Ordinance Amending WCC 3.08. Purchasing System

Requesting Council approval of the proposed amendment to strike section 3.08.135 Sunset Provision in Chapter 3.08 Purchasing System of the Whatcom County Code. This will allow for continued public accountability to project management and streamlined project delivery of capital projects.

5/22/2018: Introduced 7-0
TO: Members of the Whatcom County Council

THROUGH: Jack Louws, County Executive

FROM: Tyler Schroeder, Deputy Executive and Brad Bennett, Finance Manager

RE: Purchasing Policy Amendment

Date: May 9, 2018

Requested Action:
Consider and approve proposed amendment to strike section 3.08.135 Sunset Provision in Chapter 3.08 Purchasing System of the Whatcom County Code establishing administrative procedures for advertising and approving public contracts.

Background and Purpose:
Whatcom County Council and Executive share responsibility under WCC 3.08 for transparent, predictable, and efficient procurement of goods and services necessary to execute authorized County work. With new 2015 changes to the State purchasing laws and the Administration’s effort to provide a more transparent and program-oriented approval process the Council approved Ordinance 2016-032 amending Chapter 3.08 Purchasing System.

The 2016 changes made to the purchasing system have helped to clarify the purchasing code which has resulted in streamlined project delivery. The corresponding online project reporting enhancements have created greater transparency and public accountability to project management. In addition, the purchasing code changes have also contributed to a more robust capital improvement budget process.

As we enter the next biennium budget process and are once again developing the capital improvement budget we request to continue the positive outcomes outlined above that are a direct result of Ordinance 2016-032. The 2019-2020 budget documents will contain a separate capital program showing specific capital expenditures for the budget cycle. This coincides with online access to all contracts and online quarterly project expenditure updates. To ensure this process continues we are proposing the removal of 3.08.135 Sunset Clause which will revert to the purchasing code language in place prior to the adoption of Ordinance 2016-032.

Please contact Tyler Schroeder at extension 5207, Brad Bennett 5325, or Jon Hutchings at extension 6205 for questions or concerns regarding this amendment.

Enc.: Proposed amendment to existing WCC Chapter 3.08- Removal of 3.08.135 Sunset Provision.
PROPOSED BY: County Executive
INTRODUCTION DATE: 05/22/18

ORDINANCE NO. 2018-__

AN ORDINANCE AMENDING WHATCOM COUNTY CODE 3.08, PURCHASING SYSTEM

WHEREAS, Washington State has updated the laws governing county purchasing activities; and

WHEREAS, Whatcom County has improved transparency and access to contracts and project budget reports by making them available on-line with the launch of a new public website;

WHEREAS, Whatcom County is unique in its limited purchasing thresholds allowed under Executive Authority when compared to other Washington State Charter Counties and local municipalities; and

WHEREAS, The County has achieved greater administrative efficiencies through the clarification and streamlining of purchasing processes approved in Ordinance 2016-032; and

WHEREAS, The purchasing system code changes have created greater transparency and public accountability to project management; and

WHEREAS, The County would like to maintain the purchasing code language from which streamlined project management successes have been attributed by removing Section 3.08.135 Sunset Provision from Chapter 3.08 Purchasing System;

WHEREAS, It is essential and in the best interest of Whatcom County Government and its citizens to keep work flow moving particularly during the short and busy construction season.
NOW, THEREFORE, BE IT ORDAINED BY THE WHATCOM COUNTY COUNCIL,
Whatcom County Code 3.08 is amended to read in its entirety, as set forth in the attached
Exhibit A:

ADOPTED this day of , 2018.

WHATCOM COUNTY COUNCIL
ATTEST:

WHATCOM COUNTY, WASHINGTON

Rud Browne, Council Chair

Dana Brown-Davis, Clerk of the Council

WHATCOM COUNTY EXECUTIVE
WHATCOM COUNTY, WASHINGTON

Jack Louws, County Executive

APPROVED AS TO FORM:

( ) Approved   ( ) Denied

Daniel L. Gibson
Civil Deputy Prosecutor

Date Signed: May 18, 2018

Page 2
EXHIBIT A
Chapter 3.08
PURCHASING SYSTEM

3.08.135 Sunset-provision.

The county council must renew this chapter by December 31, 2018, or the chapter will revert to the language in place on August 1, 2016. All contracts will be administered by the purchasing ordinance in place at the time the contract was signed. (Ord. 2016-032 Exh. A).
**WHATCOM COUNTY COUNCIL AGENDA BILL**

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**TITLE OF DOCUMENT:**
Ordinance establishing WCC 1.32, adopting rules re: disclosure of public records

**ATTACHMENTS:**
Ordinance

**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.)
Ordinance establishing Whatcom County Code 1.32, adopting rules regarding compliance with Chapter 42.56 RCW, Public Records Act

**COMMITTEE ACTION:**

**COUNCIL ACTION:**
5/22/2018: Introduced 7-0

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

ESTABLISHING WHATCOM COUNTY CODE 1.32, PUBLIC RECORDS

WHEREAS, the people of the State of Washington, by Initiative Measure No. 276 (approved November 7, 1972), declared public policy to be for the full access to public records concerning the conduct of government; and

WHEREAS, Initiative Measure No. 276, codified as a portion of Chapter 42.56 RCW, mandates broad disclosure of public records, subject to exception found in that law and elsewhere; and

WHEREAS, every local agency is required to adopt rules regarding compliance with Chapter 42.56 RCW; and

WHEREAS, the local procedures should be codified in a chapter of the Whatcom County Code.

NOW, THEREFORE, BE IT ORDAINED by the Whatcom County Council that Whatcom County Code Chapter 1.32, Public Records, is hereby established as outlined in Exhibit A to this ordinance.

BE IT FURTHER ORDAINED that if a section, subsection, paragraph, sentence, clause, or phrase of this ordinance is declared unconstitutional or invalid for any reason by any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this ordinance.

ADOPTED this ________ day of ______________, 2018.

ATTEST:

Dana Brown-Davis, Council Clerk

Rud Browne, Chairperson

APPROVED as to form:

Jack Louws, Executive

( ) Approved    ( ) Denied

Date: ____________________
Chapter 1.32
Public Records

1.32.010 Purpose.
The purpose of this chapter is to ensure compliance with the provisions of Chapter 42.56 RCW and other applicable law relating to disclosure of public records.

1.32.020 Construction.
The provisions of this chapter shall be liberally construed to provide public access to public records concerning the conduct of government, mindful of individuals’ privacy rights and the desirability of the efficient administration of government.

1.32.030 Disclosure of Public Records Required.
The County Council, the County Executive, and each County department, agency, division, board, office, commission, or other County entity shall make available for public inspection and copying all public records the disclosure of which is required by chapter 42.56 RCW or other law.

1.32.040 Public Records Officer.
(1) The County Executive shall appoint a public records officer who shall provide centralized oversight, guidance and leadership to fulfill public records request for the county.
(2) Subject to subsection (3) of this section, the public records officer shall:
   (a) Serve as a point contact for members of the public in requesting disclosure of public records, provided that requests may also be presented to County offices and departments.
   (b) Oversee compliance with the public disclosure requirements of this chapter; and
   (c) Adopt such policies and procedures as may be necessary to carry out the provisions of this chapter consistent with applicable laws.
(3) Final decision-making authority over public disclosure of records of the County Council shall be vested in the chairperson of the County Council or the chairperson’s designee.
(4) The public records officer shall publish his or her name and contact information in a way reasonably calculated to provide notice to the public, such as posting at the County’s primary place of business, posting on the County’s internet site, or including in County publications.
(5) The department head will establish and follow rules for records management in their department. The department head will designate a contact for public record requests.

1.32.050 Public Records Request.
(1) The public records officer shall provide a set of uniform public disclosure request forms for use throughout the executive and legislative branches of county government. All requests for public records shall be presented in writing to the public records officer or to the public records designee of the department, agency, division, board, office, commission, or other County entity believed to be responsible for the records being requested. The request shall include the following:
   (a) The name and contact information of the person making the request for the record;
   (b) Reasonable notice that the request is for the disclosure of public records pursuant to the public records act;
   (c) Identification of the requested records by reference to names, title, subject matter, and time frames, or other means adequate for the public disclosure officer or public records designee to locate the requested records; and
(2) Upon receiving a request, the public records officer or public records designee shall
document the date the request was received.
(3) Departments and offices of elected or appointed officials having records that have
customarily been open to public inspection and/or copying may, at the option of the heads
of such departments or offices, permit inspection and copying without requiring such
requests in writing.

1.32.060 Lists of Individuals.
In the case of a request for records that may contain a list of individuals, prior to receiving
the records, the person making the request must furnish an affidavit stating either:
(1) That he/she is not requesting the list for commercial purposes; or
(2) That he/she is specifically authorized or directed by law to obtain the list of individuals
for commercial purposes, and that identifies such law.

1.32.070 Review of Denial and Exhaustion of Administrative Remedies.
(1) Any person who objects to the initial denial or partial denial of a request for a public
record subject to chapter 42.56 RCW may petition in writing (including e-mail) to the public
records officer for a review of that decision. The petition shall include a copy of or
reasonably identify the decision denying the request.
(2) The public records officer shall promptly provide the petition and other relevant
information to the Prosecuting Attorney or his/her designee.
(3) The Prosecuting Attorney or designee shall consider the petition and affirm or reverse
the denial within two business days after the public records officer’s receipt of the petition,
or within such other time as the County and the requestor may mutually agree.
(4) Administrative remedies shall not be considered exhausted until the Prosecuting
Attorney or designee has made a written decision, or until the close of the second business
day following receipt of the written request for review of the action of the public records
officer, whichever occurs first.
(5) For purposes of the public disclosure laws, the action of the public records officer
becomes final only after the review conducted under this section has been completed. No
lawsuit to review the action taken, compel the production of a public record, or impose a
penalty, costs, or attorney fees shall be brought before the administrative remedies set out
in this section have been exhausted by the party seeking the record.

1.32.080 Charges for Records.
(1) No fee shall be charged for the inspection of public records under this chapter.
(2) No fee shall be charged for locating public documents and making them available for
copying.
(3) Pursuant to RCW 42.56.120 (2)(b), the County is not calculating all actual costs for
copying records because to do so would be unduly burdensome for the following reasons:
(a) The County does not have the resources to conduct a study to determine actual
copying costs for all of its records;
(b) To conduct such a study would interfere with other essential agency functions.
Therefore, the County shall charge fees for copies of records pursuant to the default
fees in RCW 42.56.120(2)(b) and (c).
(4) The County shall charge fees for customized services pursuant to RCW 42.56.120(3).
(5) In addition to the fees and charges in subsections (3) and (4) above, the department
may also require a deposit not to exceed ten percent of the estimated cost of providing
copies for a request. If the department makes a request available on a partial or installment
basis, the agency may charge for each part of the request as it is provided. If an installment
of a records request is not claimed or reviewed, the department is not obligated to fulfill the
balance of the request.
1.32.090 Exemptions.
Public records that are not subject to disclosure under state law, that are described as
exempt by chapter 42.56 RCW, or that are required to be withheld by any other law, are
exempt from disclosure under this chapter.

1.32.100 Index of Public Records.
(1) Whatcom County government is comprised of many departments, agencies, divisions,
boards, offices, and commissions which maintain separate records and incompatible record-
keeping systems. The County’s records are voluminous, diverse, complex and stored in
multiple locations and in multiple incompatible data bases. Therefore, it would be unduly
burdensome and costly to the taxpayers, and would substantially interfere with effective
and timely County operations, to develop an index of those records identified in
RCW 42.56.070(3).
(2) No County department, agency, division, board, office, commission, or other County
entity is required to maintain an index of public records conforming to the requirements of
RCW 42.56.070(3).
(3) Any index maintained by an individual department, agency, division, board, office,
commission, or other County entity shall be made available for public inspection and
copying unless exempt from disclosure or made confidential by law.
### Construction Contract Award – Marine Drive Levee Repair
Project No. 716006; Bid No. 18-18

#### ATTACHMENTS:
1. Bid Award Memo
2. Approval for Contract Award
3. Bid Tabulation
4. Low Bid Proposal
5. Pre-Award Bidder Responsibility Checklist

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

Request FCZD Board: 1) award a contract to Iverson Earth Works LLC for the Marine Drive Levee Repair in the amount of $197,549.42 including all taxes, 2) authorize the County Executive to execute a contract for this work, 3) approve the increase in the estimated capital cost of the Marine Drive Levee Repair from $200,000 to $300,000, and 4) authorize the County Executive to execute contracts up to the increased estimated capital cost.

#### COMMITTEE ACTION:

#### COUNCIL ACTION:

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

TO: Whatcom County Flood Control Zone District Board of Supervisors

THROUGH: Jon Hutchings, Public Works Director

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

RE: Marine Drive Levee Repair Project (Bid #18-14)

DATE: May 23, 2018

Attached for your review and signature is a construction contract award package for the Marine Drive Levee Repair Project. The package includes the Bid Award, Bid Tabulation, Low Bid Proposal, and Pre-Award Bidder Responsibility Checklist.

Requested Action
Public Works respectfully requests that the County Council, acting as the Flood Control Zone District Board of Supervisors (FCZD), authorize the County Executive to award the bid and execute a contract for the Marine Drive Levee Repair to the low bidder, Iverson Earth Works LLC, in the amount of $197,549.42 including all taxes.

Four (4) bid proposals for the project were received at the bid opening on Tuesday May 8, 2018.

Background and Purpose
The left (east) bank Nooksack River levee located upstream of the Marine Drive bridge northwest of Bellingham, WA has been damaged by flooding during winter storm events. The levee helps prevent frequent flooding of Slater Road. Water overtops the damaged levee and backs up on the floodplain causing frequent road closures of Slater Road. The Whatcom County Flood Control Zone District (FCZD) will repair approximately 1,075 feet of damaged levee during the summer 2018 construction season. The repaired levee will be seeded with grass and protected with erosion control fabric where needed. Some trees on the landward side of the levee will be removed to facilitate the levee repair work. Trees on the riverward side of the levee will remain in place for shade, edge habitat, and bank protection. Irrigation of the levee crest will occur from late July into October.

Funding Amount and Source
The 2018 FCZD budget includes $200,000 for this project as of a capital budget appropriation (Exhibit B to the 2018 FCZD budget resolution). While this construction contract, at $197,549.42, is within the appropriation, additional contracts for goods and services, including cultural resources monitoring and plants, are likely to drive costs over the appropriated amount. Section II of the budget resolution stipulates that the contracted costs cannot exceed 10% of the budget allocation. Due to the potential for the contracted costs to exceed $220,000, we are bringing this award forward for approval by the Board of Supervisors.
Additionally, to cover contract costs above $200,000 we would like to transfer $100,000 of unused capital budget appropriation from the High Creek project, to increase the capital budget appropriation for this project to $300,000. This will cover the cost increase without increasing the overall budget.

Over half of the increased costs are due to the Thanksgiving 2017 flood which caused additional damages to the levee and resulted in more engineering time and increased costs of construction and quantities of materials. Additionally, one of the permits issued requires a cultural resources monitor be present on-site during excavation. Finally, the site access was revised in the final design to improve safety for the traveling public and meet the needs of the property owner.

The Washington Department of Fish and Wildlife (WDFW) is the landowner and will also be contributing $30,000 towards the project construction.

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

In accordance with W.C.C. 3.08.090, I concur with this recommendation:

/Sarah Winger, Purchasing Coordinator/

05/23/2018  
Date

Encl.
APPROVAL FOR CONTRACT AWARD

Approval is hereby granted to award the Contract as follows:

PROJECT: Marine Drive Levee Repair

NO. 716006

BID NO. 18-18

TO: IVERSON EARTH WORKS LLC

In the amount of their bid proposal of $197,549.42 including all taxes.

Jack Louws
Whatcom County Executive
Acting on behalf of the Flood Control Zone
Board of Supervisors

Daniel L. Gibson
Chief Deputy Prosecutor

Date

05/17/18
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**SUB-TOTAL**

$181,639.54  $182,073.20  $185,611.20  $189,477.00  $233,794.00

$15,439.36  $15,476.22  $15,776.95  $16,105.55  $19,872.49

**TOTAL BID AMOUNT**

$197,078.90  $197,549.42  $201,388.15  $205,582.56  $253,666.49

**Bold Italics** DENOTES CORRECTED BID AMOUNTS

I hereby certify that the amounts tabulated herein are correct and accurately represent the amounts contained in the Engineer's Estimate and the respective bid proposals opened at 2:30 P.M., May 8, 2018, for Marine Drive Levee Repair (Bid No. 18-18), Project No. 716006.

Paola J. Harris, P.E.
Whatcom County River and Flood Manager

On this day personally appeared before me, Paula J. Harris, P.E., to me known to be the individual described in and who executed the within and foregoing instrument this 5th day of May, 2018.

Residing At: Bellingham
My Commission Expires: 6-30-2021
BID PROPOSAL

MARINE DRIVE LEVEE REPAIR PROJECT

PROJECT NO. 716006

BID NO. 18-18

DATE: May 8\textsuperscript{th} 2018

TO: Whatcom County Flood Control Zone District Board of Supervisors
    Whatcom County Courthouse
    311 Grand Avenue
    Bellingham, Washington 98225

Gentlepersons:

This certifies that the Undersigned: has examined the location of the project site and the conditions of work; and has carefully read and thoroughly understands the contract documents entitled: \textit{"Marine Drive Levee Repair Project, Project No. 716006"} Whatcom County, Washington, including the "Bid Procedures and Conditions," "Specifications and Conditions," "Contract Forms," "Construction Plans," and "Appendices," governing the work embraced in this project, and the method by which payment will be made for said work. The Undersigned hereby proposes to undertake and complete the work embraced in this project in accordance with said contract documents, and agrees to accept as payment for said work, the schedule of lump sum, force account and unit prices as set forth in the "Bid" below.

The Undersigned acknowledges that payment will be based on the actual work performed and material used as measured or provided for in accordance with the said contract documents, and that no additional compensation will be allowed for any taxes (except state sales tax) not included in each lump sum or unit price, and that the basis for payment will be the actual work performed and measured or provided for in accordance with the said contract documents.

The Undersigned certifies that it is not currently disqualified from bidding on any public works contract under RCW 39.06.010 or RCW 39.12.065(3).
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## Bid Proposal  
2018 Marine Drive Levee Repair (Bid No. 18-18)

<table>
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<tr>
<th>ITEM NO</th>
<th>UNIT MEASURE</th>
<th>ITEM DESCRIPTION</th>
<th>APPROX. QUANTITY</th>
<th>UNIT PRICE</th>
<th>EXTENDED PRICE</th>
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<tbody>
<tr>
<td>12</td>
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<td>HOG FUEL</td>
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<td>$12,000</td>
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</table>

| SUBTOTAL BID AMOUNT (Bid Items 1-12) | $182,073.20 |
| STATE SALES TAX @ 8.5%               | $15,476.42  |
| TOTAL BID AMOUNT (Bid Items Subtotal plus Sales Tax) | $197,549.62 |
NON-COLLUSION DECLARATION

MARINE DRIVE LEVEE REPAIR PROJECT

PROJECT NO. 716006

BID NO. 18-18

I, by signing the proposal, hereby declare, under penalty of perjury under the laws of the United States that the following statements are true and correct:

1. That the undersigned person(s), firm, association or corporation has (have) not, either directly or indirectly, entered into any agreement, participated in any collusion, or otherwise taken any action in restraint of free competitive bidding in connection with the project for which this proposal is submitted.

2. That by signing the signature page of this proposal, I am deemed to have signed and have agreed to the provisions of this declaration.

NOTICE TO ALL BIDDERS

To report bid rigging activities call:

1-800-424-9071

The U.S. Department of Transportation (USDOT) operates the above toll free "hotline" Monday through Friday, 8:00 a.m. to 5:00 p.m. Eastern Time. Anyone with knowledge of possible bid rigging, bidder collusion, or other fraudulent activities should use the "hotline" to report such activities.

The "hotline" is part of USDOT's continuing effort to identify and investigate highway construction contract fraud and abuse, and is operated under the direction of the USDOT Inspector General. All information will be treated confidentially and caller anonymity will be respected.
BIDDER IDENTIFICATION

The name of the Bidder submitting this proposal, the address and phone number to which all communications concerned with this proposal shall be made, and the number which has been assigned indicating the Bidder is licensed to do business in the State of Washington are as follows:

Firm Name: Iversen Earth Works LLC
Address: 2330 Birch Bay Lynden Rd. Culver WA 70240
Telephone: (360) 366-3476

Contractor’s WA Registration Number: Iversen 02-068
Contractor’s WA UBI Number: 601 840 560
Contractor’s WA Employment Security Department Number: 034928 009
Contractor’s WA Excise Tax Registration Number: 601 840 560

The Firm submitting this proposal is a: 

- Sole Proprietorship
- Partnership
- Corporation/LLC

The names and titles of the principal officers of the corporation submitting this proposal, or of the partnership, or of all persons interested in this proposal as principals are as follows:

Tom Iversen 
Name (printed) 
Owner/Manager 
Title 

Name (printed) 
Title 

Name (printed) 
Title 

Name (printed) 
Title 

NOTE: Signatures of this proposal must be identified above. Failure to identify the Signatories will be cause for considering the proposal irregular and for subsequent rejection of the bid.
BID PROPOSAL SIGNATURE AND ADDENDUM ACKNOWLEDGMENT

The bidder is hereby advised that by signature of this proposal he/she is deemed to have acknowledged all requirements and signed all certificates contained herein. The undersigned hereby agrees to pay labor not less than the prevailing rates of wages or less than the hourly minimum rate of wages as specified in the Specifications and Conditions for this project.

Bid Proposal Deposit Options:

CASHIER'S CHECK ☐ DOLLARS ($______________________) PAYABLE TO WHATCOM COUNTY FLOOD CONTROL ZONE DISTRICT

CERTIFIED CHECK ☐ DOLLARS ($______________________) PAYABLE TO WHATCOM COUNTY FLOOD CONTROL ZONE DISTRICT

PROPOSAL BOND ☐ IN THE AMOUNT OF 5% OF THE BID.

Receipt is hereby acknowledged by addendum(s) No.(s) ___ 1. ____ & ____

SIGNATURE OF AUTHORIZED OFFICIAL(S)

(Proposal must be signed)

[Signature] _______________

STATE OF WASHINGTON )
COUNTY OF Whatcom ) ss.

