation under RCW 90.03.040, the department may thereupon grant
such permit. Any application may be approved for a less amount of
water than that applied for, if there exists substantial reason
therefor, and in any event shall not be approved for more water than
can be applied to beneficial use for the purposes named in the
application. In determining whether or not a permit shall issue upon
any application, it shall be the duty of the department to
investigate all facts relevant and material to the application. After
the department approves said application in whole or in part and
before any permit shall be issued thereon to the applicant, such
applicant shall pay the fee provided in RCW 90.03.470: PROVIDED
FURTHER, That in the event a permit is issued by the department upon
any application, it shall be its duty to notify the director of fish
and wildlife of such issuance.

(5) The requirements of subsections (1) and (3) of this section
do not apply to water resource mitigation pilot projects for which
permits are issued in reliance upon water resource mitigation of
impacts to instream flows and closed surface water bodies under
section 301 of this act.

NEW SECTION. Sec. 304. The legislature intends to appropriate
three hundred million dollars for projects to achieve the goals of
this act until June 30, 2033. The department of ecology is directed
to implement a program to restore and enhance stream flows by
fulfilling obligations under this act to develop and implement plans
to restore stream flows to levels necessary to support robust,
healthy, and sustainable salmon populations.

NEW SECTION. Sec. 305. Sections 201 through 208 and 301 of this
act constitute a new chapter in Title 90 RCW.

NEW SECTION. Sec. 306. If any provision of this act or its
application to any person or circumstance is held invalid, the
remainder of the act or the application of the provision to other
persons or circumstances is not affected.

NEW SECTION. Sec. 307. This act is necessary for the immediate
preservation of the public peace, health, or safety, or support of
the state government and its existing public institutions, and takes effect immediately.

--- END ---
**WHATCOM COUNTY COUNCIL AGENDA BILL**

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**TITLE OF DOCUMENT:**
Ord amend WCC 1.08 re: initiatives & referendum signatures

**ATTACHMENTS:**
Ordinance

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<th>SEPA review required?</th>
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<td>SEPA review completed?</td>
<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.)

This ordinance amends Whatcom County Code Chapter 1.08 to reflect changes approved by the voters regarding initiatives and referenda.

**COMMITTEE ACTION:**

**COUNCIL ACTION:**

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<tr>
<th>Related County Contract #:</th>
<th>Related File Numbers:</th>
<th>Ordinance or Resolution Number:</th>
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**Please Note:** Once adopted and signed, ordinances and resolutions are available for viewing and printing on the County's website at: www.co.whatcom.wa.us/council.
PROPOSED BY: CONSENT
INTRODUCTION DATE: ___________

ORDINANCE NO. __________

AMENDING WHATCOM COUNTY CODE 1.08 TO REFLECT VOTER APPROVED
CHANGES FOR LOWERING THE THRESHOLD FOR INITIATIVE AND REFERENDUM
SIGNATURES

WHEREAS, the voters of Whatcom County approved Propositions No. 4 and 5 on the
November 3, 2015, general election ballot; and

WHEREAS, proposition No. 4 read as follows: "The Whatcom County Charter Review
Commission has proposed an amendment to the Whatcom County Charter to provide
greater consistency with state law regarding the wording of initiatives and referenda. This
measure would amend Charter Sections 5.40 and 5.60 pertaining to initiatives and
referenda and increase the word limit for ballot questions from 20 to 40 words.

WHEREAS, Proposition No. 4 passed by 84.22% of the votes; and

WHEREAS, Proposition No. 5 read as follows: "The Whatcom County Charter Review
Commission has proposed an amendment to the Whatcom County Charter lowering the
number of signatures required to place initiatives and referenda on the ballot. This measure
would amend Sections 5.40 and 5.60 to lower the threshold of signatures required to place
an initiative or referendum on the ballot from 15% of the number of votes cast in the last
general election to 8% of the number of votes cast in the last regular gubernatorial
election."

WHEREAS, Proposition No. 5 passed by 50.84% of the votes; and

WHEREAS, Whatcom County Charter Sections 5.40 and 5.60 were amended to
reflect the voter approved changes; and

WHEREAS, Whatcom County Code Chapter 1.08 Initiative, Referendum and Recall,
is intended to be a supplement and a clarification of the Whatcom County Home Rule
Charter, existing statutes, and Constitutional provisions concerning subject matter hereof;

NOW, THEREFORE, BE IT ORDAINED by the Whatcom County Council that the
Whatcom County Code Section 1.08 be amended as shown in the attached Exhibit A.

ADOPTED this _____ day of ____________ 2018.

ATTEST: WHATCOM COUNTY COUNCIL
Dana Brown-Davis, Council Clerk WHATCOM COUNTY, WASHINGTON
Rud Browne, Council Chair

APPROVED AS TO FORM: ( ) Approved ( ) Denied

Jack Louws, County Executive

Date: __________________________
EXHIBIT A

Initiative, Referendum and Recall

1.08.010 Purpose.
A. This chapter recognizes rights reserved to the people of Whatcom County to propose certain measures at their option and to enact or reject them at the polls at an election, independent of the county council and to propose mini-initiatives direct to the county council. In addition, it is recognized that the people of Whatcom County have certain rights reserved to discharge a public official.

B. This chapter is intended to be a supplement and a clarification of the Whatcom County Home Rule Charter, existing statutes, and Constitutional provisions concerning subject matter hereof.

1.08.070 Duty of the prosecuting attorney.
Within 10 days after the receipt of an initiative or referendum, the prosecuting attorney, in consultation with the petitioner, shall formulate the ballot title which shall consist of: (a) a statement of the subject of the measure; (b) a concise description of the measure; and (c) a question: “Shall this be enacted into law?” The statement of the subject of the measure must be proposed as a positive statement, be sufficiently broad to reflect the subject, and be sufficiently precise to give notice of the measure’s subject matter, and not exceed ten words. The concise description must contain no more than thirty words, be a true and impartial description of the measure’s essential contents, clearly identify the proposition to be voted on, and not, to the extent reasonably possible, create prejudice either for or against the measure. A concise statement posed as a positive question, not to exceed 20 words, which shall express and give a true and impartial statement of the proposed measure. It shall not intentionally be an argument or be likely to create prejudice, either for or against the measure. Such concise statements will be the ballot title.

1.08.090 Petition – Required number of signatures.
Following expiration of the 10-day period referred to in WCC 1.08.070, the petitioner shall have 120 days to collect signatures of the registered voters of the county equal in number to not less than 158 percent of the number of votes cast in the county in the last general election regular gubernatorial election. Each petition shall contain the full text of the proposed measure, ordinance, or amendment to an ordinance, and the ballot title.