On this ___ day of May __________, 2018, before me personally appeared

[Signature] _______________

Tom Iversen, who is personally known to me to be the person described in and who executed the above instrument and who acknowledged to me the act of signing thereof.

[Signature] _______________

NOTARY PUBLIC, in and for the State of Washington, residing at _________. My Commission Expires: ________________

This proposal form is not transferable and any alteration of the firm's name or execution hereon without prior permission from Whatcom County Flood Control Zone District will be cause for considering the proposal irregular and for subsequent rejection of the bid.

[Stamp] ________________

STATE OF WASHINGTON

15
BID BOND

KNOW ALL MEN BY THESE PRESENTS, that we, Iverson Earth Works, LLC of Custer, WA as principal, and Merchants Bonding Company (Mutual) a corporation duly organized under the laws of the State of Iowa and having its principal place of business at Kirkland in the State of Washington, as Surety, are held and firmly bound unto Whatcom County Flood Control Zone District a quasi-municipal Corporation in the State of Washington, in the full and penal sum of five percent (5%) of the total bid amount appearing on the bid proposal of said principal for the work hereinafter described, for the payment of which, well and truly to be made, we bind our heirs, executors, administrators and assigns, and successors and assigns, jointly and severally, firmly by these presents.

The condition of this bond is such that, whereas, the principal herein is herewith submitting his or its bid proposal for “Marine Drive Levee Repair Project, No. 716006, Bid No 18-18.”, bid proposal, by reference thereto, being hereby made a part hereof.

NOW, THEREFORE, if the said bid proposal submitted by the said PRINCIPAL be accepted, and the contract be awarded to said PRINCIPAL, and if said PRINCIPAL shall duly make and enter into and execute said contract and shall furnish the performance bond as required by the bidding and contract documents within a period of ten (10) days from and after said award, exclusive of the day of such award, then its obligation to pay the above-mentioned penal sum as liquidated damages shall be null and void, otherwise it shall remain and be in full force and effect.

SIGNED AND SEALED this 8th day of May, 2018.

Iverson Earth Works, LLC
Principal
By

(Mark Iverson) (Seal)

Merchants Bonding Company (Mutual)
Surety
By

Attorney-In-Fact Patti White

The Attorney-in-fact, who executes this bond on behalf of the surety company, must attach a copy of his power-of-attorney as evidence of his authority.
POWER OF ATTORNEY

Know All Persons By These Presents, that MERCHANTS BONDING COMPANY (MUTUAL) and MERCHANTS NATIONAL BONDING, INC., both being corporations of the State of Iowa (herein collectively called the "Companies") do hereby make, constitute and appoint, individually,

Amanda Ivey; Andy D Prill; Annette Troseth; Benjamin Wells; Carl M Lusted III; Carol Lowell; Chad M Epple; Deborah L Buss; Jeff Barrom; Jennifer Schultz; Jim S Kuch; Jim W Doyle; Julie M Glover; Larry A Petersen; Michael A Murphy; Pati White; S M Scott; Steve Wagner; Ted Baran; Teresa A Glombecki; Theresa A Lamb

their true and lawful Attorney(s)-in-Fact, to sign its name as surety(ies) and to execute, seal and acknowledge any and all bonds, undertakings, contracts and other written instruments in the nature thereof, on behalf of the Companies in their business of guaranteeing the fidelity of persons, guaranteeing the performance of contracts and executing or guaranteeing bonds and undertakings required or permitted in any actions or proceedings allowed by law.

This Power-of-Attorney is granted and is signed and sealed by facsimile under and by authority of the following By-Laws adopted by the Board of Directors of Merchants Bonding Company (Mutual) on April 23, 2011 and amended August 14, 2015 and adopted by the Board of Directors of Merchants National Bonding, Inc., on October 16, 2015.

"The President, Secretary, Treasurer, or any Assistant Treasurer or any Assistant Secretary or any Vice President shall have power and authority to appoint Attorneys-in-Fact, and to authorize them to execute on behalf of the Company, and attach the seal of the Company thereto, bonds and undertakings, recognizances, contracts of indemnity and other writings obligatory in the nature thereof."

"The signature of any authorized officer and the seal of the Company may be affixed by facsimile or electronic transmission to any Power of Attorney or Certification thereof authorizing the execution and delivery of any bond, undertaking, recognizance, or other suretyship obligations of the Company, and such signature and seal when so used shall have the same force and effect as though manually fixed."

In connection with obligations in favor of the Florida Department of Transportation only, it is agreed that the power and authority hereby given to the Attorney-in-Fact includes any and all consents for the release of retained percentages and/or final estimates on engineering and construction contracts required by the State of Florida Department of Transportation. It is fully understood that consenting to the State of Florida Department of Transportation making payment of the final estimate to the Contractor and/or its assignee, shall not relieve this surety company of any of its obligations under its bond.

In connection with obligations in favor of the Kentucky Department of Highways only, it is agreed that the power and authority hereby given to the Attorney-in-Fact cannot be modified or revoked unless prior written notice of such intent has been given to the Commissioner-Department of Highways of the Commonwealth of Kentucky at least thirty (30) days prior to the modification or revocation.

In Witness Whereof, the Companies have caused this instrument to be signed and sealed this 9th day of February, 2018

STATE OF IOWA
COUNTY OF DALLAS as
On this this 9th day of February, 2018, before me appeared Larry Taylor, to me personally known, who being by me duly sworn did say that he is President of MERCHANTS BONDING COMPANY (MUTUAL) and MERCHANTS NATIONAL BONDING, INC.; and that the seals affixed to the foregoing instrument are the Corporate Seals of the Companies; and that the said instrument was signed and sealed in behalf of the Companies by authority of their respective Boards of Directors.

ALICIA K. GRAM
Commission Number 757430
My Commission Expires
April 1, 2020

(Expiration of notary's commission
does not invalidate this instrument)

I, William Warner, Jr., Secretary of MERCHANTS BONDING COMPANY (MUTUAL) and MERCHANTS NATIONAL BONDING, INC., do hereby certify that the above and foregoing is a true and correct copy of the POWER-OF-ATTORNEY executed by said Companies, which is still in full force and effect and has not been amended or revoked.

In Witness Whereof, I have hereunto set my hand and affixed the seal of the Companies on this 9th day of May, 2018.

POA 0018 (3/17)
Certification of Compliance with Wage Payment Statutes

The bidder hereby certifies that, within the three-year period immediately preceding the bid solicitation date April 18, 2018, the bidder is not a "willful" violator, as defined in RCW 49.48.082, of any provision of chapters 49.46, 49.48, or 49.52 RCW, as determined by a final and binding citation and notice of assessment issued by the Department of Labor and Industries or through a civil judgment entered by a court of limited or general jurisdiction.

I certify under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

[Signature]

Bidder’s Business Name

Tom Iversen

Signature of Authorized Official*

Tom Iversen

Printed Name

Owner/Manager

Date

City

State

Check One:

Sole Proprietorship □  Partnership □  Joint Venture □  Corporation □  LLC

State of Incorporation, or if not a corporation, State where business entity was formed:

Washington

If a co-partnership, give firm name under which business is transacted:

* If a corporation, proposal must be executed in the corporate name by the president or vice-president (or any other corporate officer accompanied by evidence of authority to sign). If a co-partnership, proposal must be executed by a partner.
May 3, 2018

Whatcom County Bid 18-18
ADDENDUM NO. 1
Marine Drive Levee Repair Project
Project No. 716006

ATTENTION:

This Addendum No. 1 consists of a total of 3 pages, including this page.

All bidders and plan holders are hereby notified that the contract documents for the subject project have been amended as hereinafter set forth. The following changes, additions, and/or deletions are hereby made part of the contract documents and plans.

SPECIAL PROVISIONS

1. Page 100, Lines 14-27, are revised to read the following:

2-03 Roadway Excavation and Embankment

2-03.1 Description

(*****)

1. The Work described in this Section, regardless of the nature or type of the materials encountered, includes the following as shown on the Plans (1) backfilling depressions resulting from clearing and grubbing operations using in-place levee material as available; (2) grading and compacting the in-place levee material to create a smooth surface on the levee crest and backslope; (3) importing, placing, grading, and compacting the imported levee select fill on the levee crest and backslope to reestablish original levee dimensions; (4) excavating trenches for geotextile fabric installation as shown on the Plans, (5) placing and grading the imported Topsoil Type A on all surfaces within the clearing and grubbing limits, (6) grading and compacting existing open area adjacent to the Marine Drive bridge, (7) restoring temporary access road on levee between the two repair segments (approximately 325 feet) to conditions prior to Project construction, and (8) performing any other earthwork tasks necessary to complete the Work.

2. Page 102, 3rd Paragraph, Lines 22 through 24, are revised to read the following:

2-03.3(14) Embankment Construction
Topsoil Type A [8-02.3(4)A] shall be imported, placed, and graded on all disturbed surfaces within the clearing and grubbing limits at a depth of 3 inches with the exception of permanent access roads and paths as designated by the Engineer or Landowner.

3. **Page 106, Lines 14 through 16.** are revised to read the following:

   **2-03.4 Measurement**

   "Topsoil Type A Import" is measured as cubic yards of imported Topsoil Type A placed and graded as shown on the Plans.

4. **Page 106, Lines 36 through 40.** are revised to read the following:

   **2-03.5 Payment**

   "Topsoil Type A Import" payment will be made per the unit Contract price per cubic yard and shall be full compensation for furnishing all labor, tools, equipment, and materials required to place topsoil material, including but not limited to furnishing, hauling, placing, and grading topsoil material.

5. **Page 109, newly inserted section after Line 17.** shall read the following

   **8-02.3(4)A Topsoil Type A**

   Section 8-02.3(4)A is supplemented with the following:

   "Topsoil Type A material shall have the following properties:

   Material shall be free of roots, sticks, or angular materials

   Sand: greater than 0.05 mm to less than 2 mm – maximum of 60%

   Silt: greater than 0.002 mm to less than 0.05 mm – maximum of 35%

   Clay: less than 0.002 mm – maximum of 15%

   Organic Content: Percent of dry weight – 8 to 12%

   Acidity (pH) – 5.0 to 6.5

   Clay and Silt combined – no greater than 40%

   Soils shall have pH range of 5.0 to 6.5 with dolomite limestone added as necessary to attain this range. Contractors shall send minimum of one (1) representative sample of Topsoil Type A to the Contracting Agency for soil testing a minimum of 7 working days prior to delivery to project site.

6. The Engineers estimate has been revised to $175,000 - $200,000.
PLAN

1. Plans are unchanged. See Sheet 5, Construction Note 14 for installation of Imported Topsoil.

BID PROPOSAL

1. Please replace Page 11 with the revised Page 11B (included below) which includes the following revisions:

   a. Revise the item description of bid item 5 from "Topsoil Type B" to "Topsoil Type A Import".

NOTE: Acknowledgement of the receipt of this addendum is required under “Bid Proposal Signature and Addendum Acknowledgment” on page 15 of the Contract Documents in order for the bid proposal to be considered complete. Failure to acknowledge receipt of this addendum may become cause for rejection of the bid.

END OF ADDENDUM NO. 1 – WHATCOM COUNTY BID #18-18
<table>
<thead>
<tr>
<th>ITEM NO</th>
<th>UNIT MEASURE</th>
<th>ITEM DESCRIPTION</th>
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<th>UNIT PRICE</th>
<th>EXTENDED PRICE</th>
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<td>4</td>
<td>TON</td>
<td>LEVEE SELECT FILL IMPORT</td>
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<tr>
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<td>GRASS SEED</td>
<td>250</td>
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11B
# Pre-Award Bidder Responsibility Checklist

## Project Information

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<td>On-Call Rates for Construction Equipment with Operator, Project Labor, and Temporary Traffic Control</td>
<td>04/24/18</td>
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## Contractor Name, Address & Phone Number

| Tom Iverson, Iverson Earthworks LLC  
2330 Birch Bay Lynden Rd, Custer, WA 98240 | Phone Number: | (360) 366-3476 |

## Labor & Industries

| Contractor Registration  
https://secure.lni.wa.gov/verify/  
License Number: | Account Active: |  
IVERSEW02L8 | Yes ☒ No ☐ |
| Effective Date (must be effective on or before Bid Submittal Deadline): | Expiration Date: |  
06/28/1998 | 10/18/2018 |
| Certificate of Workers Compensation: | Account Current: |  
485,309-01 | Yes ☒ No ☐ |

## Department of Revenue

| State Excise Tax Registration Number (Current UBI)  
https://secure.dor.wa.gov/gteuauthn/_#/1  
Tax Registration Number: | Account Status: |  
601-840-566 | Active ☒ Closed ☐ |

## Employment Security Department Number

| Has Bidder provided account number on the Bid Form? |  
034928 00 9 | Yes ☒ No ☐ |

## Lists & Links

| Labor & Industries Debarred Contractors List  
https://secure.lni.wa.gov/verify/  
Is the Bidder listed on the "Contractors Not Allowed to Bid" (Debarred) List? |  
Yes ☐ No ☒ |
| Labor & Industries Contractor Strike List  
https://secure.lni.wa.gov/verify/  
Is Bidder on the "Contractor Strike List"? |  
Yes ☐ No ☒ |
| SAM (System for Award Management) *****Federal Contracts Only*****  
https://www.sam.gov/portal/SAM/#1  
Does Contractor have any Active Exclusions? |  
Yes ☐ No ☒ |

## Checked By

| Name of Employee: | Date: |
| M. Jones | 05/15/18 |
**WHATCOM COUNTY COUNCIL AGENDA BILL**

<table>
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<th>Date Received in Council Office</th>
<th>Agenda Date</th>
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<td>6/5/18</td>
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<td>Dept. Head:</td>
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<td>Executive:</td>
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<td>5/29/18</td>
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</table>

**TITLE OF DOCUMENT:** Amendment to 2017-2019 Subrecipient Agreement: Whatcom County Flood Control Zone District and Whatcom Conservation District: PIC Program Non-Dairy Technical Assistance and Data Coordination

**ATTACHMENTS:**
Memo
Amendment

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

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

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

**Requested Date:**

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

The purpose of this amendment is to provide additional funding and to extend the period of performance to support the Whatcom County Pollution Identification and Correction (PIC) Program. This includes funding for WCD staff and supplies for non-dairy agricultural technical assistance, data coordination, and small farm workshops.

**COMMITTEE ACTION:**

**COUNCIL ACTION:**

**Related County Contract #:**
201706029, 201705027-1

**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

MAY 24, 2018

TO: The Honorable Jack Louws, County Executive

THROUGH: Jon Hutchings, Public Works Director

FROM: Gary Stoyka, Natural Resources Manager

DATE: May 15, 2018

RE: Amendment to Subrecipient Agreement between Whatcom County Flood Control Zone District and Whatcom Conservation District

Enclosed are two (2) originals of Amendment to the 2017-2019 Subrecipient Agreement between Whatcom County Flood Control Zone District (FCZD) and Whatcom Conservation District (WCD) for the Pollution Identification and Correction (PIC) Program for your review and signature.

Requested Action
Public Works respectfully requests that the County Executive, following approval by the FCZD Board of Supervisors, amend the subrecipient agreement with the WCD for support of the non-dairy agriculture technical assistance and data coordination components of the PIC Program.

Background and Purpose
In June 2017, Whatcom County FZCD received grant funding from the Washington State Department of Health (DOH Interagency Agreement N22509) to enhance the Whatcom County PIC program which includes funding for WCD staff for non-dairy agriculture technical assistance and data coordination in June 2017. In June 2017, the FZCD entered a subrecipient agreement with the WCD for technical assistance for non-dairy agriculture and data coordination to support the PIC program. The grant agreement with DOH was amended in April 2018 to provide additional funding for the PIC Program, including additional non-dairy technical assistance, data coordination, and small farm outreach. The purpose of this amendment to the subrecipient agreement is to provide additional funding and to extend the period of performance for WCD staff to implement these additional activities.

Funding Amount and Source
This amendment is in the amount of $181,700.00 for a total of $535,066.00. This subrecipient agreement is fully funded by the Washington State Department of Health grant agreement GVL22509-1 (previously grant agreement N22509) with the Whatcom County FCZD for the Whatcom County PIC Program (WCC 201705027-1).

Please contact Erika Douglas at extension 6294, if you have any questions or concerns regarding the terms of this agreement.

Encl.
<table>
<thead>
<tr>
<th>Originating Department:</th>
<th>Public Works</th>
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<tbody>
<tr>
<td>Division/Program: (i.e. Dept. Division and Program)</td>
<td>Natural Resources- PIC Program</td>
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<tr>
<td>Contract or Grant Administrator:</td>
<td>Erika Douglas</td>
</tr>
<tr>
<td>Contractor’s / Agency Name:</td>
<td>Whatcom Conservation District</td>
</tr>
</tbody>
</table>

**Is this a New Contract?** Yes ☑ No ☐

If not, is this an Amendment or Renewal to an Existing Contract? Yes ☑ No ☐

If Amendment or Renewal, (per WCC 3.08.100 (a)) Original Contract #: 201706029

**Does contract require Council Approval?** Yes ☑ No ☐

If No, include WCC: (see Whatcom County Codes 3.06.010, 3.08.090 and 3.08.100)

**Is this a grant agreement?** Yes ☑ No ☐

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

**Is this contract grant funded?** Yes ☑ No ☐

If yes, Whatcom County grant contract number(s): 201705027-1

**Is this contract the result of a RFP or Bid process?**

Contract

Cost Center: 813002

**Is this agreement excluded from E-Verify?** No ☑ Yes ☐

If no, include Attachment D Contractor Declaration form.

If YES, indicate exclusion(s) below:

☐ Professional services agreement for certified/licensed professional.

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

☐ Contract work is for less than 120 days.

☒ Interlocal Agreement (between Governments).

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

☐ Work related subcontract less than $25,000.

☐ Public Works - Local Agency/Federally Funded FHWA.

| Contract Amount: (sum of original contract amount and any prior amendments): | Council approval required for; all property leases, contracts or bid awards exceeding $40,000, and professional service contract amendments that have an increase greater than $10,000 or 10% of contract amount, whichever is greater, **except when:**
| $ 353,366.00 | 1. Exercising an option contained in a contract previously approved by the council.
| $ 181,700.00 | 2. Contract is for design, construction, r-o-w acquisition, prof. services, or other capital costs approved by council in a capital budget appropriation ordinance.
| $ 535,066.00 | 3. Bid or award is for supplies.
| | 4. Equipment is included in Exhibit “B” of the Budget Ordinance.
| | 5. Contract is for manufacturer’s technical support and hardware maintenance of electronic systems and/or technical support and software maintenance from the developer of proprietary software currently used by Whatcom County.

| This Amendment Amount: | 4/1/17-6/30/19 | Expiration Date: 6/30/19 |
| $ 181,700.00 | Date: 5/15/18 |
| Total Amended Amount: | Date: 5/16/18 |
| $ 535,066.00 | Date: 5/23/18 |
| | Date: 5/24/18 |

**Summary of Scope:** The purpose of this amendment is to provide additional funding and to extend the period of performance to support the Whatcom County Pollution Identification and Correction (PIC) Program. This includes funding for WCD staff and supplies for non-dairy agricultural technical assistance, data coordination, and small farm workshops.

**Term of Contract:**

<table>
<thead>
<tr>
<th>Contract Routing:</th>
<th>Date:</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Prepared by: ED</td>
<td>5/15/18</td>
</tr>
<tr>
<td>2. Attorney signoff: Daniel L. Gibson</td>
<td>05/16/18</td>
</tr>
<tr>
<td>3. AS Finance reviewed: M Caldwell</td>
<td>5/16/18</td>
</tr>
<tr>
<td>4. IT reviewed (if IT related):</td>
<td></td>
</tr>
<tr>
<td>5. Contractor signed:</td>
<td>5.23.18</td>
</tr>
<tr>
<td>6. Submitted to Exec.:</td>
<td>5.24.18</td>
</tr>
<tr>
<td>7. Council approved (if necessary):</td>
<td></td>
</tr>
<tr>
<td>8. Executive signed:</td>
<td></td>
</tr>
<tr>
<td>9. Original to Council:</td>
<td></td>
</tr>
</tbody>
</table>
AMENDMENT TO 2017-2019 SUBRECIPIENT AGREEMENT
WHATCOM COUNTY FLOOD CONTROL ZONE DISTRICT - WHATCOM CONSERVATION DISTRICT
Pollution Identification and Correction (PIC) Program
Non-Dairy Agriculture Technical Assistance and Data Coordination

WHEREAS, Whatcom County Flood Control Zone District (County) and the Whatcom Conservation District (WCD or Subrecipient), entered a subrecipient agreement in June 2017 (WCC 201706029) wherein Whatcom County provided funding to the WCD to provide technical assistance for the non-dairy agriculture best management practices component of the Whatcom County Pollution Identification and Correction (PIC) program to the mutual advantage of each jurisdiction; and,

WHEREAS, Whatcom County received grant funding from the Washington State Department of Health (DOH Interagency Agreement N22509) to enhance the Whatcom County PIC program which includes funding for WCD staff for non-dairy agriculture technical assistance and data coordination; and

WHEREAS, Whatcom County received a grant amendment from the Washington State Department of Health (DOH Interagency Agreement GVL22509-1, originally N22509; WCC 201705027-1) to provide additional funding and to extend the period of performance for the Whatcom County PIC Program. This includes funding for WCD staff for non-dairy agriculture technical assistance, data coordination, and small farm workshops; and

WHEREAS, it is in the best interest of each party to enter into this Amendment of the Subrecipient Agreement.

NOW THEREFORE, the WCD and County agree to the amendments as follows:

1. Extend the term of this contract until June 30, 2019. This contract will be effective for services performed from April 1, 2017 through June 30, 2019.

2. Replace all references to DOH Interagency Agreement N22509 to DOH Interagency Agreement GVL22509.

3. Add additional funding of $181,700 to provide total funding of $535,066.


5. All other terms and conditions remain unchanged.

6. The effective date of this amendment is upon execution.
IN WITNESS WHEREOF, the parties have signed this Agreement this _______ day of __________________, 2017.

WHATCOM CONSERVATION DISTRICT
By __________________________
Larry Helm, WCD Chair

Approved as to form:
Office of the WCD Attorney

WHATCOM COUNTY FLOOD CONTROL ZONE DISTRICT
By __________________________
Jack Louws, County Executive

Approved as to form:
Whatcom County Chief Prosecuting Attorney

Director of Public Works

STATE OF WASHINGTON    
COUNTY OF WHATCOM    ) ss.

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

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

STATE OF WASHINGTON    
COUNTY OF WHATCOM    ) ss.

On this 25th day of May, 2018, before me personally appeared Larry Helm, to me known to be the Chair of the Whatcom Conservation District and who executed the above instrument and who acknowledged to me the act of signing and sealing thereof.

__________________________
NOTARY PUBLIC in and for the State of Washington, residing at Lynnwood.
My commission expires: 05/08/2024

Page 2 of 19
EXHIBIT A-1 - SCOPE OF WORK
Pollution Identification and Correction (PIC) Program
Non-Dairy Agriculture Technical Assistance and Data Coordination

PROJECT DESCRIPTION
The purpose of this subrecipient agreement is to provide technical assistance to landowners with non-dairy agricultural activities and coordinate data in support of the Whatcom County PIC Program and Whatcom Clean Water Program. In general the categories of activities consist of program administration, site-specific technical assistance for non-dairy agricultural operations, small farm workshops, and data coordination for the Whatcom Clean Water Program (WCWP). Details of each of these activities are provided below.

Task 1: Program Administration
WCD will track and report participation in community outreach and engagement efforts, landowner contacts and technical assistance, small farm workshop development and hosting, and data coordination provided under this program.

Deliverables and Timelines:
- Monthly invoices and summaries of landowner/operator contacts. Monthly summaries will include a list of landowners/operators in PIC focus areas that have been contacted, landowners/operators in PIC focus areas participating in the program, and the corresponding parcels owned or operated. Monthly summaries will also include a summary small farm workshops and data coordination activities completed.
- Quarterly progress reports-Technical Assistance. Quarterly reports will include number of landowners/operators contacted, number of landowners/operators participating in the program, number and type of pollution sources identified, number of farm plans completed, and number of BMPs installed. This information will be summarized by watershed focus areas.
- Quarterly progress reports- Data Coordination. Quarterly reports for data coordination will begin in the fourth quarter of 2017 and will summarize progress on the water quality database, data entered, and how data queries and reports are being used for community outreach and source tracking.
- Quarterly progress report- Small Farm Workshops. Quarterly reports for small farm workshops will begin the second quarter of 2018 and will summarize small farm workshops held, topics covered, and a record of participants to support implementation of the small farm improvement rebate program.
- Quarterly reports shall be submitted by the following dates:
  - June 30, September 30*, and December 30, 2017
  - March 30*, June 30, September 30*, and December 30, 2018
  - March 30*, June 30, 2019*

  * Dates in bold with asterisks are required for grant FEATs reports

Task 2: Non-Dairy Agriculture Technical Assistance
- Landowners with non-dairy agricultural operations within PIC areas are encouraged to work with the WCD through PIC landowner contacts, WID landowner contacts, PDS or Department of Ecology technical assistance or compliance recommendations. Voluntary walk-ins are also eligible to receive WCD technical assistance through this program to improve and protect water quality.
- Introductory letters from the County Executive and County Council will be sent to landowners/operators/residents in the PIC focus areas and/or PIC annex areas informing
landowners of water quality issues, potential sources of fecal coliform bacteria, community successes and the technical and financial assistance available through the PIC program.

- WCPW and WCD staff will conduct windshield surveys of PIC focus areas to identify parcels with potential non-dairy agricultural operations.
- WCPW staff will generate and prioritize a list of parcels with potential non-dairy agricultural activities in PIC focus areas and/or PIC annex areas and provide this mailing list to WCD. Approximately one week following the introductory letter, WCPW will send the first in a series of outreach letters and/or materials to landowners with potential non-dairy agricultural activities (as described in Flow Chart B-1). When referring landowners to WCD for assistance in either the PIC or CAO context, WCD will be identified as a local, non-regulatory agency that provides assistance to landowners on a voluntary basis. WCD will initiate offers of technical assistance through invites to targeted outreach events and BMP and incentive postcards (or other methods developed to overcome identified barriers) to landowners/operators/residents of parcels in the mailing list. Initial contact will occur within approximately one week of issuance of the first letter from WCPW sent to landowners (per Flow Chart B-1). WCD will continue offers of technical assistance throughout the following two month period of subsequent letters sent by WCPW as described in Flow Charts A & B-1.

- Through direct landowner/operator/resident contacts, WCD staff will offer free technical assistance to landowners/operators/residents in the form of confidential risk assessments, farm plan development, and guidance in the implementation of BMPs. BMP incentives, rebates, small grants and other cost-share options will be described and offered as available.
- WCD will offer technical assistance for temporary fixes to problems identified through the risk assessment that require immediate attention (e.g. animal access to creek, discharge or potential discharge of manure to creek or ditch). Permanent fixes for these problems will be addressed through development and implementation of a farm plan.
- Whatcom County will exercise prosecutorial discretion in withholding enforcement action for violations of the Critical Areas Ordinance or referral of landowners to other agencies for enforcement so long as the landowner is demonstrating good faith in working with the WCD to correct pollution problems.
- WCPW and WCD staff will meet bi-monthly to discuss any adaptations needed to improve the process for landowner contacts. WCPW and WCD technical assistance staff will also participate in bi-weekly WCPW field staff coordination meetings.
- WCPW and WCD will continue meeting with the North Lynden Watershed Improvement District (WID) to improve and adapt efforts to engage landowners in identifying and correcting pollution sources. WCPW and WCD will work with other WIDs to engage landowners as well.

**Deliverables and Timelines:**

- Monthly summaries of landowner/operator contacts shall be submitted to the County by the tenth day of the following month. Monthly summaries will include a list of landowners/operators/residents that have been contacted, landowners/operators/residents participating in the program, and the corresponding parcels owned or operated.
- Progress will be tracked through quarterly reports described above including number of landowners/operators/residents contacted, number of landowners/operators/residents participating in the program, number and type of pollution sources identified, number of farm plans completed, number of BMPs planned and installed. This information will be aggregated by watershed focus area.
- A minimum of 150 landowners/operators/residents in the Drayton Harbor, Portage Bay, or Lummi Bay watersheds with non-dairy agricultural operations will be contacted through the PIC program letters during the first year and 250 in the second year of the two-year project. The goal of this program is 50% of the contacted landowners/operators/residents (or 200
landowners/operators/residents contacts described in the first bullet) will receive site risk assessments and technical assistance to evaluate site conditions. Actions will be initiated to reduce bacteria pollution risk with six months (implement BMPs) of the risk assessment as seasonally feasible.

- Reports on WCD contacts and technical assistance will be included in the quarterly reports described in Task 1.

**Task 3: Data Coordination**

- The data coordinator will support the efforts of the Whatcom Clean Water Program (WCWP). Water quality data collected by WCWP partners will be compiled, entered and stored in a comprehensive database, and analyzed to support efforts to improve water quality in Whatcom County.
- The data coordinator will assist WCWP partners and community groups with data queries to support community outreach and source tracking efforts.

**Deliverables and Timelines:**
- Quarterly progress reports describing data management activities as described in Task 1.

**Task 4: Small Farm Workshops**

- WCD will coordinate and host at least four small farm workshops focused on topics relevant to the types of animals identified in PIC focus area windshield surveys and/or seasonal management practices that would provide water quality protection in PIC focus areas.
- WCD will provide information about incentives, rebates, small grant and other financial assistance programs at workshops.
- WCD will provide records of landowners/operators/residents that participate in small farm workshops to WCPW to assist with implementation of the small farm improvement rebate program.

**Deliverables and Timelines:**
- Quarterly progress reports describing small farm workshops as described in Task 1.
- Record of participants for each small farm workshop for rebate program.
Flow Chart A
Broad-Scale Description of Landowner Contacts through Whatcom County PIC Program

Whatcom County Pollution Identification and Correction (PIC) Program
Community Solutions for Clean Water

- Routine Water Quality Monitoring
- Identify Focus Areas
- Conduct Recon Study of Drainage (GIS, windshed survey, segmented monitoring)
- Identify Priority Parcels through Water Quality Data and Recon Study
- Dairy: WCPW Notifies WSDA
- Non-Dairy: WCPW Refers Landowner to WCD

- Evidence of Livestock
- Evidence of Septic
- Evidence of Stormwater Outfall

- WCPW Notifies Health
- Health Reviews ROSS Status
- Current ROSS; No Problems
- No Current ROSS

- WCPW Notifies NPOES Jurisdiction

- WCPW Provides Technical and Financial Ass
- No Response: WCPW Attempts Landowner Contact

- BMAP Installation During 9 Month Period
- Response: Problems Corrected
- No Response: Referral for Compliance / Enforcement (PDS, DCE)

- Health Contacts Landowner with 3 Letters (Tech and Financial Assistance Available)
- Responsive: No Problems or Problems Corrected
- No Response: Compliance / Enforcement (Health)

- Landowner is in Compliance and Protecting Water Quality
EXHIBIT B-1: BUDGET
Pollution Identification and Correction (PIC) Program
Non-Dairy Agriculture Technical Assistance and Data Coordination

As consideration for the services provided pursuant to the Scope of Work, the County agrees to compensate the District in an amount not to exceed the contract amount of $535,066 with additional details provided below. The budget for this agreement is provided through federal funding from DOH Grant Agreement GVL22509-1 (previously N22509). Federal funding is provided by US Environmental Protection Agency federal grant award #PC01J18001-0, DOH Puget Sound Restoration, CFDA# 66.123, CFDA Title: Puget Sound Action Agenda: Technical Investigations and Implementation Assistance Program. Requests for payment and reimbursement by the County will coincide and be based on the successful completion of services described in Exhibit A-1.

Requests for reimbursement should contain the name of the employee, title, dates of service, number of hours, individual hourly billing rate, total by employee and grand total. Personnel time shall be supported by signed employee timesheets that account for the total activity of the employee including time spent on this grant-funded project. In addition, supporting documentation for the hourly billing rate computation and the most recent federally approved indirect rate must be submitted at the beginning of the project. Requests for reimbursement of other expenses must be accompanied by copies of paid invoices itemizing costs incurred. Mileage requests should be supported by mileage logs. Supporting records shall comply with documentation requirements found in OMB Super Circular 2 CFR Part 200.430 (i) Standards for Documentation of Personnel Expenses. Whatcom County does not reimburse the cost of alcoholic beverages. Any work performed prior to the effective date of this contract or continuing after the completion date of the same unless otherwise agreed upon in writing, will be at the contractor’s expense.

Personnel, overhead, and travel shall be tracked and invoiced as Data Coordination or Non-Dairy Agriculture Technical Assistance. Budgets for each of these categories are defined in the DOH Grant Agreement GVL22509-1 as based on actual expenses up to $155,366 for Data Coordination, $369,700 for Non-Dairy Agriculture Technical Assistance (including travel), and $10,000 for Small Farm Workshops.

<table>
<thead>
<tr>
<th>Personnel (Salaries and Benefits) Actual Costs*</th>
<th>Estimated Rate/Unit</th>
<th>Cost</th>
</tr>
</thead>
<tbody>
<tr>
<td>Admin</td>
<td>$44.35/hr</td>
<td>$124,293 Data Coordination</td>
</tr>
<tr>
<td>Mgmt/Admin/Engineer</td>
<td>$71.97/hr</td>
<td>$291,760 Non-Dairy Agriculture Technical Assistance</td>
</tr>
<tr>
<td>Planner</td>
<td>$36.42/hr</td>
<td>$4,000 Small Farm Workshops</td>
</tr>
<tr>
<td>GIS Specialist</td>
<td>$53.44/hr</td>
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</tr>
<tr>
<td>Outreach Specialist</td>
<td>$48.76/hr</td>
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<tr>
<td>Planner</td>
<td>$41.20/hr</td>
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</tr>
<tr>
<td>Planner</td>
<td>$37.55/hr</td>
<td></td>
</tr>
<tr>
<td>Data Coordinator</td>
<td>$37.34/hr</td>
<td></td>
</tr>
</tbody>
</table>

| Indirect                                      | 25% of salaries/benefits | $105,013 |
| Workshop Supplies, Printing Mailing, Room Rental |                        | $5,000   |
| Travel**                                      |                        | $5,000   |
| Totals                                        |                        | Not to exceed $535,066 |

* These are June 2017 rates and are subject to changes with annual WCD adjustments.
**Mileage rate will be at current federal approved mileage reimbursement.**

**EXHIBIT C-1**

**CONTRACT INFORMATION**

<table>
<thead>
<tr>
<th>Item Description</th>
<th>Federal Funding Source</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Subrecipient Name (Exactly as listed in DUNS): <a href="http://www.SAM.gov">www.SAM.gov</a></td>
<td>Whatcom Conservation District</td>
</tr>
<tr>
<td>2 Subrecipient DUNS Number: <a href="http://www.SAM.gov">www.SAM.gov</a></td>
<td>142424899</td>
</tr>
<tr>
<td>3 Federal Award Identification Number (FAIN):</td>
<td>PC-01J18001-0</td>
</tr>
<tr>
<td>4 Federal Award Date</td>
<td>8/2/2016</td>
</tr>
<tr>
<td>5 Start and End Date of the contract: Found in the “Term” section of the contract.</td>
<td>4/1/17-6/30/19</td>
</tr>
<tr>
<td>6 Amount of Federal Funds Obligated by this action:</td>
<td>$181,700</td>
</tr>
<tr>
<td>7 Total Amount of Federal Funds Obligated to the subrecipient by Whatcom County for this subaward (per funding source):</td>
<td>$535,066</td>
</tr>
<tr>
<td>8 Total Amount of the Federal Award to Whatcom County:</td>
<td>$1,015,000</td>
</tr>
<tr>
<td>9 Project description as listed on the FFATA form:</td>
<td>This project comprises the Whatcom County’s component of the Whatcom Clean Water Program, a multi-agency and tribal partnership. Through the “Whatcom County Enhanced Pollution Identification and Correction (PIC) Program “Near Term Action (NTA), Whatcom County Public Works (WCPW) will enhance the exiting program to expand the geographic areas, improve data management and coordination, further interagency coordination, expand partnerships, and address emerging issues. The goal of this enhanced program is to meet water quality standards for fecal coliform in the focus area creeks, upgrade 938 acres of shellfish beds in Drayton Harbor and Birch Bay by 2018, and reduce bacteria levels in Portage Ba to support a shellfish upgrade of 500 acres by 2020.</td>
</tr>
<tr>
<td>10 Name of the Federal awarding agency:</td>
<td>EPA/Region 10/ Office of Water and Watersheds</td>
</tr>
<tr>
<td>11 Name of the pass-through entity:</td>
<td>Washington State Department of Health and Whatcom County</td>
</tr>
<tr>
<td>12 Contact information for awarding official- Statement of Work (Name of County project coordinator)</td>
<td>Erika Douglas</td>
</tr>
<tr>
<td>13 Contact information for awarding official- General Contact:</td>
<td><a href="mailto:PICprogram@co.whatcom.wa.us">PICprogram@co.whatcom.wa.us</a></td>
</tr>
<tr>
<td>14 CFDA Number</td>
<td>66.123</td>
</tr>
<tr>
<td>15 CFDA Name</td>
<td>Puget Sound Action Agenda: Technical Investigations and Implementation Assistance Program</td>
</tr>
<tr>
<td>16 Is the award Research and Development?</td>
<td>No</td>
</tr>
<tr>
<td>17 The limiting indirect cost rate for the Federal award, if any:</td>
<td>NA</td>
</tr>
<tr>
<td>18 Certifications and Assurances- all</td>
<td></td>
</tr>
<tr>
<td></td>
<td>requirements imposed on the subrecipient by the federal awarding agency: The contract covers all standard certifications and assurances.</td>
</tr>
<tr>
<td>---</td>
<td>----------------------------------------------------------------------------------------------------------------------------------</td>
</tr>
<tr>
<td>19</td>
<td>Are there any additional requirements imposed by the pass-through entity (Whatcom County) to meet its own responsibilities to the awarding agency: Included in contract.</td>
</tr>
<tr>
<td></td>
<td>Yes</td>
</tr>
</tbody>
</table>
| 20 | **Indirect Rate:**  
DOH Grant Website  
Does the subrecipient have an approved indirect rate? If your contract allows indirects, you must use the subrecipient’s approved indirect rate. Indirect rates approved by DOH are posted on the DOH Grant website. |
|   | Yes- 25%                                                                                                                           |
| 21 | **Access to Subgrantee's accounting records:**  
All subrecipients are required to make their accounting records available and accessible to the awarding agency. You can find this requirement in the “Records Maintenance” section of the contract. |
| 22 | **Closeout Requirements**  
1) Submit all final billing within 30 days of the end of the contract.  
2) Submit all required program reports and deliverables according to timelines in Exhibit A-1 (Scope of Work).  
3) Dispose of property purchased with subaward funds and dispose of or return government-furnished property no longer used for subaward related activities. |
1. General Terms and Conditions - Updated 4-27-2017
The subrecipient agrees to comply with the current EPA general terms and conditions available at: https://www.epa.gov/grants/epa-general-terms-and-conditions-effective-april-27-2017-or-later. These terms and conditions are in addition to the assurances and certifications made as a part of the award and the terms, conditions, or restrictions cited throughout the award, and are added to the end of this document.

The EPA repository for the general terms and conditions by year can be found at http://www.epa.gov/grants/grant-terms-and-conditions.

2. General Terms and Conditions - Consultant Cap - Additional Information
In addition to the General Terms and Conditions #6 "Consultant Cap", as of January 1, 2017, the limit is $622.72 per day $77.84 per hour.

NOTE: For future years' limits, the subrecipient may find the annual salary for Level IV of the Executive Schedule on the following Internet site: http://www.opm.gov/oca. Select "Salary and Wages", and select "Rates of Pay for the Executive Schedule". The annual salary is divided by 2087 hours to determine the maximum hourly rate, which is then multiplied by 8 to determine the maximum daily rate.

3. General Terms and Conditions – Cybersecurity
The subrecipient agrees to comply with the current EPA general terms and conditions ‘Cybersecurity’. The terms and conditions can be found on the EPA Grants Terms and Conditions Website.

For STATES:

For TRIBES:

For Other Recipients:

4. General Terms and Conditions - Indirect Costs for States and Tribal
The cost principles of 2 CFR 200 Subpart E are applicable, as appropriate, to this award.

In addition to the General Terms and Conditions "Indirect Cost Rate Agreements", if the subrecipient does not have a previously established indirect cost rate, it agrees to prepare and submit its indirect cost rate proposal in accordance with 2 CFR 200 Appendix VII.

The subrecipient agrees to comply with the audit requirements in accordance with 2 CFR 200 Subpart F.

5. UTILIZATION OF SMALL, MINORITY AND WOMEN’S BUSINESS

ENTERPRISES(MBE/WBE)

GENERAL COMPLIANCE, 40 CFR, Part 33
The subrecipient agrees to comply with the requirements of EPA's Disadvantaged Business Enterprise (DBE) Program for procurement activities under assistance agreements, contained in 40 CFR, Part 33.

MBE/WBE REPORTING, 40 CFR, Part 33, Subpart E
The subrecipient agrees to complete and submit a “MBE/WBE Utilization Under Federal Grants, Cooperative Agreements and Interagency Agreements” report (EPA Form 5700-52A) on an annual basis. All procurement
actions are reportable, not just that portion which exceeds $150,000. When completing the annual report, subrecipients are instructed to check the box titled “annual” in section 1B of the form. For the final report, subrecipients are instructed to check the box indicated for the “last report” of the project in section 1B of the form. Annual reports are due by October 30th of each year. Final reports are due by October 30th or 90 days after the end of the project period, whichever comes first.

The reporting requirement is based on total procurements. Subrecipients with expended and/or budgeted funds for procurement are required to report annually whether the planned procurements take place during the reporting period or not. If no budgeted procurements take place during the reporting period, the subrecipient should check the box in section 5B when completing the form.

The current EPA Form 5700-52A can be found at the EPA Office of Small Business Program’s Home Page at http://www.epa.gov/osbp/dbereporting.htm.

This provision represents an approved deviation from the MBE/WBE reporting requirements as described in 40 CFR, Part 33, Section 33.502; however, the other requirements outlined in 40 CFR Part 33 remain in effect, including the Good Faith Effort requirements as described in 40 CFR Part 33 Subpart C, and Fair Share Objectives negotiation as described in 40 CFR Part 33 Subpart D and explained below.

**SIX GOOD FAITH EFFORTS, 40 CFR, Part 33, Subpart C**

Pursuant to 40 CFR, Section 33.301, the subrecipient agrees to make the following good faith efforts whenever procuring construction, equipment, services and supplies under an EPA financial assistance agreement, and to require that sub-recipients, loan recipients, and prime contractors also comply. Records documenting compliance with the six good faith efforts shall be retained:

(a) Ensure DBEs are made aware of contracting opportunities to the fullest extent practicable through outreach and recruitment activities. For Indian Tribal, State and Local and Government subrecipients, this will include placing DBEs on solicitation lists and soliciting them whenever they are potential sources.

(b) Make information on forthcoming opportunities available to DBEs and arrange time frames for contracts and establish delivery schedules, where the requirements permit, in a way that encourages and facilitates participation by DBEs in the competitive process. This includes, whenever possible, posting solicitations for bids or proposals for a minimum of 30 calendar days before the bid or proposal closing date.

(c) Consider in the contracting process whether firms competing for large contracts could subcontract with DBEs. For Indian Tribal, State and local Government subrecipients, this will include dividing total requirements when economically feasible into smaller tasks or quantities to permit maximum participation by DBEs in the competitive process.

(d) Encourage contracting with a consortium of DBEs when a contract is too large for one of these firms to handle individually.


(f) If the prime contractor awards subcontracts, require the prime contractor to take the steps in paragraphs (a) through (e) of this section.

**CONTRACT ADMINISTRATION PROVISIONS, 40 CFR, Section 33.302**

The subrecipient agrees to comply with the contract administration provisions of 40 CFR, Section 33.302.

**BIDDERS LIST, 40 CFR, Section 33.501(b) and (c)**

Subrecipients of a Continuing Environmental Program Grant or other annual reporting grant, agree to create and maintain a bidders list. Subrecipients of an EPA financial assistance agreement to capitalize a revolving loan fund also agree to require entities receiving identified loans to create and maintain a bidders list if the recipient of the loan is subject to, or chooses to follow, competitive bidding requirements. Please see 40 CFR, Section 33.501 (b) and (c) for specific requirements and exemptions.
FAIR SHARE OBJECTIVES, 40 CFR, Part 33, Subpart D

1. For Grant Awards $250,000 or Less

This assistance agreement is a Technical Assistance Grant (TAG); or the award amount is $250,000 or less; or the total dollar amount of all of the subrecipient’s financial assistance agreements from EPA in the current Federal fiscal year is $250,000 or less. Therefore, the subrecipient of this assistance agreement is exempt from the fair share objective requirements of 40 CFR, Part 33, Subpart D, and is not required to negotiate fair share objectives/goals for the utilization of MBE/WBEs in its procurements.

2. For Subrecipients Accepting Goals

A subrecipient must negotiate with the appropriate EPA award official, or his/her designee, fair share objectives for MBE and WBE participation in procurement under the financial assistance agreements.

In accordance with 40 CFR, Section 33.411 some subrecipients may be exempt from the fair share objectives requirements as described in 40 CFR, Part 33, Subpart D. Subrecipients should work with their DBE coordinator, if they think their organization may qualify for an exemption.

Accepting the Fair Share Objectives/Goals of Another Recipient
The dollar amount of this assistance agreement, or the total dollar amount of all of the subrecipient’s financial assistance agreements in the current federal fiscal year from EPA is $250,000, or more. The subrecipient accepts the applicable MBE/WBE fair share objectives/goals negotiated with EPA. The Region 10 fair share objectives/goals can be found: http://www.epa.gov/osbp/pdfs/r10fairsharegoals.pdf.

By signing this financial assistance agreement, the subrecipient is accepting the fair share objectives/goals and attests to the fact that it is purchasing the same or similar construction, supplies, services and equipment, in the same or similar relevant geographic buying market.

Negotiating Fair Share Objectives/Goals, 40 CFR, Section 33.404
The subrecipient has the option to negotiate its own MBE/WBE fair share objectives/goals. If the subrecipient wishes to negotiate its own MBE/WBE fair share objectives/goals, the subrecipient agrees to submit proposed MBE/WBE objectives/goals based on an availability analysis, or disparity study, of qualified MBEs and WBEs in their relevant geographic buying market for construction, services, supplies and equipment.

The submission of proposed fair share goals with the supporting analysis or disparity study means that the subrecipient is not accepting the fair share objectives/goals of another subrecipient. The subrecipient agrees to submit proposed fair share objectives/goals, together with the supporting availability analysis or disparity study, to the Regional MBE/WBE Coordinator within 120 days of its acceptance of the financial assistance award. EPA will respond to the proposed fair share objective/goals within 30 days of receiving the submission. If proposed fair share objective/goals are not received within the 120 day time frame, the subrecipient may not expend its EPA funds for procurements until the proposed fair share objective/goals are submitted.

3. For Subrecipients with Established Goals

The subrecipient must negotiate with the appropriate EPA award official, or his/her designee, fair share objectives for MBE and WBE participation in procurement under the financial assistance agreements.

In accordance with 40 CFR, Section 33.411 some subrecipients may be exempt from the fair share objectives requirements described in 40 CFR, Part 33, Subpart D. Subrecipients should work with their DBE coordinator, if they think their organization may qualify for an exemption.

Current Fair Share Objective/Goal
The dollar amount of this assistance agreement or the total dollar amount of all of the subrecipient’s financial assistance agreements in the current federal fiscal year from EPA is $250,000, or more. The Region 10 fair share objectives/goals can be found: http://www.epa.gov/osbp/pdfs/r10fairsharegoals.pdf.
Negotiating Fair Share Objectives/Goals
In accordance with 40 CFR, Part 33, Subpart D, established goals/objectives remain in effect for three fiscal years unless there are significant changes to the data supporting the fair share objectives. The subrecipient is required to follow requirements as outlined in 40 CFR Part 33, Subpart D when renegotiating the fair share objectives/goals.

4. For DWSRF, CWSRF and BROWNFIELDS RLF Recipients ONLY

Objective/Goals of Loan Recipients
As a subrecipient of an EPA financial assistance agreement to capitalize revolving loan funds, the subrecipient agrees to either apply its own fair share objectives negotiated with EPA to identified loans using a substantially similar relevant geographic market, or negotiate separate fair share objectives with its identified loan recipients. These separate objectives/goals must be based on demonstrable evidence of the availability of MBEs and WBEs in accordance with 40 CFR, Part 33, Subpart D.

The subrecipient agrees that if procurements will occur over more than one year, the subrecipient may choose to apply the fair share objective in place either for the year in which the identified loan is awarded or for the year in which the procurement action occurs. The subrecipient must specify this choice in the financial assistance agreement, or incorporate it by reference therein.

Programmatic Conditions

1. Semi-Annual Performance Reports
The subrecipient shall submit performance reports every six (6) months during the life of the project. Reports are due 30 calendar days after the end of each reporting period. Reports shall be submitted to the EPA Project Officer and may be provided electronically.

In accordance with 2 CFR 200.328, as appropriate, the subrecipient agrees to submit performance reports that include brief information on each of the following areas:

   a. a comparison of actual accomplishments to the outputs(outcomes) established in the assistance agreement work plan for the period;
   b. the reasons why established goals were not met, if appropriate;
   c. additional pertinent information including, when appropriate, analysis and explanation of cost overruns or high unit costs.

In addition to the semi-annual performance reports, the subrecipient shall immediately notify the DOH Contracts Manager of developments that have a significant impact on the award-supported activities. As appropriate, the subrecipient agrees to inform the Project Officer as soon as problems, delays or adverse conditions become known which will materially impair the ability to meet the outputs/outcomes specified in the assistance agreement work plan. This notification shall include a statement of the action taken or contemplated, and any assistance needed to resolve the situation.

The subrecipient will submit performance reports through EPA’s Puget Sound Financial and Ecosystem Accounting Tracking System (FEATS). Reports are due 30 calendar days after the end of each reporting period. The reporting periods shall end March 31st and September 30th of each calendar year. Reports shall be submitted to the Project Officer on the FEATS form provided by the Project Officer and shall be submitted by electronic mail. The subrecipient agrees to submit performance reports that include brief information on each of the following areas:

   a. a comparison of actual accomplishments to the outputs(outcomes) established in the assistance agreement work plan for the period;
   b. the reasons for slippages if established outputs(outcomes) were not met;
   c. additional pertinent information, including when appropriate, analysis and information of cost overruns or high unit costs.

2. Final Performance Report
The subrecipient shall submit a final performance report through FEATS, which is due 30 calendar days after the expiration or termination of the award. The report shall be submitted to the Project Officer and must
be provided electronically. The report shall generally contain the same information as in the periodic reports, but should cover the entire project period. After completion of the project, the Project Officer may waive the requirement for a final performance report if the Project Officer deems such a report is inappropriate or unnecessary.

3. Program Income – Addition
If program income is generated, the subrecipient is required to account for program income related to this project. Program income earned during the project period shall be retained by the subrecipient and shall be added to funds committed to the project by EPA and the subrecipient, and shall be used to further eligible project objectives.

4. Information Collection Requirements
EPA and the subrecipient agree to comply with the requirements of the Paperwork Reduction Act in completing the project. Because the scope of work includes a survey, a questionnaire or similar information-gathering activity, the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.), requires EPA to obtain Office of Management and Budget (OMB) clearance prior to the subrecipient’s collection of information by means of identical questions posed to 10 or more persons.

The subrecipient will provide to the EPA Project Officer the following information: (1) description of the information to be collected; (2) explanation of the need for the information; and (3) to whom the survey is being directed.

5. Recognition of EPA Funding
Reports, documents, signage, videos, or other media, developed as part of projects funded by this assistance agreement shall contain the following statement:

“This project has been funded wholly or in part by the United States Environmental Protection Agency under assistance agreement PC-00J88001-3 to (subrecipient). The contents of this document do not necessarily reflect the views and policies of the Environmental Protection Agency, nor does mention of trade names or commercial products constitute endorsement or recommendation for use.”

6. Annual Conferences
The subrecipient may attend one or more appropriate conferences each year, which may be within the Puget Sound region. The specific conferences will be determined in consultation with the Grant Officer. The purpose of this requirement is to provide subrecipients with opportunities to learn about and benefit from other relevant initiatives and programs that relate to the funded work; to exchange information about their funded work with organizations that may benefit from their experience; and generally to raise awareness within the Puget Sound, Salish Sea, and large aquatic ecosystem protection and restoration communities of the funded work. Examples of potentially relevant conferences include, but are not limited to, the biennial Puget Sound-Georgia Basin Ecosystem Conference [http://depts.washington.edu/wwconf/psgb/] and local or regional meetings of Tribal, professional, scientific, or other relevant associations [http://www.wwu.edu/salishseaconference/]. Specific conferences will depend on the nature of the work proposed. Subrecipient will be allowed to use award funds to pay for travel and lodging. The subrecipient should include anticipated costs for attending conferences in their proposed budget. [https://www.eopugetsound.org/terms/354/]

7. Peer Review
The results of this project may affect management decisions relating to Puget Sound. Prior to finalizing any significant technical products the Principal Investigator (PI) of this project must solicit advice, review and feedback from a technical review or advisory group consisting of relevant subject matter specialists. A record of comments and a brief description of how respective comments are addressed by the PI will be provided to the Project Monitor prior to releasing any final reports or products resulting from the funded study.

8. Competency of Organizations Generating and/or Using Environmental Measurement Data
In accordance with Agency Policy Directive Number FEM-2012-02, Policy to Assure the Competency of Organizations Generating Environmental Measurement Data under Agency-Funded Assistance Agreements, subrecipient shall maintain competency for the duration of the project period of this
agreement and this will be documented during the annual reporting process. A copy of the Policy is available online at http://www.epa.gov/fem/labcomp.htm or a copy may also be requested by contacting the EPA Project Officer for this award.

**Federal Assistance Agreement Funds Up To $200,000**
Subrecipient agrees that if the total federal funding obligated on this award exceeds $200,000 (resulting from subsequent amendments to this agreement) and will involve the use or generation of environmental data it will (unless it has otherwise done so) demonstrate competency prior to carrying out any activities involving the generation or use of environmental data under this agreement.

**Federal Assistance Agreement Funds Exceed or Expect to Exceed $200,000**
Subrecipient agrees, by entering into this agreement, that it has demonstrated competency prior to award, or alternatively, where a pre-award demonstration of competency is not practicable. The Subrecipient agrees to submit documentation and demonstrate competency prior to carrying out any activities under the award involving the generation or use of environmental data.

9. **STORET Requirement**
Subrecipients are required to institute standardized reporting requirements into their work plans and include such costs in their budgets. All water quality data generated in accordance with an EPA approved Quality Assurance Project Plan as a result of this assistance agreement, either directly or by subaward, will be required to be transmitted into the Agency’s Storage and Retrieval (STORET) data warehouse using either WQX or WQX web. Water quality data appropriate for STORET include physical, chemical, and biological sample results for water, sediment and fish tissue. The data include toxicity data, microbiological data, and the metrics and indices generated from biological and habitat data. The Water Quality Exchange (WQX) is the water data schema associated with the EPA, State and Tribal Exchange Network. Using the WQX schema partners map their database structure to the WQX/STORET structure. WQX web is a web based tool to convert data into the STORET format for smaller data generators that are not direct partners on the Exchange Network. More information about WQX, WQX web, and the STORET warehouse, including tutorials, can be found at [http://www.epa.gov/storet/wqx/](http://www.epa.gov/storet/wqx/)

If activities submitted as match for this federal assistance agreement involve the generation of water quality data, the resulting information must be publicly accessible (in STORET or some other database). Subrecipients are encouraged to develop a cross walk between any non-STORET database utilized for the storage of water quality data associated with match activities and EPA’s Water Quality Exchange (WQX).

10. **Riparian Buffers**
Riparian buffer restoration projects in agricultural areas shall be consistent with the interim riparian buffer recommendations provided to EPA and the Natural Resource Conservation Service by National Marine Fisheries Service letters of January 30, 2013 (stamp received date - February 4, 2013) and April 9, 2013 (stamp received date April 16, 2013), or the October 28, 2013 guidance. Grantees shall confirm in writing projects’ consistency with the recommendations referenced above. When developing project proposals, grantees also should consider the extent to which proposals include appropriate riparian buffers or otherwise address pollution sources on other water courses on the properties in the project area to support water quality and salmon recovery. Deviations can only be obtained through an exception approved by EPA. In order for EPA to evaluate a request for an exception, the grantee must submit the scientific rationale demonstrating adequacy of buffers for supporting water quality and salmon recovery. The request must summarize tribal input on the scientific rationale or other relevant issues. The scientific rationale could be developed from sources such as site-specific assessment data, salmon recovery plans, Total Maximum Daily Loads (TMDLs) and the state nonpoint plan. EPA will confer with the National Oceanic and Atmospheric Administration (NOAA) and the Washington Department of Ecology and provide the opportunity for affected tribes to consult with EPA before making a final decision on a deviation request.

11. **International Travel (Including Canada)**
All International Travel must be approved by the Office of International and Tribal Affairs (OITA) BEFORE travel occurs. Even a brief trip to a foreign country, for example to attend a conference, requires OITA approval. Please contact your EPA Project Officer as soon as possible if travel is planned out of the country, including Canada and/or Mexico, so that they can obtain appropriate approvals from EPA Headquarters. If
you have questions, please contact your EPA Project Officer listed on the front page of the Award Document.

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

13. Model Programmatic Subaward Reporting Requirement (GPI-16-01)
The subrecipient must report on its subaward monitoring activities under 2 CFR 200.331(d).

Examples of items that must be reported if the pass-through entity has the information available are:

- Summaries of results of reviews of financial and programmatic reports.
  Summaries of findings from site visits and/or desk reviews to ensure effective subrecipient performance.
- Environmental results the subrecipient achieved.
- Summaries of audit findings and related pass-through entity management decisions.
- Actions the pass-through entity has taken to correct deficiencies such as those specified at 2 CFR 200.331(e), 2 CFR 200.207 and the 2 CFR Part 200.338 Remedies for Noncompliance.

14. Lobbying and Litigation
i. The chief executive officer of this subrecipient agency shall ensure that no grant funds awarded under this assistance agreement are used to engage in lobbying of the Federal Government or in litigation against the U.S. unless authorized under existing law. The subrecipient shall abide by the Cost Principles available at 2 CFR 200 which generally prohibits the use of federal grant funds for litigation against the U.S. or for lobbying or other political activities. The subrecipient agrees to comply with Title 40 CFR Part 34, New Restrictions on Lobbying. The subrecipient shall include the language of this provision in award documents for all subawards exceeding $100,000, and require that subrecipients submit certification and disclosure forms accordingly.

ii. In accordance with the Byrd Anti-Lobbying Amendment, any recipient who makes a prohibited expenditure under Title 40 CFR Part 34 or fails to file the required certification or lobbying forms shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such expenditure.

iii. Subcontracts awarded by the subrecipient shall contain, when applicable, the anti-lobbying provision as stipulated in the Appendix II to Part 200—Contract Provisions for Non-Federal Entity Contracts Under Federal Awards.

iv. Pursuant to Section 18 of the Lobbying Disclosure Act, the subrecipient affirms that it is not a nonprofit organization described in Section 501(c)(4) of the Internal Revenue Code of 1986; or that it is a nonprofit organization described in Section 501(c)(4) of the Code but does not and will not engage in lobbying activities as defined in Section 3 of the Lobbying Disclosure Act. Nonprofit organizations exempt from taxation under section 501(c)(4) of the Internal Revenue Code that engage in lobbying activities are ineligible for EPA subawards.

15. Quality Assurance Requirements (2 CFR 1500.11)
(a) Quality assurance applies to all assistance agreements that involve environmentally related data operations, including environmental data collection, production or use.

(b) Recipients shall develop a written quality assurance system commensurate with the degree of confidence needed for the environmentally related data operations.

(c) If the recipient complies with EPA’s quality policy, the system will be presumed to be in compliance with the quality assurance system requirement. The recipient may also comply with the quality assurance system requirement by complying with American National Standard
ASQ/ANSI E4:2014: Quality management systems for environmental information and technology programs.

16. **ULO Stretch Goal**

Recipients of EPA assistance agreements that include subawards in the approved workplan should manage their programs and subaward funding in ways that reduce the length of time that federal funds obligated and committed to subaward projects are "unspent" federal funds, not yet drawn down through disbursements to subaward recipients.

EPA encourages the reduction of these unliquidated obligations (ULOs) by applying the following programmatic term and condition to these assistance agreements with subaward projects:

The FY2016 Strategic Initiative Lead awards, the FY2016 Tribal Lead Organization award, the FY2016 Management Conference Support For Implementation Strategies award, and may apply to subsequent awards not yet identified.

Assistance agreement recipients and subrecipients are to apply these "stretch" goals throughout the life of the assistance agreement and to confer with your DOH Grant Manager whenever instances arise that make attainment of these stretch goals unlikely.

Stretch Goal: A stretch goal for utilization of funds for each new strategic initiative lead grant with subawards is established. All funds should be spent by 21/2 years in order for incremental funding to be considered at levels otherwise available for the fourth year of the grant.

- Funds Awarded in FY2017 (October 1, 2016-September 30, 2017) Should all Be Drawn Down by March 2020
- Funds Awarded in FY2018 (October 1, 2017-September 30, 2018) Should all Be Drawn Down by March 2021
- Funds Awarded in FY2019 (October 1, 2018-September 30, 2019) Should all Be Drawn Down by March 2022
- Funds Awarded in FY2020 All Should Be Drawn down by award end date.

17. **Animal Subjects**


18. **Copyrighted Material and Data**

In accordance with 2 CFR 200.315, EPA has the right to reproduce, publish, use and authorize others to reproduce, publish and use copyrighted works or other data developed under this assistance agreement for Federal purposes.

Examples of a Federal purpose include but are not limited to: (1) Use by EPA and other Federal employees for official Government purposes; (2) Use by Federal contractors performing specific tasks for the Government; (3) Publication in EPA documents provided the document does not disclose trade secrets (e.g. software codes) and the work is properly attributed to the subrecipient through citation or otherwise; (4) Reproduction of documents for inclusion in Federal depositories; (5) Use by State, tribal and local governments that carry out delegated Federal environmental programs as "co-regulators" or act as official partners with EPA to carry out a national environmental program within their jurisdiction and; (6) Limited use by other grantees to carry out Federal grants provided the use is consistent with the terms of EPA's authorization to the other grantee to use the copyrighted works or other data. Under Item6, the grantee acknowledges that EPA may authorize another grantee(s) to use the copyrighted works or other data...
developed under this grant as a result of: the selection of another grantee by EPA to perform a project that will involve the use of the copyrighted works or other data or; termination or expiration of this agreement.

In addition, EPA may authorize another grantee to use copyrighted works or other data developed with Agency funds provided under this grant to perform another grant when such use promotes efficient and effective use of Federal grant funds.

END OF DOCUMENT
Resolution authorizing Whatcom County Executive to act as the authorized representative on behalf of Whatcom County and to legally bind our organization with respect to the below Projects for which we seek grant funding assistance managed through the Recreation and Conservation Office.

MEMORANDUM

Whatcom County Purchase of Development Rights Program has submitted several applications to the Washington State Recreation and Conservation Office Washington Wildlife and Recreation Program Farmland Preservation grant program. This resolution authorizes current Whatcom County Executive to act as the authorized representative for Whatcom County will full authority to bind the organization regarding all matters related to the Projects listed in the resolution (and below).

16-1942 Acq. Whatcom County – Anderson Creek Area Acquisitions (includes PDR applications Grubbs, Carbee, and Greenwood)
16-1939 Acq. Whatcom County – Cougar Creek Ranch Acquisition
16-1938 Acq. Whatcom County – Brar Acquisition
18-2015 Acq. Roper Agricultural Conservation Easement
18-1625 Acq. TeVelde Agricultural Conservation Easement
18-2060 Acq. McLeod Agricultural Conservation Easement

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: Honororable Whatcom County Councilmembers
    Honororable Jack Louws, Whatcom County Executive

THROUGH: Mark Personius, Director, PDS

FROM: Chris Elder, PDR Program Administrator

DATE: May 22, 2018

SUBJECT: Request approval to authorize Whatcom County Executive Jack Louws to act as the authorized representative on behalf of Whatcom County and to legally bind our organization with respect to the below Projects for which we seek grant funding assistance managed through the Washington State Recreation and Conservation Office.

Whatcom County PDR Program staff applied to the Washington State Recreation and Conservation Office (RCO) Washington Wildlife and Recreation Program (WWRP) Farmland Preservation grant program in 2016 for several of the Purchase of Development Rights Program applications. RCO has notified the PDR Program Administrator that matching funds have been awarded for the following projects:

16-1942 Acq. Whatcom County – Anderson Creek Area Acquisitions (includes PDR applications Grubbs, Carbee, and Greenwood)
16-1939 Acq. Whatcom County – Cougar Creek Ranch Acquisition
16-1938 Acq. Whatcom County – Brar Acquisition

Resolution 2018-106 authorized Whatcom County Executive to sign agreements with Washington State RCO to received matching funds to support acquisition of PDR conservation easements on the Grubbs, Carbee, Greenwood (collectively Anderson Creek Area), and Cougar Creek Ranch projects. Since the passage of this resolution and due to additional funds coming available, Whatcom County has now been awarded matching funds to proceed with acquisition of an agricultural conservation easement on the Brar property.

Staff from the RCO informed the PDR Program Administrator that the RCO now requires use of resolution language that is provided by the RCO. The attached draft resolution uses the RCO required language and defines the authority granted to the authorized agent.

Additionally the PDR Program Administrator has submitted three (3) applications to the 2018 application round of the RCO WWRP Farmland Preservation category. These applications include:

18-2015 Acq. Roper Agricultural Conservation Easement
18-1625 Acq. TeVelde Agricultural Conservation Easement
18-2060 Acq. McLeod Agricultural Conservation Easement
These projects are not guaranteed to be awarded matching funds and will still require Council approval before an agricultural conservation easement can be completed.

**Request Summary**
PDR Program Administrator requests approval of the attached resolution to authorize Whatcom County Executive Jack Louws as having full authority to bind Whatcom County regarding all matters related to the projects listed above.

Please contact PDR Program Administrator Chris Elder at (360)778-5932 with any questions.
RESOLUTION #

Authorizing Whatcom County Executive Jack Louws to act as the authorized representative on behalf of Whatcom County for Washington State Recreation and Conservation Office Washington Wildlife and Recreation Farmland Preservation project grants

Project(s) Number(s), and Name(s)
16-1942 Acq, Whatcom County – Anderson Creek Area Acquisitions
16-1939 Acq, Whatcom County – Cougar Creek Ranch Acquisition
16-1938 Acq, Whatcom County – Brar Acquisition
18-2015 Acq, Roper Agricultural Conservation Easement
18-1625 Acq, TeVelde Agricultural Conservation Easement
18-2060 Acq, McLeod Agricultural Conservation Easement

WHEREAS, state grant assistance is requested by Whatcom County, for projects stewarded through the Purchase of Development Rights Program, to aid in financing the cost of the Project(s) referenced above;

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

1. Our organization has applied for or intends to apply for funding assistance managed by the Office for the above “Project(s).”

2. Jack Louws, Whatcom County Executive, is authorized to act as a representative/agent for our organization with full authority to bind the organization regarding all matters related to the Project(s), including but not limited to, full authority to: (1) approve submittal of a grant application to the Office, (2) enter into a project agreement(s) on behalf of our organization, (3) sign any amendments thereto on behalf of our organization, (4) make any decisions and submissions required with respect to the Project(s), and (5) designate a project contact(s) to implement the day-to-day management of the grant(s).

3. Our organization has reviewed the sample project agreement on the Recreation and Conservation Office’s WEBSITE at: https://rco.wa.gov/documents/manuals&forms/SampleProjAgreement.pdf. We understand and acknowledge that if offered a project agreement to sign in the future, it will contain an indemnification and legal venue stipulation (applicable to any sponsor) and a waiver of sovereign immunity (applicable to Tribes) and other terms and conditions substantially in the form contained in the sample project agreement and that such terms and conditions of any signed project agreement shall be legally binding on the sponsor if our representative/agent enters into a project agreement on our behalf. The Office reserves the right to revise the project agreement prior to execution and shall communicate any such revisions with the above authorized representative/agent before execution.
4. Our organization acknowledges and warrants, after conferring with its legal counsel, that its authorized representative/agent has full legal authority to enter into a project agreement(s) on its behalf, that includes indemnification, waiver of sovereign immunity (as may apply to Tribes), and stipulated legal venue for lawsuits and other terms substantially in the form contained in the sample project agreement or as may be revised prior to execution.

5. Grant assistance is contingent on a signed project agreement. Entering into any project agreement with the Office is purely voluntary on our part.

6. Our organization understands that grant policies and requirements vary depending on the grant program applied to, the grant program and source of funding in the project agreement, the characteristics of the project, and the characteristics of our organization.

7. Our organization further understands that prior to our authorized representative/agent executing the project agreement(s), the RCO may make revisions to its sample project agreement and that such revisions could include the indemnification, the waiver of sovereign immunity, and the legal venue stipulation. Our organization accepts the legal obligation that we shall, prior to execution of the project agreement(s), confer with our authorized representative/agent as to any revisions to the project agreement from that of the sample project agreement. We also acknowledge and accept that if our authorized representative/agent executes the project agreement(s) with any such revisions, all terms and conditions of the executed project agreement (including but not limited to the indemnification, the waiver of sovereign immunity, and the legal venue stipulation) shall be conclusively deemed to be executed with our authorization.

8. Any grant assistance received will be used for only direct eligible and allowable costs that are reasonable and necessary to implement the project(s) referenced above.

9. Our organization acknowledges and warrants, after conferring with its legal counsel, that no additional legal authorization beyond this authorization is required to make the indemnification, the waiver of sovereign immunity (as may apply to Tribes), and the legal venue stipulation substantially in form shown on the sample project agreement or as may be revised prior to execution legally binding on our organization upon execution by our representative/agent.

10. If match is required for the grant, we understand our organization must certify the availability of match at least one month before funding approval. In addition, our organization understands it is responsible for supporting all non-cash matching share commitments to this project should they not materialize.

11. Our organization acknowledges that if it receives grant funds managed by the Office, the Office will pay us on only a reimbursement basis. We understand reimbursement basis means that we will only request payment from the Office after we incur grant eligible and allowable costs and pay them. The Office may also determine an amount of retainage and hold that amount until the Project is complete.

12. Our organization acknowledges that any property acquired with grant assistance must be dedicated for the purposes of the grant in perpetuity unless otherwise agreed to in writing by our organization and the Office. We agree to dedicate the property in a signed “Deed of Right” for fee acquisitions, or an “Assignment of Rights” for other than fee acquisitions (which documents will be based upon the Office’s standard versions of those documents), to be recorded on the title of the property with the county auditor.
13. Our organization acknowledges that any property acquired in fee title must be immediately made available to the public unless otherwise provided for in policy, the project agreement, or authorized in writing by the Office Director.

14. This resolution is deemed to be part of the formal grant application to the Office.

15. Our organization warrants and certifies, after conferring with its legal counsel, that this resolution was properly and lawfully adopted following the requirements of our organization and applicable laws and policies and that our organization has full legal authority to commit our organization to the warranties, certifications, promises and obligations set forth herein.

This application authorization was adopted by our organization during the meeting held:
Location: Whatcom County Council Chambers, 311 Grand Avenue, Bellingham, WA 98225
Date: June 5, 2018

APPROVED this ________ day of __________, 2018

______________________________
WHATCOM COUNTY COUNCIL
WHATCOM COUNTY, WASHINGTON

ATTEST:

______________________________
Dana Brown-Davis, Council Clerk

______________________________
Rud Browne, Chairperson

APPROVED as to form:

______________________________
Civil Deputy Prosecutor

Washington State Attorney General's Office

Approved as to form ______________ 1/19/18

Assistant Attorney General Date
**TITLE OF DOCUMENT:** Economic Development Investment Program – EDI Board recommendation

**ATTACHMENTS:** Memorandum; EDI Program application from PUD No. 1; EDI Board Meeting Notes from 5/16/18; Rural Sales Tax Fund spreadsheet

**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 Economic Development Investment Board has reviewed a funding application from the PUD No. 1 of Whatcom County and is making the following recommendation for adoption by the County Council:

Approval of PUD NO. 1’s request for EDI funding in the amount of $1.6-million in support of the Grandview/Northgate Water Supply Pipeline project: as a loan in the amount of $800,000 and a grant in the amount of $800,000.

**COMMITTEE ACTION:**

**COUNCIL ACTION:**

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

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

To: Whatcom County Council Members  
From: Executive Jack Louws  
Subject: Economic Development Investment Board – Funding Recommendation  
Date: May 23, 2018

At the last meeting of the EDI Board, the following recommendation was adopted by the Board. This is being presented for review and approval by the County Council. Please note the attached meeting notes and project application. If the recommendation of the Board is accepted by the Council, the administration will proceed with the preparation of an Interlocal Agreement and supplemental budget for County Council review and approval.

<table>
<thead>
<tr>
<th>Project</th>
<th>Funding Request</th>
<th>Recommendation</th>
<th>Vote</th>
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<tr>
<td>Water Supply Pipeline</td>
<td>$800,000 (loan)</td>
<td>$800,000 (loan)</td>
<td>(grant/loan)</td>
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Please consider this recommendation at your June 5th, 2018 meeting. The Administration has confirmed that sufficient fund balances are available for council approval of this request.

The PUD No. 1 has also included this project on their Comprehensive Economic Development Strategy (CEDS) list update for 2018.

If you have any questions on this matter, please feel free to contact me or Deputy Executive Schroeder.

Attachments: EDI Board Meeting Notes of 5/16/18  
PUD No. 1 - EDI Program Application  
Rural Sales Tax Fund spreadsheet 03-31-18
Notes of EDI Board Meeting

May 16, 2018 - 8:30 a.m.

Board Members present at Meeting:
- Jack Louws, County Executive
- Kelli Linville, Mayor, City of Bellingham
- Guy Occhiogrosso, Bellingham Chamber
- Aubrey Stargell, Timber Industry
- Tyler Schroeder, Deputy Executive
- Jeff McLure, PUD#1
- Michael Shepard (POB Commissioner)
- Scott Korthuis, City of Lynden Mayor
- Don Goldberg, Associate Development Org.
- Stephen A. Jones, Agricultural Industry
- Rud Browne, County Council Chair

Board Members absent:
- Bonnie Onyon, Small Cities Mayor
- Jim Kyle, Fishing Industry
- David Franklin, At-Large

Staff present:
- Suzanne Mildner, Board Clerk (Executive Office)

Guests present:
- Stephan Jilk, PUD#1
- Paul Schissler, Community Planner
- Satpal Sidhu, County Council

1. Welcome and Introductions
Board Chair, Executive Jack Louws welcomed everyone and called the meeting to order. Round table introductions were made.

2. Meeting Minutes from 12/12/17 — Executive Louws called for comments or corrections to the meeting notes from 12/12/17, and hearing none, affirmed that the minutes will stand as entered for the record.

3. EDI Fund Review – Status as of 3/31/18
A review of the Public Utilities Improvement/EDI Fund was given as of 3/31/18. Executive Louws briefly went over the revenues, expenditures and commitments noted on the spreadsheet. There is currently a cash balance of $12.7 million dollars. Of the $12.7 million dollar cash balance, $3 million is committed to EDI projects. That leaves a remaining balance of approximately $9.7 million. We’re in a healthy position at this time. When reviewing the list of projects that have been funded over the years, it’s clear we’ve done a lot of good work in the community.

4. Old Business – Update on NW Washington Fair Agricultural Project
Executive Louws commented on the benefits this project will bring to the community, summarizing the size and scope of the project, the stakeholders involved, and the current status. The EDI Board and County Council approved $470,000. There is still fundraising occurring and it’s going well, just short a few hundred thousand dollars. Executive Louws visited Skagit County recently to assist with a presentation to the Council wherein $180,000 was requested for the project; this is currently under consideration. In the past, Whatcom County supported Skagit’s facility in a similar fashion. One of the challenges of allocating EDI dollars is that the County cannot give it to a private foundation or private entity. NW Washington Fair is a private entity, so there has been much discussion, involving legal counsel, on how to make this project happen. One avenue available to us is Whatcom County will make this contribution to the project which will be in lieu of a capital lease for the WSU Extension agency for a period of years. For example, WSU will be able to occupy the space rent-free related to capital for about 15 years. This is a minor change in the details outlined in the original application that was
presented, however this scenario is feasible, legal and an agreement will be established outlining the details. Mayor Linville expressed her support for this project. Mr. Goldberg mentioned that if the lease scenario doesn’t work, there is potential that they could condo that area for the county within the building, wherein there would be separate ownership, and EDI could be put towards that. Executive Louws acknowledged this as a viable option to consider if the first scenario doesn’t come to fruition. There were a few other questions raised by board members, such as lease term, WSU programs, etc. 4H was brought up, and Executive Louws stated he committed an extra ½ an FTE into the 19-20 budget, subject to Council approval. Timeline for construction commencement is expected to be this coming fall.

5. Application: PUD No. 1 project for Grandview/Northgate Water Supply Pipeline
Executive Louws asked Steve Jilk to address the board and provide a project overview. Mr. Jilk referenced the project application, which was previously provided, and then gave board members a handout that he said should address some of the questions that he anticipated may arise at this meeting. The PUD operates a potable water system and a fire suppression system in the Grandview area, about 250 acres of light industrial in this service area, including several businesses. The PUD has been working on this project for about five years, essentially looking at alternative ways to address the siting that has occurred to the open air pond that is used for fire suppression system. Solutions have been sought to stabilize this water source and/or seek other sources of water. At the same time, there are a number of potential building projects in this service area that are being impacted by this due to the insufficient supply of water, thereby resulting in denied building permits. They looked at a number of different options to replace that source for water, including Ferndale connections, digging additional wells, building reservoirs, etc. The most cost effective and sustainable source of supply would be building a pipeline that would connect one of the PUD's large transmission lines out to Cherry Point through their industrial system to Grandview. A large portion of the projects costs would be recouped through charges to the customers in the service area. By improving water flow and storm water management in this service area, it will definitely open up greater opportunities for building and expansion of businesses. Current property owners are supportive of this project; letters of support have been provided.

Executive Louws invited questions. Mayor Linville asked if this improvement could service the Slater Road area; no it could not. Mr. Goldberg asked what the loan term would be. Mr. Jilk said it was his assumption it would be the standard 20 year term. In exploring internal financing of $1.1-million, what was developed was a package using a 20 year loan from EDI and a 30 year loan from the industrial fund, and they combined this to come up with a rate that would be reasonable for customers to repay. Councilor Browne asked about the idea of providing a gift of public funds to landowners, through this service which will increase property values. Mr. Jilk said the public funds will benefit the PUD, not the landowners directly, and the landowners will be required to pay back the loans through their rates. Is there any advantage to drill more wells? No, when looking at what it would take to drill a number of wells to reach adequate capacity in terms of flow, the valving system, the pumping system, and the reservoir, the costs far exceed this $2.7 million.

Mayor Korthuis asked about potable water and sewer service in this service area? Yes, there is potable water, but no sewer service, only septic.

Councilor Sidhu asked about the businesses north of the service area, i.e. Delta Tech, and will they benefit from this project? Mr. Jilk said they are already serviced by the PUD (fire systems connected). Mr. Stargell asked for verification that there are no new water rights involved? Correct, the pipeline would connect to the PUD’s industrial system. Also, this project will give the landowners and the drainage district an opportunity to rehabilitate the pond, and create flow
through. Commissioner Shepard asked if there has been any assessment on broadband needs of the business park and is there any efficiency derived by running a conduit for future broadband opportunities while already digging. Yes, there will be not only conduit, but there will be fiber in the trench; so the opportunity for broadband is there, but the PUD does not provide that service.

Executive Louws called for a motion to get this on the table for consideration for approval. Mr. Jones so moved and Mayor Linville seconded. Chair Louws supports the project and he read from a note from the Fire Marshall’s office, referencing the challenges of permitting high density warehouses in the area because of fire code restrictions; this project would alleviate that problem. Executive Louws believes that this is an excellent opportunity and he appreciates the PUD bringing it forward. Mayor Linville supports construction of a pipeline over the idea of digging more wells. Mr. Goldberg supports the motion and the number one issue is infrastructure. Mayor Korthuis supports the project, but is concerned about the 1/3, 2/3 fund ratio (PUD/County), as it is not in alignment with the usual policies, typically more of a 50/50 split. Mr. Schroeder supports the project and the motion, and asked about other project benefits as mentioned in the application, such as stream augmentation, habitat enhancement and mitigation to other water uses in California Creek drainage. Mr. Jilk spoke briefly about the recent discussions with farmers in this drainage area; possible irrigation source? Divert water from Nooksack into California Creek, etc. This is doable as an option, and would mitigate low summertime instream flows.

Ms. Mildner asked for clarification on the wording of the motion on the table. Executive Louws clarified: Mr. Jones made a motion for the EDI Board to recommend to the County Council approval of the EDI application from the PUD No. 1 for an $800,000 grant as well as an $800,000 loan for the project, as presented in the fund application, with the understanding that the administration will work out the contract terms with the PUD. The motion was seconded by Mayor Linville.

Councilor Browne asked for clarification regarding property owners who will be developing their vacant lot, will they pay for this? Mr. Jilk said there would be a connection charge to the PUD for fire suppression, in the range of $8,000 - $10,000 per connection. Then all customers in the service area, if they have a building permit and a connection to the system, will pay a fixed fire flow charge on a monthly basis. Councilor Sidhu asked what the project timeframe is. Mr. Jilk said they hope to begin construction this year.

Executive Louws called for a vote on the motion (as stated above). The vote was taken and the motion carried unanimously 10-0 (Mr. McClure previously abstained from voting on this issue).

6. Other business
Executive Louws asked for an update on economic development activities from the new Port of Bellingham Economic Development Director, Mr. Goldberg. Mr. Goldberg said things are going well, he’s getting to know the community and the various complexities of getting users to properties. He’s assembling his team and will be putting together a plan for getting infrastructure to properties, thereby allowing companies to get established in the community. There are a number of initiatives he’s working with Steve Jilk on at Cherry Point, and there have been discussions and interest from Canadian companies. There are data centers seeking properties, but having a difficult time of it either because there is no land or there’s no power, or both. Cherry Point is a jewel that has a huge amount of natural gas, power, water and 1500 acres of land available. There is a data center group looking at locating there, which will provide tax revenue to the county and the PUD.
He was recently in Skagit County working on workforce issues, including discussion on student training. He is working a lot with the small cities. Also he just brought in a new hire, Gina, who will be starting June 1st. She has her masters, works for State Dept. of Commerce in research. Her role will be research and communications. Soon he'll be starting the last hire for another project manager (similar to John) and that person will have a background in technology and recreation.

Another item: Harcourt closed on 3 residential building lots along the waterfront; the waterfront is coming together. The economy is generally holding very strong and there are a lot of companies expressing interest. For instance, a Chinese company contacted him this week about a potential 30-acre site that they're interested in buying in Cherry Point for a 300,000-foot manufacturing facility. They are looking elsewhere as well, and seek incentives to move here. He is also working on the new Business Advisory Council.

Executive Louws said if Mr. Goldberg should have any projects that he'd like to get input on from this group, to communicate directly with the Executive office and we'll arrange to assemble the group for discussion. He expressed his appreciation for the work Mr. Goldberg is doing.

A comment from Councilor Sidhu: in reference to the Business Advisory Committee, the County Council has this on their agenda pending approval. They have been waiting for the economic piece of it to come together, and expect that the committee will have a dual role which includes being an advisory group to the EDI Board.

Meeting was adjourned at 9:35 a.m.

NEXT MEETING DATE: TBD

Respectfully Submitted,
Suzanne Mildner,
EDI Board Clerk
Whatcom County Executive Office
May 1, 2018

Suzanne Mildner
Whatcom County
311 Grand Street, Suite #108
Bellingham, WA 98225

Dear Suzanne,

Please find enclosed an application for EDI Fund project funding for a Public Utility District No. 1 of Whatcom County project.

This project is to construct a water transmission pipeline to provide water to an existing fire service system that serves a number of light industrial parks: Grandview, Northgate, I-5, and Delta Tech, comprising some 250 acres of light industrial zoned lands, in the I-5, Grandview/Vista Road area.

By constructing this pipeline, the PUD will be able to provide water from its industrial water system to the existing fire system and will accomplish three significant changes to the development in this area. Most significantly will be the improvements to the capacity of the fire system. The lack of a sustainable source of water, quantity and pressure to the existing system has created a barrier to construction and expansion of building in this area. Using this new source of water will bring the fire system up to fire protection standards, improving public safety and lower fire insurance costs.

Secondly, the one existing source of water to the fire system, a storm water retention pond will be available to property owners for rehabilitation to enable a higher level of storm water management to the area and also enable expansion of existing businesses and reduce flooding in the area.

Finally, the new source of water, via the PUD’s new transmission line could provide water for stream augmentation, habitat enhancement, and mitigation to other water uses in the California Creek drainage.

The project has support from local property owners and existing businesses.

Please advise me as to how and when the application will be considered and we can plan on presenting the project to the EDI Board and County Council.

Thank you for your assistance.

Sincerely,

[Signature]
Stephan Jilk
General Manager
Public Utility District No. 1 of Whatcom County

cc: County Executive Louws
Enc. EDI Application for Funding and Letters of Support
Whatcom County
Economic Development Investments Program
Application for Funding

Jack Louws, Whatcom County Executive
Whatcom County Economic Development Investment (EDI) Program
Roving Loan and Grant Program to Encourage Creation or Retention of Private Sector Jobs

Preliminary Information and Application

Note: The intent of this Program is to be consistent with State law, RCW 82.14.370

1. **Who is eligible to apply:** Local general or special-purpose governments and higher education.

2. **What projects are covered:** Construction of publically-owned infrastructure, facilities, and related improvements, which enable or encourage the creation or retention of private sector businesses and jobs in Whatcom County consistent with EDI Program Policy Objectives.

3. **What activities are fundable:** New construction, refurbishment, replacement, rehabilitation, renovation or repair. Demolition is allowable if tied to construction. Soft costs allowed within scope of construction budget. No land acquisition except right-of-way included in a construction project.

4. **What can you use the funds for:** Transportation (roads, bridges, rail), utility services (water, sewer, storm, energy, telecom) and public buildings or structures.

5. **Other Limitations:** Planning/feasibility only projects are not eligible. Minimum local match is 10% of EDI request. EDI Board will make recommendations to the County Council which makes the final decision.

**Preferential Project Types**

First Preference – “JOBS IN HAND PROJECTS” – These types of projects will allow for the immediate creation and/or retention of jobs by providing public infrastructure that directly supports jobs. A perfect example would be a private business that will build or move into a facility and hire employees if a road is built or if water/sewer lines are extended to the site. These types of proposals would include a commitment by the private sector employer to create jobs and provide private investment.

Second Preference – “BUILD IT AND JOBS WILL COME PROJECTS” – These types of projects will construct public infrastructure but are not associated with a specific commitment from a private business to locate and/or create jobs. A perfect example would be the construction of roads and utility infrastructure to serve a new business park that would benefit multiple businesses.

Third Preference – COMMUNITY ENHANCEMENT PROJECTS” – These types of projects generally improve the physical appearance or create community assets to enhance the business climate. Examples would be boardwalk, streetscaping, downtown structures, and other publicly-owned facilities that make a community or region more attractive to existing or future businesses.
Whatcom County Economic Development Investment (EDI) Program
R revolving Loan and Grant Program to Encourage Creation or Retention of Private Sector Jobs

Preferential Project Terms

First Preference - EDI LOAN – Due to the preferred revolving nature of EDI funds, proposals that are loan only will receive higher scoring. Loan terms and interest rate structure matches the Public Works Trust Fund program. The county will maintain discretion to modify such as including a deferral period.

Second Preference - LOAN/GRANT COMBINATION – The preferred combination of grant funds and loan funds is 1/3 grant, 2/3 loan.

Third Preference - EDI GRANT – Due to the “one-shot” nature of grants, projects of equal scoring requesting a grant only will be scored lower than another similar project requesting a loan/grant mix.

Preferential* Project Amounts (Guidelines)

JOBS IN HAND PROJECTS - $1,000,000 limit if grant only. $2,000,000 limit if combination of grant and loan. $3,000,000 limit if loan only.

BUILD IT AND JOBS WILL COME PROJECTS - $500,000 limit if grant only. $1,000,000 limit if combination of grant and loan. $1,500,000 limit if loan only.

COMMUNITY ENHANCEMENT PROJECTS - $250,000 limit if grant only. $500,000 limit if combination of grant and loan. $750,000 limit if loan only.

*Based on compelling reasons, the EDI Board and County Council may consider exceptions.

Past Performance

Have you received EDI Program funding in the past? X Yes ________ No

If yes, provide project name and EDI grant/loan awarded: ____________

If yes, EDI Program staff and/or the EDI Board may conduct an audit to review performance measures against projected outcomes, such as job creation projections.

Has your jurisdiction received any audit findings from the Washington State Auditor in the past 10 years? ________ Yes; X No. If yes, provide details:

Last Updated: 11/18/13
THRESHOLD PROJECT CRITERIA

Evidence of Planning

YES  NO
X    ___
Not applicable
X    ___

Project included on an adopted regional economic strategy ("CEDS" list).
Project included in the applicant's Comprehensive Plan.
Project included in the applicant’s Capital Expenditure Plan or adopted budget.

COMMENTS:


THRESHOLD PROJECT SCORING

POINTS

Preferential Project Type

7

X Jobs In Hand 10 points
X Build It And Jobs Will Come 5 points
X Community Enhancement 2 points

5

Preferential Project Terms

X Loan Only 10 points
X Loan/Grant 5 points

0

Preferential Project Amounts

0

X Outside Preferred Dollar Limits 0 points

12

TOTAL POINTS

To proceed to other parts of the application and to receive EDI Board review, a proposed project must score 10 or more points on the above section.
Whatcom County Economic Development Investment (EDI) Program
Revolving Loan and Grant Program to Encourage Creation or Retention of Private Sector Jobs

PROJECT APPLICANT

Applicant Name: Public Utility District No. 1 of Whatcom County

Applicant Address: PO Box 2308 | 1705 Trigg Road, Ferndale, WA 98248

Applicant Contact Person: Stephan Jilk, General Manager

Applicant Email and Phone Number: stevej@pudwhatcom.org  (360) 384-4288 ext. 12

PROJECT TITLE

Grandview/I-5/Northgate/Delta Tech Fire System Supply Pipeline

PROJECT AMOUNT REQUESTED

$ 1,600,000  EDI TOTAL - (Loan $ 800,000  ; Grant $ 800,000)

$ 1,100,000  Local Match (10% of EDI request minimum)

The total project cost (estimate) is $2,700,000. This request is for 30% of project cost in grant and 30% in loan. Remaining 40% will be funded by the PUD.

PROJECT TYPE

__ Jobs In Hand  ___ Build It And Jobs Will Come  ___ Community Enhancement

PROJECT TERMS

__ Loan Only  ___ Grant/Loan  ___ Grant Only  If a loan, term requested: ____ (years)

PROJECT LOCATION: Grandview/Interstate 5/Vista Road

PROJECT DESCRIPTION

(one page limit)

This project will provide multiple benefits to an area of Whatcom County zoned Light Industrial - multiple business parks and some limited residential. This is a pipeline project connecting the PUD's industrial water line to the fire service system at the Grandview, Northgate, I-5 and Delta Tech industrial parks. Providing water supply to the system will provide adequate fire flow to these areas, allowing additional new buildings and expansion of existing businesses. It will also allow the use of the existing pond/source of supply to be managed for stormwater purposes, its original purpose and another opportunity to allow for additional building in this area. By using this new pipeline to move water into this drainage area, California Creek, this water can be used to improve habitat in California Creek and mitigate other uses of water in the California Creek drainage. The project will improve public safety, remove barriers for new buildings and expansion of existing businesses, improve habitat and open up opportunities for job creation.

Last Updated: 11/18/13
Whatcom County Economic Development Investment (EDI) Program
Revolving Loan and Grant Program to Encourage Creation or Retention of Private Sector Jobs

BASIC PROJECT INFORMATION

1. Complete the public project budget and status of funds below. If EDI funds are approved is funding 100% complete? X Yes ___ No

The PUD will use the EDI loan/grant to fill the gap of funding needed to make the project feasible. Of the total project cost of $2,700,000, the EDI loan/grant will provide $1,600,000 - 30% of project cost in grant and 30% of project cost in loan

The PUD is providing an additional $1,100,000 (40%) to complete the project’s total cost.

<table>
<thead>
<tr>
<th>Funding Source</th>
<th>Amount</th>
<th>Planned/Applied For</th>
<th>Secured</th>
</tr>
</thead>
<tbody>
<tr>
<td>Federal Dollars</td>
<td>$ 0</td>
<td>Yes ___ No ___</td>
<td>Yes ___ No ___</td>
</tr>
<tr>
<td>State Dollars</td>
<td>$ 0</td>
<td>Yes ___ No ___</td>
<td>Yes ___ No ___</td>
</tr>
<tr>
<td>Local Dollars</td>
<td>$ 1,100,000</td>
<td>Yes ___ No ___</td>
<td>Yes X ___ No ___</td>
</tr>
<tr>
<td>EDI Funding</td>
<td>$ 1,600,000*</td>
<td>Yes ___ No ___</td>
<td>Yes ___ No ___</td>
</tr>
<tr>
<td>TOTAL</td>
<td>$ 2,700,000</td>
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</tbody>
</table>

*EDI grant portion would be 30% of the total project cost.

2. Describe the amount of outside (private) funding committed to the project (eg. Plant and equipment).

Private customers will be paying charges to repay the loan.

3. Describe the public infrastructure being proposed. Include engineering estimates and a site map detailing the proposed improvements as Attachments A and B.

This is a pipeline project. Construction of a 16" water line with valving, pressure controls and fire hydrants connecting an existing 24" PUD water line to an existing fire service system.

4. Describe how these improvements will enhance or encourage community vitality and stimulate other private development in the area.

This project will bring sufficient water quantity and pressure to an existing fire service system so the system will meet all current building and insurance standards so building construction can take place. The current system does not provide that and as such, has inhibited growth in this area.
5. List all permits and environmental reviews required for the public project and detail their status (completed, in-process, etc.)

<table>
<thead>
<tr>
<th>Permit Type</th>
<th>In Process</th>
<th>Date Completed</th>
</tr>
</thead>
<tbody>
<tr>
<td>Preliminary Engineering</td>
<td></td>
<td>X</td>
</tr>
<tr>
<td>Environmental Review</td>
<td>X</td>
<td></td>
</tr>
<tr>
<td>Design Engineering</td>
<td></td>
<td>X</td>
</tr>
<tr>
<td>Right-of-Way</td>
<td>X</td>
<td></td>
</tr>
<tr>
<td>Construction Permits</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Environmental Permits</td>
<td></td>
<td></td>
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<tr>
<td>Bid Documents</td>
<td></td>
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<tr>
<td>Award Construction Contract</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Begin Construction</td>
<td></td>
<td></td>
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<tr>
<td>Project Operational</td>
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</tbody>
</table>

6. Are any other public jurisdictions involved in this project? If so, in what way?

- Whatcom County - Permitting
- Washington State Dept. of Transportation (WSDOT) - Permitting
- Washington State Dept. of Fish and Wildlife (WDFW) - Permitting
- City of Ferndale - System improved, partially in City - City consulted on plan/system upgrade

7. Who will maintain the public facility/infrastructure to be completed with EDI funds? Will this project impact utility rates within the jurisdiction?

Public Utility District No. 1 will construct, own and maintain the new line as well as continue to operate the water systems in the service area. Customers of the PUD in this service area will pay charges to the PUD to recover PUD costs.

8. Will this project directly generate a revenue stream that could be used to repay an EDI loan? Will this project spur indirect revenues that could be used to repay an EDI loan? If no to either question – why?

The PUD will recover its net costs for this project through customer charges.

Last Updated: 11/18/13
9. What other revenue sources are available for this project and have they been considered. This includes forming a Local Improvement District (LID or ULID), issuing Councilmanic Bonds, Revenue Bonds, or other source(s).
The PUD has a LUD for other system improvements at this location already. The PUD will be financing the $1,100,000 PUD share plus the $800,000 loan from EDI with rate charges.

10. Describe the private development project that will be supported by this public facility project. If there is a committed private sector partner include Contingency Agreement (Attachment C).
There is no specific private sector project being proposed if this pipeline project occurs; however, without the pipeline, any development in that area is very, very limited.

11. Explain why the private development requires the proposed public improvement(s).
The fire service system needs to be upgraded to meet current building and fire codes to support new construction. Allowing the use of the current fire pond for stormwater management will also improve site development opportunities.

12. What is the status of the associated private development review and permits. List all permits required and give the current status (applied for, being reviewed, issued).

<table>
<thead>
<tr>
<th>Environmental Review</th>
<th>In Process</th>
<th>Date Completed</th>
</tr>
</thead>
<tbody>
<tr>
<td>Construction Permits</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Environmental Permits</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Not Applicable</td>
<td></td>
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</tbody>
</table>

13. Describe the type of industry or economic activity the public development will attract. What is the strategy to attract industry to the project site?
Approximately half of the areas zoned for light industrial development in this service area is not currently built on.
Fire service and stormwater management are key issues to address to support development.
Whatcom County Economic Development Investment (EDI) Program
Revolving Loan and Grant Program to Encourage Creation or Retention of Private Sector Jobs

14. List the number of projected jobs, by type, to be retained and/or created by the private entity.

<table>
<thead>
<tr>
<th>Occupation</th>
<th>Current Jobs Retained** (In FTEs)</th>
<th># Of Jobs Created Year 1 (In FTEs)</th>
<th># Of Jobs Created by Year 5 (In FTEs)</th>
<th>Hourly Wage of current or new position</th>
<th>Local Occupational Hourly Wages***</th>
</tr>
</thead>
<tbody>
<tr>
<td>Mgmt./Admin*</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>N/A</td>
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<tr>
<td>Technical/Prof</td>
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<tr>
<td>Office/Clerical</td>
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<tr>
<td>Production</td>
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<td></td>
<td></td>
</tr>
<tr>
<td>Sales</td>
<td></td>
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<td></td>
<td></td>
</tr>
<tr>
<td>Skilled Crafts</td>
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<td></td>
</tr>
<tr>
<td>Others</td>
<td></td>
<td></td>
<td></td>
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<td></td>
</tr>
<tr>
<td>Totals</td>
<td></td>
<td></td>
<td></td>
<td>N/A</td>
<td>N/A</td>
</tr>
</tbody>
</table>

* Indicate Management positions in annual salary.

** Retained jobs are defined as jobs that would otherwise be lost from the county without this project.

*** This column will be populated with data from the state before application is distributed and revised annually.

a. Projected annual gross payroll for all job classifications $_______
b. Describe fringe benefits the company offers to regular full time employees? (health insurance, retirement plans, etc.)

15. How does this project support the economy of Whatcom County and how does it fit into a county-wide economic development strategy?

There are few areas of Whatcom County zoned for this type of development with water, roads, and electricity services in place. These light industrial parks create living wage jobs, provide property tax revenue and provide industries that provide services and products of value to the community. The PUD does not collect taxes off property as taxes in this service area goes to Whatcom County. Approximately one half of the 250 acres zoned light industrial is now developed. This project will eliminate barriers to allow additional development. The PUD is seeking some EDI support in order to leverage private (customers) charges to make the project feasible.

Last Updated: 11/18/13
16. What will the effect of this project be on the natural environment – does the project address any issues related to public health, pollution, or quality of life?

This project will free up the use of an existing pond to be managed for stormwater purposes and allow adjoining property owners to enhance the drainage system and California Creek to improve ecological systems and streamflow for salmon habitat.

17. Does this project address any existing issues related to public safety and/or does it increase public safety in the future or address a potential future public safety issue?

The project will upgrade the fire protection system for some 250 acres of light industrial/manufacturing land and provide enhanced fire protection for existing residential properties.

18. Describe specific quantifiable measures of the outcomes, other than purely jobs, that will demonstrate project success. Describe how you will measure this and explain what you expect to show as progress toward the outcome.

The fire protection system will now meet all building and fire protection requirements to support the construction of buildings and businesses on the properties as zoned.

Application for Funding – Certification

I HEREBY CERTIFY THAT THE INFORMATION GIVEN IN THIS APPLICATION TO WHATCOM COUNTY FOR INVESTMENTS IN ECONOMIC DEVELOPMENT IS TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE AND BELIEF.

Signature of Responsible Public Official: [Signature] Date: [Signature]
WATER PIPELINE PROJECT

May 16, 2018

PUBLIC UTILITY DISTRICT NO. 1
OF WHATCOM COUNTY

Whatcom County Economic Development Investment Board
Public Utility District No. 1 of Whatcom County – Vista Road
Water Pipeline Project Proposal
Water Pipeline Project

PUBLIC UTILITY DISTRICT NO. 1
OF WHATCOM COUNTY

WHAT IS THE PROJECT

Construction of a water transmission pipeline to serve existing fire service system in a light industrial zone with four (4) different business parks. The Public Utility District (PUD) would connect this pipeline to its large industrial water system to supply water to the industrial park service area.

WHY BUILD THE PIPELINE?

The existing industrial parks, encompassing some 250 acres zoned for light industrial/manufacturing and commercial use is served by two different water systems, one provides potable water and the other provides water for fire (hydrants/sprinklers) supply.

The main source of water for the fire system is an open air pond. The priority purpose of the pond is to exist as a retention pond for storm water. This pond is becoming less and less stable as a source of water for fire supply. The backup source – a groundwater well – was never designed to meet today’s fire suppression standards.

Lack of sufficient supply of water to meet today’s building fire codes is inhibiting expansion of businesses and construction of new buildings in this service area/business park development.
OTHER OPTIONS
The PUD has considered several options to meet the supply needs including drilling additional wells, building storage and connecting to the City of Ferndale’s water system. The Vista Road Pipeline Project is considered the least costly and the most sustainable and stable option.

WHY ASK FOR EDI FUNDS?
Can't the PUD build the project without EDI assistance?
The PUD has only one source of funding for these kinds of projects: Our Customers.
The PUD does not collect property taxes so if there is further development in a PUD service area, Whatcom County or a city would benefit from property and sales tax revenue. Any costs associated with this project that are not covered by the EDI grant portion will be paid for by the property owners and businesses - $1,900,000 of the total estimated cost of $2,700,000 will be paid by the PUD customers in this service area.

GOT JOBS?
Are there any “planned developments” that will proceed if the project is completed?
“Jobs in hand?”
There are no “known” projects pending at this time. Several businesses have indicated strong interest in getting the project completed as the lack of adequate fire water supply is seen as a barrier to expansion and additional development in the area.

OTHER BENEFITS
Are there any associated or other benefits to bring this water supply to the area and allowing the use of the existing pond for other purposes?
Yes, the pond can now be rehabilitated for storm water management purposes. This may allow further development at this location and help alleviate flooding in the area. Using the PUD’s Nooksack River water as a source of supply could open up opportunities to augment California Creek streamflow and improve salmon habitat, as well as mitigate for other water consumption needs in the California Creek drainage basin.

IS EDI FUNDING APPROPRIATE?
This project will improve fire safety, allow for storm water management improvement – both of which greatly enhance the expansion of existing businesses and construction of new buildings and new business startups. This will create new jobs and increase property taxes for Whatcom County and sales tax revenue for the City of Ferndale. This use of EDI funds seems most appropriate for this vital and much needed improvement to this light industrial zone within the PUD service area.
## Whatcom County
### Rural Sales Tax
#### Report as of 03/31/2018

<table>
<thead>
<tr>
<th>Revenue</th>
<th>Totals for Years 1999-2012</th>
<th>2013</th>
<th>2014</th>
<th>2015</th>
<th>2016</th>
<th>2017</th>
<th>2018</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Sales Tax Revenue</td>
<td>(32,256,827.11)</td>
<td>(3,247,487.85)</td>
<td>(3,325,480.78)</td>
<td>(3,484,041.50)</td>
<td>(3,622,268.05)</td>
<td>(3,960,295.94)</td>
<td>(1,026,980.48)</td>
<td>(50,925,381.75)</td>
</tr>
<tr>
<td>Grant Revenue</td>
<td>(50,000.00)</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>(50,000.00)</td>
</tr>
<tr>
<td>Loan Principal Payments</td>
<td>(1,125,630.00)</td>
<td>(609,663.00)</td>
<td>(964,927.00)</td>
<td>(369,913.00)</td>
<td>(786,408.00)</td>
<td>(918,116.00)</td>
<td>-</td>
<td>(5,369,182.00)</td>
</tr>
<tr>
<td>Interest Earnings</td>
<td>(326,573.00)</td>
<td>(62,066.00)</td>
<td>(69,207.00)</td>
<td>(52,161.00)</td>
<td>(106,421.00)</td>
<td>(123,786.55)</td>
<td>(50,183.00)</td>
<td>(792,397.55)</td>
</tr>
<tr>
<td><strong>Total Revenue</strong></td>
<td>(33,781,038.11)</td>
<td>(3,919,236.85)</td>
<td>(4,359,614.78)</td>
<td>(3,906,115.50)</td>
<td>(4,515,087.09)</td>
<td>(5,002,198.49)</td>
<td>(1,673,688.48)</td>
<td>(57,136,961.30)</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th></th>
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<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Capital Facilities Exp (30%)</td>
<td>9,510,396.07</td>
<td>1,539,891.16</td>
<td>156,430.34</td>
<td>1,114,750.03</td>
<td>13,466.01</td>
<td>1,511,227.47</td>
<td>3,400.84</td>
</tr>
<tr>
<td>Other Agency Loans (35%)</td>
<td>6,382,909.88</td>
<td>454,044.75</td>
<td>49,341.70</td>
<td>6,557,229.10</td>
<td>2,096,143.60</td>
<td>2,252,678.40</td>
<td>-</td>
</tr>
<tr>
<td>Grant Expenditures (35%)</td>
<td>6,719,270.71</td>
<td>392,073.55</td>
<td>109,257.50</td>
<td>3,283,242.20</td>
<td>2,121,869.50</td>
<td>118,312.52</td>
<td>1,000.00</td>
</tr>
<tr>
<td><strong>Total Expenditures</strong></td>
<td>22,612,576.66</td>
<td>2,386,909.48</td>
<td>315,028.84</td>
<td>10,955,222.01</td>
<td>4,731,479.11</td>
<td>3,882,218.39</td>
<td>4,460.84</td>
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</tbody>
</table>

<table>
<thead>
<tr>
<th>Cash Balance/Year</th>
<th>2013</th>
<th>2014</th>
<th>2015</th>
<th>2016</th>
<th>2017</th>
<th>2018</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>(11,148,453.45)</td>
<td>(1,532,327.39)</td>
<td>(4,044,584.94)</td>
<td>7,849,106.51</td>
<td>(283,617.98)</td>
<td>(1,119,980.10)</td>
<td>(1,669,207.64)</td>
<td>(12,749,064.59)</td>
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</table>

### Cash Balance Allocation

<table>
<thead>
<tr>
<th></th>
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<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Sales Tax Revenue</td>
<td>15,277,814.53</td>
<td>13,649,822.52</td>
<td>50,000.00</td>
<td>1,477,992.01</td>
<td>1,477,992.01</td>
<td>1,477,992.01</td>
<td></td>
</tr>
<tr>
<td>Grant Revenue</td>
<td>17,823,883.61</td>
<td>17,792,347.43</td>
<td>-</td>
<td>31,536.18</td>
<td>619,023.57</td>
<td>(587,487.39)</td>
<td></td>
</tr>
<tr>
<td>Principal/Interest Payments</td>
<td>17,823,883.61</td>
<td>17,792,347.43</td>
<td>-</td>
<td>5,077,957.25</td>
<td>2,427,975.00</td>
<td>2,649,982.25</td>
<td></td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td>50,925,381.75</td>
<td>44,387,896.31</td>
<td>50,000.00</td>
<td>6,687,455.44</td>
<td>3,046,998.57</td>
<td>3,540,486.87</td>
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<tr>
<td><strong>Adjusted Total</strong></td>
<td>50,925,381.75</td>
<td>44,387,896.31</td>
<td>50,000.00</td>
<td>6,161,579.55</td>
<td>6,161,579.55</td>
<td>6,161,579.55</td>
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</table>

*Committed equals the total remaining commitments from the table below.

### Administration and EDI Proposed Commitments

<table>
<thead>
<tr>
<th>Project Name</th>
<th>Total Approved</th>
<th>Capital Facilities Fund</th>
<th>EDI Loan</th>
<th>EDI Grant Fund</th>
<th>Total Remaining Commitments</th>
</tr>
</thead>
<tbody>
<tr>
<td>Ferndale Affordable Housing (332213)</td>
<td>1,725,000.00</td>
<td>-</td>
<td>619,023.57</td>
<td>1,500.00</td>
<td>620,523.57</td>
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<tr>
<td>POB ED Consortium (332219)</td>
<td>1,345,900.00</td>
<td>-</td>
<td>856,475.00</td>
<td>-</td>
<td>856,475.00</td>
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<tr>
<td>NW WA Fair Agricultural Center (332236)</td>
<td>470,000.00</td>
<td>-</td>
<td>470,000.00</td>
<td>-</td>
<td>470,000.00</td>
</tr>
<tr>
<td>COB Waterfront Project (332229)</td>
<td>1,100,000.00</td>
<td>-</td>
<td>1,100,000.00</td>
<td>-</td>
<td>1,100,000.00</td>
</tr>
<tr>
<td><strong>Totals</strong></td>
<td>4,640,900.00</td>
<td>-</td>
<td>619,023.57</td>
<td>2,427,975.00</td>
<td>3,046,998.57</td>
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</tbody>
</table>
### Cost Center Description

<table>
<thead>
<tr>
<th>Type of Activity</th>
<th>Actual 2017</th>
<th>Actual 2018</th>
</tr>
</thead>
</table>

#### Total Capital Facilities

<table>
<thead>
<tr>
<th>Actual 2017</th>
<th>Actual 2018</th>
</tr>
</thead>
</table>

#### Total

<table>
<thead>
<tr>
<th>Actual 2017</th>
<th>Actual 2018</th>
</tr>
</thead>
</table>

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### Notes

- Fund 03252: Public Utilities Improv Fund
- Current Year Spreadsheets: Public Utility impre 03-31-18 updated 5-4-18 KK

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### Total

<table>
<thead>
<tr>
<th>Actual 2017</th>
<th>Actual 2018</th>
</tr>
</thead>
</table>

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###总计

<table>
<thead>
<tr>
<th>Actual 2017</th>
<th>Actual 2018</th>
</tr>
</thead>
</table>

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## CLEARANCES

<table>
<thead>
<tr>
<th>Originator:</th>
<th>Initial</th>
<th>Date</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>JT</td>
<td>2/9/18</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Division Head:</th>
<th>Date</th>
</tr>
</thead>
<tbody>
<tr>
<td>AD</td>
<td>4/4/18</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Dept. Head:</th>
<th>Date</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>5/7/18</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Prosecutor:</th>
<th>Date</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>5/8/18</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Purchasing/Budget:</th>
<th>Date</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>5/10/18</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Executive:</th>
<th>Date</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>5/29/18</td>
</tr>
</tbody>
</table>

## TITLE OF DOCUMENT:
Contract between Whatcom County and Opportunity Council

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

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

Opportunity Council is constructing a forty-unit apartment building, 22 North, to supply affordable, permanent supportive housing for individuals experiencing behavioral health and other health problems and who have a history of homelessness. Individuals served by 22 North will require on-site supportive services to achieve housing stability. The purpose of this contract is to provide partial support for 24/7/365 facility-based staffing to ensure a safe, supportive living environment, conducive to housing stability, a recovery oriented life, and a positive relationship with neighborhood residents and businesses.

## COMMITTEE ACTION:

## COUNCIL ACTION:

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

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

TO: Jack Louws, County Executive

FROM: Regina A. Delahunt, Director

RE: Opportunity Council – Permanent Supportive Housing Services

DATE: May 4, 2018

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

- Background and Purpose
  The local 2017 Point in Time survey counted 742 people experiencing homelessness in Whatcom County. Causes of homelessness include economic challenges, family break up, behavioral health problems, domestic violence, and a lack of safe, affordable housing. Of those counted as experiencing homelessness, many had characteristics of chronic homelessness, including those who had been homeless for over a year, had four or more episodes of homelessness in the last three years, and who are frequent users of community emergency services. Opportunity Council is developing and constructing a 40 unit apartment building, 22 North, to supply affordable, permanent supportive housing for individuals experiencing homelessness. 22 North will provide on-site supportive services and housing for people with behavioral health problems, and who require these services to remain stably housed. Special populations to be served at 22 North will include Veterans, young adults, and individuals with a history of chronic homelessness. The purpose of this contract is to provide partial support for 24/7/365 facility-based staffing to ensure a safe, supportive living environment conducive to housing stability, a recovery oriented life for tenants, and a positive relationship with neighborhood residents and businesses.

- Funding Amount and Source
  Funding for this contract, in an amount not to exceed $250,000 per year will be provided by the local Behavioral Health Program Fund and Mental Health Millage. These funds are included in the 2018 budget. County Council approval is required as this contract exceeds $40,000. An agenda bill is attached.

Please contact Barbara Johnson-Vinna at extension #6046 if you have any questions regarding the terms of this agreement.

Encl.
**WHATCOM COUNTY CONTRACT INFORMATION SHEET**

<table>
<thead>
<tr>
<th>Originating Department:</th>
<th>Health</th>
</tr>
</thead>
<tbody>
<tr>
<td>Division/Program: (i.e. Dept. Division and Program)</td>
<td>8510 Human Services / 855040 Housing Program</td>
</tr>
<tr>
<td>Contract or Grant Administrator:</td>
<td>Barbara Johnson-Vinna</td>
</tr>
<tr>
<td>Contractor's / Agency Name:</td>
<td>Opportunity Council</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Is this a New Contract?</th>
<th>Yes ☑</th>
<th>No ☑</th>
</tr>
</thead>
<tbody>
<tr>
<td>If not, is this an Amendment or Renewal to an Existing Contract?</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

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

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

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

<table>
<thead>
<tr>
<th>Is this contract the result of a RFP or Bid process?</th>
<th>Yes ☑</th>
<th>No ☑</th>
</tr>
</thead>
<tbody>
<tr>
<td>If yes, RFP and Bid number(s):</td>
<td>Contract Cost Center: 124100 / 671300</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Is this agreement excluded from E-Verify?</th>
<th>No ☑</th>
<th>Yes ☑</th>
</tr>
</thead>
<tbody>
<tr>
<td>If no, include Attachment D Contractor Declaration form.</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

If YES, indicate exclusion(s) below:

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

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

- $250,000

**This Amendment Amount:**

- $

**Total Amended Amount:**

- $

**Summary of Scope:** The Contractor will be responsible for programmatic and administrative services associated with the operation of the Housing and Essential Needs program and for distributing rental and utility assistance subsidies to eligible participants and to those no longer eligible for HEN and awaiting admission to the State's Aged, Blind and Disabled program.

**Term of Contract:** 1 Year

**Expiration Date:** 06/30/2019

**Contract Routing:**

1. Prepared by: JT  
   Date: 2/8/2018
2. Attorney signoff: RB  
   Date: 4/6/2018
3. AS Finance reviewed:  
   Date: 5/10/18
4. IT reviewed (if IT related):  
   Date:  
5. Contractor signed:  
   Date: 5-1-18
6. Submitted to Exec.:  
   Date: 5-11-18
7. Council approved (if necessary):  
   Date:  
8. Executive signed:  
   Date:  
9. Original to Council:  
   Date:  

*Council approval required for: all property leases, contracts or bid awards exceeding $40,000, and professional service contract amendments that have an increase greater than $10,000 or 10% of contract amount, whichever is greater, except when:*

1. Exercising an option contained in a contract previously approved by the council.
2. Contract is for design, construction, r-o-w acquisition, professional services, or other capital costs approved by the council in a capital budget appropriation ordinance.
3. Bid or award is for supplies or equipment included approved in the budget.
4. Contract is for manufacturer's technical support and hardware maintenance of electronic systems and/or technical support and software maintenance from the developer of proprietary software currently used by Whatcom County.
Opportunity Council, hereinafter called Contractor, and Whatcom County, hereinafter referred to as County, agree and contract as set forth in this Agreement, including:

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

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

The term of this Agreement shall commence on the 1st day of July, 2018, and shall, unless terminated or renewed as elsewhere provided in the Agreement, terminate on the 30th day of June, 2019.

The general purpose or objective of this Agreement is to provide resident support services, as more fully and definitively described in Exhibit A hereeto. The language of Exhibit A controls in case of any conflict between it and that provided here.

The maximum consideration for the initial term of this agreement or for any renewal term shall not exceed $250,000. The Contract Number, set forth above, shall be included on all billings or correspondence in connection therewith.

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

IN WITNESS WHEREOF, the parties have executed this Agreement this 1st day of May, 2018.

CONTRACTOR:

Opportunity Council

Greg Winter, Executive Director

STATE OF WASHINGTON )
COUNTY OF Whatcom ) ss.

On this 1st day of May, 2018, before me personally appeared Greg Winter to me known to be the Executive Director of Opportunity Council and who executed the above instrument and who acknowledged to me the act of signing and sealing thereof.

Kathleen Miller

NOTARY PUBLIC in and for the State of Washington, residing at Bellingham, WA. My commission expires 05/31/21.
WHATCOM COUNTY:
Recommended for Approval:

Anne Deacon, Human Services Manager  Date  5/4/18

Regina Delahunt, Director  Date  5/7/18

Approved as to form:
Royce Buckingham, Prosecuting Attorney  Date  5/8/18

Approved:
Accepted for Whatcom County:

By: ________________________________
Jack Louws, Whatcom County Executive

STATE OF WASHINGTON  )  
COUNTY OF WHATCOM  ) ss

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

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

CONTRACTOR INFORMATION:

Opportunity Council
Greg Winter, Executive Director
1111 Cornwall Avenue
Bellingham, WA 98225
360-734-5121
Greg_winter@oppco.org
GENERAL CONDITIONS

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

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

Series 10-19: Provisions Related to Term and Termination

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

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

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

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

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

Series 20-29: Provisions Related to Consideration and Payments

20.1 Accounting and Payment for Contractor Services:
Payment to the Contractor for services rendered under this Agreement shall be as set forth in Exhibit "B." Where Exhibit "B" requires payments by the County, payment shall be based upon written claims supported, unless otherwise provided in Exhibit "B," by documentation of units of work actually performed and amounts earned, including, where appropriate, the actual number of days worked each month, total number of hours for the month, and the total dollar payment requested, so as to comply with municipal auditing requirements.
Unless specifically stated in Exhibit "B" or approved in writing in advance by the official executing this Agreement for the County or his designee (hereinafter referred to as the "Administrative Officer") the County will not reimburse the Contractor for any costs or expenses incurred by the Contractor in the performance of this contract. Where required, the County shall, upon receipt of appropriate documentation, compensate the Contractor, no more often than monthly, in accordance with the County’s customary procedures, pursuant to the fee schedule set forth in Exhibit "B."

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

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

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

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

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

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

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

Contractor will defend, indemnify and hold harmless the County, its officers, agents or employees from any loss or expense, including, but not limited to, settlements, judgments, setoffs, attorneys’ fees or costs incurred by reason of claims or demands because of breach of the provisions of this paragraph.
30.2 **Assignment and Subcontracting:**
The performance of all activities contemplated by this agreement shall be accomplished by the Contractor. No portion of this contract may be assigned or subcontracted to any other individual, firm or entity without the express and prior written approval of the County.

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

31.1 **Ownership of Items Produced:**
All writings, programs, data, public records or other materials prepared by the Contractor and/or its consultants or subcontractors, in connection with performance of this Agreement, shall be the sole and absolute property of the County.

31.2 **Patent/Copyright Infringement:**
Contractor will defend and indemnify the County from any claimed action, cause or demand brought against the County, to the extent such action is based on the claim that information supplied by the Contractor infringes any patent or copyright. The Contractor will pay those costs and damages attributable to any such claims that are finally awarded against the County in any action. Such defense and payments are conditioned upon the following:
A. The Contractor shall be notified promptly in writing by the County of any notice of such claim.
B. Contractor shall have the right, hereunder, at its option and expense, to obtain for the County the right to continue using the information, in the event such claim of infringement, is made, provided no reduction in performance or loss results to the County.

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

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

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

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

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

Professional Liability - $1,000,000. per occurrence (this amount may vary with circumstances)

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

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

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

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

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

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

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

36.1 Waiver of Noncompetition: Not Applicable

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

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

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

Barbara Johnson-Vinna, Program Specialist
Whatcom County Health Department
509 Girard Street
Bellingham, WA 98225
360-778-6046
BJohnson@co.whatcom.wa.us

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

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

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

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

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

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

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

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

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

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

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

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

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

   d. Arbitration: Not Applicable

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

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

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

I. Background

The 2017 Point in Time census counted 742 people experiencing homelessness in Whatcom County. The causes of homelessness include economic factors, family break up, behavioral health challenges, domestic violence, and a lack of safe, affordable housing. Of those counted in the Whatcom County Point in Time Count, a significant number had characteristics of chronic homelessness, including those who had been homeless for over a year, had four or more episodes of homelessness in the last three years, and who are frequent users of community emergency services. Opportunity Council is in the process of constructing a forty-unit apartment building to provide housing for individuals that are experiencing homelessness. This new facility, 22 North, will supply affordable, permanent supportive housing for young adults (18-24 years old), people experiencing serious behavioral health problems, and other vulnerable individuals who require supportive services to remain stably housed. The purpose of this contract is to provide partial support for 24/7/365 facility-based staffing to ensure a safe, supportive living environment conducive to housing stability, a recovery oriented life for residents, and a positive relationship with neighborhood tenants and businesses. 22 North will begin screening and accepting residents in mid-year of 2018, with the facility expected to be at full capacity by the end of 2018 or in early 2019. The addition of 22 North to our homeless housing system fulfills the goals and strategies of our Local Plan Update of our Ten Year Plan to End Homelessness, including strategies of increasing our supply of affordable and permanent supportive housing, and engaging in collaborative partnerships to increase our impact of reducing homelessness.

II. Definitions

Permanent Supportive Housing (PSH) – Housing for a person with multiple barriers to employment and housing stability, which might include mental illness, chemical dependency, and/or other disabling or chronic conditions. Comprehensive arrays of supportive services are made available to the resident.

III. Statement of Work

The Contractor will be responsible to provide 24/7/365 facility-based staffing and for the overall management of a positive and healthy living environment at 22 North. The Contractor will also be responsible to work proactively with neighboring residents and business owners to maintain positive relationships.

The Contractor will be responsible for meeting the following obligations deemed necessary to meet the program objectives of increased housing stability for homeless individuals housed at 22 North, as well as good neighbor behavior:

1. Create a positive community among residents by actively engaging residents in on-site recreational and social activities. Create opportunities for resident involvement in internal and external neighborhood volunteer activities. Operate all functions in lobby office, including checking visitors in and out, answering phones, and monitoring the security system.
2. Maintain safety and security of all staff, residents and visitors by monitoring all general access areas and enforcing building rules, including street front.
3. Work collaboratively with, Northwest Youth Services, Veterans Affairs staff, and other outside service providers to ensure provision of coordinated services to residents. Assist case management staff by encouraging residents to engage in supportive services.
4. Proactively establish positive relationships with neighborhood residents and businesses and respond to neighborhood complaints promptly and professionally. Establish a policy that outlines 22 North tenant and staff expectations of good neighbor behaviors. Ensure on-site staff receive supervision and training on policy and procedures.
5. Establish a single phone number accessible 24/7 to residents and neighboring businesses where immediate concerns can be reported to a live person.
6. Provide behavioral management support by helping residents and guests make pro-social choices. Assist residents to remain in compliance with all components of their lease, including the House Rules addendum and Non-tolerance for Criminal Activity addendum. Respond to resident complaints in a timely manner.
7. Address issues that threaten continued program participation and the safety of other residents or the immediate neighborhood. Respond to crises in a supportive manner; keep residents safe; and encourage residents to contribute to creation of a safe community. Initiate action as required, including contact with the emergency response system.

8. Work closely with Whatcom Homeless Service Center and other community stakeholders to determine the referrals of potential residents into the program. Follow the Homeless Service Center policy for prioritizing individuals identified for PSH at 22 North.

9. Provide initially and thereafter, annual training to on-site staff on Substance Use Disorders, Serious Mental Illness, Milieu Management, and Good Neighbor Policies and Procedures. Comply with relevant state and federal confidentiality laws and regulations.

IV. Program Outcomes and Reporting Requirements

During this contract period, the Contractor is expected to meet the following outcomes in efforts towards achieving the goals of the county Local Plan Update to End Homelessness in Whatcom County which are: 1) Reduce homelessness 2) Reduce time spent homeless 3) Increase number of people moving in to permanent housing, and 4) Increase housing retention rates and reduce returns to homelessness.

<table>
<thead>
<tr>
<th>Measure</th>
<th>Target</th>
<th>Outcomes/Outputs</th>
</tr>
</thead>
<tbody>
<tr>
<td>Quarterly occupancy (total number housed at 22 North at end of each quarter)</td>
<td>40</td>
<td>Current occupancy total number</td>
</tr>
<tr>
<td>New entries for quarter</td>
<td>Maintain full capacity</td>
<td># New admissions</td>
</tr>
</tbody>
</table>
| # and type of exits during quarter | No exits to homelessness | # of total exits and exit types:  
  - Death  
  - Stable/permanent housing  
  - Abandonment of unit  
  - Housing with additional supports  
  - Homelessness  
  - Other (explain): |
| Type and frequency of known neighborhood encounters | 0 complaints by neighbors; Minimum of 6 outreach efforts by Program Manager quarterly (with neighbors, nearby businesses) | # of complaints from neighbors  
  # of outreach efforts by Program Manager |
| Behavioral health stability of residents | Reduced behavioral health crisis service and law enforcement calls | # of calls to crisis service and law enforcement  
  # of residents engaged in behavioral health treatment |
| Returns to homelessness | 0 | Decrease returns to homelessness in Whatcom County |

Other Reporting Requirements

Describe types of on-site activities and level of participation by residents

Residents will have the opportunity to participate in volunteer, employment and life skills, social, recreational and community building activities on-site. Target goal: 65% of residents will participate in on-site activities.

The Contractor will submit quarterly reports in the format presented above and quarterly reports will be due as follows:

<table>
<thead>
<tr>
<th>Reporting Period</th>
<th>Due By</th>
</tr>
</thead>
<tbody>
<tr>
<td>July 1 – Sept 30</td>
<td>Oct 15th</td>
</tr>
<tr>
<td>Oct 1 – Dec 31</td>
<td>Jan 15th</td>
</tr>
<tr>
<td>Jan 1 – Mar 31</td>
<td>Apr 15th</td>
</tr>
<tr>
<td>Apr 1 – June 30</td>
<td>July 15th</td>
</tr>
</tbody>
</table>
EXHIBIT “B”  
(COMPENSATION)

I. Budget and Source of Funding: The source of funding for this contract, in the amount not to exceed $250,000, is Mental Health Millage and the Behavioral Health Fund.

II. Budget

The budget for this cost reimbursement contract is as follows:

<table>
<thead>
<tr>
<th>Cost Description</th>
<th>Documents Required Each Invoice</th>
<th>Budget</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personnel – Salary &amp; benefits</td>
<td>GL detail</td>
<td>$215,349</td>
</tr>
<tr>
<td>Supplies / Printing / Postage</td>
<td>GL detail</td>
<td>$ 3,061</td>
</tr>
<tr>
<td>Cell phone expenses</td>
<td>GL detail</td>
<td>$2,624</td>
</tr>
<tr>
<td>Mileage</td>
<td>Mileage log to include: name of the staff member, date of travel, starting point and destination of travel, the number of miles traveled and a brief description of the purpose of travel. Mileage will be reimbursed at a rate not to exceed the GSA’s rate (per <a href="http://www.gsa.gov">www.gsa.gov</a>).</td>
<td>$2,180</td>
</tr>
<tr>
<td>SUBTOTAL</td>
<td></td>
<td>$223,214</td>
</tr>
<tr>
<td>Indirect Costs (12%)</td>
<td>GL detail</td>
<td>26,786</td>
</tr>
<tr>
<td>TOTAL</td>
<td></td>
<td>$ 250,000</td>
</tr>
</tbody>
</table>

Changes to the line item budget that exceed 10% of the line item amount must be approved in writing by the County. Indirect costs shall not exceed the current approved indirect rate. The contract value will not exceed $250,000.

I. Invoicing

1. The Contractor shall submit itemized invoices up to two times per month in a format approved by the County. Invoices should be received no later than the 15th of each month for the previous month expenditures. Invoices submitted for payment must include the documentation specified in “Documents Required with Each Invoice” above. Invoices and all invoice-related communication should be sent to HL-BusinessOffice@co.whatcom.wa.us or mail to:

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

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

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

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

4. Duplication of Billed Costs or Payments for Services: The Contractor shall not bill the Health Department for services performed or provided under this contract, and the Health Department shall not pay the Contractor, if the Contractor has been or will be paid by any other source, including grants, for those costs used to perform or provide the services in this contract. The Contractor is responsible for any audit exceptions or disallowed amounts paid as a result of this contract.
EXHIBIT "C"
(INSURANCE)
# WHATCOM COUNTY COUNCIL AGENDA BILL

<table>
<thead>
<tr>
<th>CLEARANCES</th>
<th>Initial</th>
<th>Date</th>
<th>Date Received in Council Office</th>
<th>Agenda Date</th>
<th>Assigned to:</th>
</tr>
</thead>
<tbody>
<tr>
<td>Originator:</td>
<td>JT</td>
<td>2/7/18</td>
<td></td>
<td>6/5/18</td>
<td>Finance/Council</td>
</tr>
<tr>
<td>Division Head:</td>
<td></td>
<td>5/17/18</td>
<td></td>
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<td></td>
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<tr>
<td>Dept. Head:</td>
<td></td>
<td>5/18/18</td>
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<tr>
<td>Prosecutor:</td>
<td></td>
<td>5/21/18</td>
<td></td>
<td></td>
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<tr>
<td>Purchasing/Budget:</td>
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<td>5/22/18</td>
<td></td>
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<tr>
<td>Executive:</td>
<td></td>
<td>5/29/16</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

**TITLE OF DOCUMENT:**
Contract between Whatcom County and Opportunity Council

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

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

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

This contract provides rental assistance, utility assistance and essential needs for recipients of the Washington State Department of Commerce Housing and Essential Needs (HEN) Program. Although this is a new contract, HEN services have been provided through previous contracts with the Opportunity Council since 2011.

**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.
Enclosed are two (2) originals of a contract between Whatcom County and Opportunity Council for your review and signature.

- **Background and Purpose**
  Housing and Essential Needs (HEN) is a program of the Washington State Department of Commerce Consolidated Homeless Grant (CHG) and is intended to provide rental assistance, utility assistance and essential needs for recipients whose eligibility is determined by the Department of Social and Health Services (DSHS). Commerce provides funding to each County for these services. This is a sole source contract with Opportunity Council as the administrator of the Whatcom Homeless Service Center, to administer the HEN program in Whatcom County. In the last 12 months, the HEN program has provided assistance to 281 Whatcom County households.

- **Funding Amount and Source**
  Funding for this contract, in an amount not to exceed $1,087,355, is the Department of Commerce Housing and Essential Needs (HEN) Grant. These funds are included in the 2018 budget. Council approval is required as this contract exceeds $40,000.

- **Differences from Previous Contracts**
  Although this contract is new, HEN services have been provided under previous contracts with Opportunity Council since 2011. Legislative changes have expanded or modified services and benefits in some areas.

Please contact Barbara Johnson-Vinna at extension #6046 if you have any questions regarding this agreement.

Encl.
### WHATCOM COUNTY CONTRACT INFORMATION SHEET

**Originating Department:** Health  
**Division/Program: (i.e. Dept. Division and Program)** 8510 Human Services / 855040 Housing Program  
**Contract or Grant Administrator:** Barbara Johnson-Virna  
**Contractor’s / Agency Name:** Opportunity Council

<table>
<thead>
<tr>
<th>Is this a New Contract?</th>
<th>Yes ☒</th>
<th>No ☒</th>
</tr>
</thead>
<tbody>
<tr>
<td>If not, is this an Amendment or Renewal to an Existing Contract?</td>
<td>Yes ☐</td>
<td>No ☒</td>
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<tr>
<td>Original Contract #:</td>
<td></td>
<td></td>
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<table>
<thead>
<tr>
<th>Does contract require Council Approval?</th>
<th>Yes ☒</th>
<th>No ☐</th>
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<tbody>
<tr>
<td>If No, include WCC:</td>
<td>(see Whatcom County Codes 3.06.010, 3.08.090 and 3.08.100)</td>
<td></td>
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</table>

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

<table>
<thead>
<tr>
<th>Is this contract grant funded?</th>
<th>Yes ☒</th>
<th>No ☐</th>
</tr>
</thead>
<tbody>
<tr>
<td>If yes, Whatcom County grant contract number(s):</td>
<td>201708006</td>
<td></td>
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</tbody>
</table>

<table>
<thead>
<tr>
<th>Is this contract the result of a RFP or Bid process?</th>
<th>Yes ☒</th>
<th>No ☐</th>
</tr>
</thead>
<tbody>
<tr>
<td>If yes, RFP and Bid number(s):</td>
<td>Contract Cost Center: 122600 / 124100</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Is this agreement excluded from E-Verify?</th>
<th>No ☒</th>
<th>Yes ☐</th>
</tr>
</thead>
<tbody>
<tr>
<td>If no, include Attachment D Contractor Declaration form.</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

If YES, indicate exclusion(s) below:

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

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

$ 1,087,355

This Amendment Amount:

$

Total Amended Amount:

$

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**Summary of Scope:** The Contractor will be responsible for programmatic and administrative services associated with the operation of the Housing and Essential needs program and for distributing rental and utility assistance subsidies to eligible participants and to those no longer eligible for HEN and awaiting admission to the State’s Aged, Blind and Disabled program.

**Term of Contract:** 1 Year  
Expiration Date: 06/30/2019

**Contract Routing:**

1. Prepared by: JT  
   Date: 2/8/2018
2. Attorney signoff: RB  
   Date: 4/6/2018
3. AS Finance reviewed: bbennett ☒  
   Date: 4/4/2018
4. IT reviewed (if IT related):  
   Date:  
5. Contractor signed: ☑  
   Date: 5-14-18
6. Submitted to Exec.:  
   Date: 5-24-18
7. Council approved (if necessary):  
   Date:  
8. Executive signed:  
   Date:  
9. Original to Council:  
   Date:  

---

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Opportunity Council, hereinafter called Contractor, and Whatcom County, hereinafter referred to as County, agree and contract as set forth in this Agreement, including:

General Conditions, pp. 3 to 8,
Exhibit A (Scope of Work), pp. 9 to 11,
Exhibit B (Compensation), pp. 12 to 13,
Exhibit C (Certificate of Insurance).

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

The term of this Agreement shall commence on the 1st day of July, 2018, and shall, unless terminated or renewed as elsewhere provided in the Agreement, terminate on the 30th of June 2019.

The general purpose or objective of this Agreement is to provide funding for the operation of the Housing and Essential Needs Program as more fully and definitively described in Exhibit A hereto. The language of Exhibit A controls in case of any conflict between it and that provided here.

The maximum consideration for the initial term of this agreement or for any renewal term shall not exceed $1,087,355. The Contract Number, set forth above, shall be included on all billings or correspondence in connection therewith.

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

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

CONTRACTOR:

Opportunity Council

Greg Winter, Executive Director

STATE OF WASHINGTON

COUNTY OF Whatcom

On this 14th day of May, 2018, before me personally appeared Greg Winter to me known to be the Executive Director of Opportunity Council and who executed the above instrument and who acknowledged to me the act of signing and sealing thereof.

Kaitlyn Miller

NOTARY PUBLIC in and for the State of Washington, residing at Bellingham, WA My commission expires 05/31/21
WHATCOM COUNTY:
Recommended for Approval:

Anne Deacon, Human Services Manager Date

Regina Delahunty, Director Date

Approved as to form:

Royce Buskirk, Prosecuting Attorney Date

Approved:
Accepted for Whatcom County:

By: ______________________________
Jack Louws, Whatcom County Executive

STATE OF WASHINGTON } ss
COUNTY OF WHATCOM )

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

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

CONTRACTOR INFORMATION:

Opportunity Council
Greg Winter, Executive Director
1111 Cornwall Avenue
Bellingham, WA 98225
360-734-5121
Greg_winter@opppo.org
GENERAL CONDITIONS

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

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

Series 10-19: Provisions Related to Term and Termination

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

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

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

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

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

Series 20-29: Provisions Related to Consideration and Payments

20.1 Accounting and Payment for Contractor Services:
Payment to the Contractor for services rendered under this Agreement shall be as set forth in Exhibit "B." Where Exhibit "B" requires payments by the County, payment shall be based upon written claims supported, unless otherwise provided in Exhibit "B," by documentation of units of work actually performed and amounts earned, including, where appropriate, the actual number of days worked each month, total number of hours for the month, and the total dollar payment requested, so as to comply with municipal auditing requirements.
Unless specifically stated in Exhibit "B" or approved in writing in advance by the official executing this Agreement for the County or his designee (hereinafter referred to as the "Administrative Officer") the County will not reimburse the Contractor for any costs or expenses incurred by the Contractor in the performance of this contract. Where required, the County shall, upon receipt of appropriate documentation, compensate the Contractor, no more often than monthly, in accordance with the County’s customary procedures, pursuant to the fee schedule set forth in Exhibit "B."

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

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

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

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

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

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

The Contractor acknowledges that the entire compensation for this Agreement is specified in Exhibit "B" and the Contractor is not entitled to any benefits including, but not limited to: vacation pay, holiday pay, sick leave pay, medical, dental, or other insurance benefits, or any other rights or privileges afforded to employees of the County. The Contractor represents that he/she/it maintains a separate place of business, serves clients other than the County, will report all income and expense accrued under this contract to the Internal Revenue Service, and has a tax account with the State of Washington Department of Revenue for payment of all sales and use and Business and Occupation taxes collected by the State of Washington.
Contractor will defend, indemnify and hold harmless the County, its officers, agents or employees from any loss or expense, including, but not limited to, settlements, judgments, setoffs, attorneys' fees or costs incurred by reason of claims or demands because of breach of the provisions of this paragraph.

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

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

31.1 **Ownership of Items Produced:**
All writings, programs, data, public records or other materials prepared by the Contractor and/or its consultants or subcontractors, in connection with performance of this Agreement, shall be the sole and absolute property of the County.

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

A. The Contractor shall be notified promptly in writing by the County of any notice of such claim.

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

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

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

34.1 **Proof of Insurance:**
The Contractor shall carry for the duration of this Agreement general liability and property damage insurance with the following minimums:

Property Damage per occurrence - $500,000.00 (this amount may vary with circumstances)
General Liability & Property Damage for bodily injury- $1,000,000.00 (this amount may vary with circumstances)

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

a. Professional Liability - $1,000,000 per occurrence:
If the professional liability insurance is a claims made policy, and should the contractor discontinue coverage either during the term of this contract or within three years of completion, the contractor agrees to purchase tail coverage for a minimum of three years from the completion date of this contract or any amendment to this contract.
34.2 **Industrial Insurance Waiver:**
With respect to the performance of this agreement and as to claims against the County, its officers, agents and employees, the Contractor expressly waives its immunity under Title 51 of the Revised Code of Washington, the Industrial Insurance Act, for injuries to its employees and agrees that the obligations to indemnify, defend and hold harmless provided in this agreement extend to any claim brought by or on behalf of any employee of the Contractor. This waiver is mutually negotiated by the parties to this agreement.

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

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

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

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

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

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

36.1 **Waiver of Noncompetition:** Not Applicable

36.2 **Conflict of Interest:**
If at any time prior to commencement of, or during the term of this Agreement, Contractor or any of its employees involved in the performance of this Agreement shall have or develop an interest in the subject matter of this Agreement that is potentially in conflict with the County’s interest, then Contractor shall immediately notify the County of the same. The notification of the County shall be made with sufficient specificity to enable the County to make an informed judgment as to whether or not the County’s interest may be compromised in any manner by the existence of the conflict, actual or potential. Thereafter, the County may require the Contractor to take reasonable steps to remove the conflict of interest. The County may also terminate this contract according to the provisions herein for termination.
37.1 Administration of Contract:
This Agreement shall be subject to all laws, rules, and regulations of the United States of America, the State of Washington, and political subdivisions of the State of Washington. The Contractor also agrees to comply with applicable federal, state, county or municipal standards for licensing, certification and operation of facilities and programs, and accreditation and licensing of individuals.

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

Barbara Johnson-Vinna  
Whatcom County Health Department  
509 Girard Street  
Bellingham, WA 98225  
360-778-6046  
BJohnso@co.whatcom.wa.us

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

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

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

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

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

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

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

40.1 Modifications:
Either party may request changes in the Agreement. Any and all agreed modifications, to be valid and binding upon either party, shall be in writing and signed by both of the parties.
40.2 Contractor Commitments, Warranties and Representations: Not Applicable

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

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

42.1 Disputes:

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

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

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

d. Arbitration: Not Applicable

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

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

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

I. Background

The Housing and Essential Needs (HEN) is one of three programs created by Engrossed Senate House Bill 2082 which terminated the Disability Lifeline (DL) Program. HEN funds are part of Washington State Department of Commerce (Commerce) Consolidated Homeless Grant (CHG) and are intended to provide rental assistance, case management, utility assistance and essential needs for Medical Care Services recipients whose eligibility is determined by the Department of Social and Health Services (DSHS). The Whatcom Homeless Service Center (WHSC), a housing services program that serves as the coordinated entry for homelessness prevention and re-housing services for Whatcom County residents, will distribute rental and utility assistance and provide case management services for the HEN Program. The WHSC manages the Homeless Management Information Services (HMIS) for the County and will be responsible for the HMIS requirements of the HEN Program. People eligible to receive HEN rental and utility assistance will be served as long as funding is available and within the designated program requirements.

II. Project Description and Design

Housing and Essential Needs funds are limited to providing rental assistance, case management, utility assistance and essential needs for Washington Apple Health (Medicaid) recipients who are experiencing homelessness, or at substantial risk of becoming homeless and whose eligibility is determined by DSHS. The HEN Program is not intended to provide long term support for households, nor will it be able to address all the financial and supportive service needs of households that affect housing stability, nor will it be able to serve all those who are eligible. WHSC will serve as the administrative entity for the rental, case management, and utility assistance to eligible individuals. The WHSC will staff the program with program operations and case management employed staff that are funded by the Contract and are responsible for program implementation. An additional case management position (1 FTE) was previously included in the budget for the purpose of providing HEN Program clients with assistance accessing housing using HEN rental assistance, as well as other services supporting housing stability and retention.

Due to a recent change in state law in March of 2018, expansion of HEN eligibility now includes Aged, Blind, or Disabled (ABD) recipients, and those who DSHS has determined to be incapacitated due to substance use. Although eligibility for HEN has expanded, HEN funding has not increased. HEN providers are expected to prioritize those who are HEN-eligible who have the greatest need, including prioritizing people experiencing homelessness. Guidance from Commerce on prioritization of HEN-eligible clients indicates the following factors must be used to determine greatest need to include, but not be limited to, unsheltered homelessness, chronic homelessness, and length of time homeless. Additional guidance on prioritization is available in the Washington State Coordinated Entry Guidelines, Section 4, and within the Consolidated Homeless Grant guidelines.

III. Statement of Work

The Contractor will be responsible for programmatic and administrative services associated with the operation of the HEN Program. Programmatic and administrative services include all activities necessary to operate the WHSC in accordance with the requirements set forth in the Administrative Requirements and Guidelines for the CHG as more fully described in Section IV: Special Conditions, below.

The Contractor will:

1. Commit to efforts to reducing and ending homelessness in Whatcom County by:
   a. Prioritizing unsheltered homeless households for services (as per CHG Guidelines).
   b. Assessing each household's housing needs and facilitating housing stability with the goal of obtaining or maintaining permanent housing (as per CHG Guidelines).
   c. Employing a progressive engagement service model.
2. Providing direct services to individuals whose eligibility is noted in the DSHS Benefits Verification System (BVS).
3. Documenting client eligibility in client files.
4. Authorizing and issuing rental and utility assistance subsidies in a timely manner.
5. Tracking and reporting rental and utility assistance subsidies.
6. Coordinating with existing housing providers and landlords to identify and secure permanent housing placements for clients.
7. Cultivating and maintaining relationships with local landlords who agree to participate in the program.
8. Making client referrals for Essential Needs Services, housing and other community resources.
9. Coordinating with the Community Service Office of DSHS regarding client service delivery.
10. Complying with HMIS requirements including data entry and reporting responsibilities.
11. Committing to reporting complete quality data that is timely, truthful and accurate (as per CHG/ESH Guidelines and HMIS User Agreement).
12. Ensuring compliance with State and Federal confidentiality laws and regulations.
13. Completing all other activities identified by Whatcom County and Commerce as necessary to implement and manage the rental and utility assistance portion of the HEN Program.

IV. Special Conditions

The Contractor will comply with program requirements, policies and procedures contained in the “Department of Commerce Guidelines for Consolidated Homeless Grant” hereafter referred to as CHG Guidelines located at: http://www.commerce.wa.gov/serving-communities/homelessness/consolidated-homeless-grant/. Changes to the CHG Guidelines may be made without contract amendment. The CHG Guidelines will be updated periodically in compliance with changing State requirements. Whenever a revised edition of the CHG Guidelines is available, the County will provide an email notification.

Consequences of non-compliance with CHG/ESG Guidelines, as per the Department of Commerce for Grantees, are listed below and will be passed on to CHG/ESG Subgrantees:

a. If Commerce determines that a Grantee is failing to comply with the Guidelines, Terms and Conditions, Commerce will notify Grantee that Grantee will receive technical assistance and be required to respond to a corrective action plan to address and remedy the noncompliance. The technical assistance and corrective action plan to address and remedy the noncompliance will be passed on to the Subgrantee by the County.

b. If the Grantee is still out of compliance after the technical assistance, Commerce may move the Grantee into a probationary period with a second corrective action plan and may reduce the grant total by 20%. The second corrective action plan will be passed on to the Subgrantee by the County.

c. If the Grantee remains out of compliance after the probation period, Commerce may terminate the grant, per the General Terms and Conditions TERMINATION FOR CAUSE.

V. Program Outcomes

During this contract period, the Contractor is expected to meet the following outcomes:

1. The Contractor will provide assistance to all HEN eligible households that seek assistance during the contract term providing that HEN rent and utility assistance funds are available. Based on the previous 12 month period, the program is expected to serve an estimated 160 households between 7/1/2018 – 6/30/2019.
VI. Reporting Requirements

The Contractor will submit the following reports on a monthly basis to the County:

1. Number of HEN eligible households assisted during the current month and how many have been assisted year to date.

2. Average amount of subsidy per HEN household.

3. Number of HEN eligible households declined.

4. Projects falling under the following intervention types and funded by the Consolidated Homeless Grant (CHG), which includes HEN, will be expected to meet or demonstrate progress towards the following system-wide performance measures as set by the Washington State Department of Commerce (refer to following table).

System wide performance measures and benchmarks specific to intervention type (HMIS project type) are outlined in the table below. CHG Grantees must meet or demonstrate progress towards established performance measure targets by meeting the indicated benchmarks. Targeted Prevention performance measures are exempted from the “Consequences of non-compliance” as per Commerce, listed in Section IV: Special Conditions above, wherein “Grantee” refers to the County being the CHG recipient.

Updates to the CHG System-Wide Mandatory Performance Measures table below will be provided periodically by Commerce. Updates will be posted on the Whatcom County Health Department website which can be accessed at: http://whatcomcounty.us/910/Housing-Program. Additionally, the Opportunity Council will receive written notification from the County, to include the updated table, upon notification of updates from Commerce.

<table>
<thead>
<tr>
<th>Intervention Type</th>
<th>Performance Measures</th>
<th>2016 Baseline</th>
<th>Change from Baseline</th>
<th>June 30, 2018 Benchmark</th>
</tr>
</thead>
<tbody>
<tr>
<td>Emergency Shelter</td>
<td>Increase Percent Exits to Permanent Housing</td>
<td>37.4%</td>
<td>Increase by at least 5 percentage points</td>
<td>42%</td>
</tr>
<tr>
<td>Emergency Shelter</td>
<td>Reduce Percent Returns to Homelessness from months</td>
<td>11.8%</td>
<td>Decrease by at least 5 percentage points</td>
<td>Less than 10%</td>
</tr>
<tr>
<td>Rapid Rehousing</td>
<td>Increase Percent Exits to Permanent Housing</td>
<td>77.5%</td>
<td>Increase by at least 5 percentage points</td>
<td>At least 80%</td>
</tr>
<tr>
<td>Rapid Rehousing</td>
<td>Reduce Returns to Homelessness in 2 Years</td>
<td>2.9%</td>
<td>Maintain current rate (already at target)</td>
<td>5% or less</td>
</tr>
<tr>
<td>Targeted Prevention</td>
<td>Reduce Number of New Homeless</td>
<td>891 people</td>
<td>Reduce number of new homeless as compared to baseline by 41</td>
<td>850 people or less</td>
</tr>
<tr>
<td>Targeted Prevention</td>
<td>Increase households served most likely to enter homelessness based on a residence prior to project entry: institutional setting or temporarily staying with friends or family</td>
<td>8%</td>
<td>Increase by at least 5 percentage points</td>
<td>13% or more</td>
</tr>
</tbody>
</table>
I. Budget and Funding

The source of funding for this contract, in an amount not to exceed $1,087,355, is from the Washington State Department of Commerce, Housing and Essential Needs (HEN) Grant.

The budget for this contract is as follows:

<table>
<thead>
<tr>
<th>Cost Description</th>
<th>Documents Required with Each Invoice</th>
<th>Budget</th>
</tr>
</thead>
<tbody>
<tr>
<td>Housing Referral Specialist</td>
<td>Expanded General Ledger (GL) report for the period billed</td>
<td>73,840</td>
</tr>
<tr>
<td>Housing Case Manager</td>
<td>Expanded GL report for the period billed</td>
<td>127,400</td>
</tr>
<tr>
<td>Program Support Specialist</td>
<td>Expanded GL report for the period billed</td>
<td>15,600</td>
</tr>
<tr>
<td>Case Management Coordinator</td>
<td>Expanded GL report for the period billed</td>
<td>16,640</td>
</tr>
<tr>
<td>HMIS Coordinator</td>
<td>Expanded GL report for the period billed</td>
<td>4,600</td>
</tr>
<tr>
<td>WHSC Director (Program Supervision)</td>
<td>Expanded GL report for the period billed</td>
<td>3,828</td>
</tr>
<tr>
<td>50% Fringe Benefit Rate</td>
<td>Expanded GL based on federally approved fringe rate</td>
<td>120,954</td>
</tr>
<tr>
<td>Rent and Utility Assistance – HEN</td>
<td>Expanded GL with Client ID, payee, amount</td>
<td>621,958</td>
</tr>
<tr>
<td>Director Program Supplies – Office Space, Telephone, Insurance</td>
<td>Expanded GL report for the period billed</td>
<td>21,000</td>
</tr>
<tr>
<td>Mileage</td>
<td>Include name of traveler, date, start &amp; end point, and purpose. Receipts required for transportation costs, registration fees, etc. Lodging and meal costs follow federal guidelines (<a href="http://www.gsa.gov">www.gsa.gov</a>). Receipts for meals are not required.</td>
<td>5,400</td>
</tr>
<tr>
<td>Travel/Training</td>
<td></td>
<td>5,000</td>
</tr>
<tr>
<td><strong>Subtotal</strong></td>
<td></td>
<td><strong>1,016,220</strong></td>
</tr>
<tr>
<td>7% Indirect</td>
<td></td>
<td>71,135</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td></td>
<td><strong>1,087,355</strong></td>
</tr>
</tbody>
</table>

The Contractor may transfer funds among budget line items within each program budget in an amount up to 10% of the total program budget. In no instance shall the indirect cost or fringe benefit rate exceed the current approved indirect cost allocation plan. All allocated direct costs must be based on approved cost allocation plan.

II. Invoicing

1. The Contractor shall submit itemized invoices up to two times per month in a format approved by the County. Invoices should be received no later than the 15th of each month for the previous month expenditures. Invoices submitted for payment must include the documentation specified in "Documents Required with Each Invoice" above. Invoices and all invoice-related communication should be sent to HL-BusinessOffice@co.whatcom.wa.us or mail to:

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

2. End of year rental assistance payments will be invoiced and reimbursed based on the date of the rental assistance check issuance.

3. Payment by the County will be considered timely if it is made within 30 days of the receipt and acceptance of billing information from the Contractor. The County may withhold payment of an invoice if the Contractor submits it more than 30 days after the expiration of this Contract.
4. Invoices must include the following statement, with an authorized signature and date:
   
   I certify that the materials have been furnished, the services rendered, or the labor performed as described on this invoice.

5. Duplication of Billed Costs or Payments for Services: The Contractor shall not bill the Health Department for services performed or provided under this contract, and the Health Department shall not pay the Contractor, if the Contractor has been or will be paid by any other source, including grants, for those costs used to perform or provide the services in this contract. The Contractor is responsible for any audit exceptions or disallowed amounts paid as a result of this contract.
TITLE OF DOCUMENT:
Amendment 1 to Whatcom County Contract 2018-03018 between Tetra Tech and Whatcom County

ATTACHMENTS:
1. Memo
2. Contract Information Sheet
3. Contract and related exhibits

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

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

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

This amendment provides additional funds to supplement the original engineering services contract (2018-03018) to accommodate an enlarged project area. Recent discussions between the Birch Bay Watershed and Aquatic Resources Management (BBWARM) District and the Birch Bay Water and Sewer District (BBWSD) revealed that both districts are planning utility repair projects in the same corridor from Pt. Whitehorn Road to Holeman Avenue. The BBWARM District has two stormwater projects along the same length of Birch Bay Drive as the BBWSD’s waterline repair project. Coordination of these projects will save both districts money and lessen the impact to the neighborhood.

The Birch Bay Drive Outfall Improvement project (PW-3) encompasses roughly half of the total length of the Birch Bay Drive corridor (from Pt. Whitehorn Road to Jill Street). The additional funds requested in this amendment will allow for completion of the remaining half (from Jill St to Holeman Ave), also known as the Birch Bay Drive and Petticote Lane Storm Drain Improvements project (PW-2). Both stormwater projects are rated as high priority projects in the Birch Bay Subwatershed Master Plan and proposed six-year plan.

COMMITTEE ACTION: 

COUNCIL ACTION: 

Related County Contract #: 
Related File Numbers:

Ordinance or Resolution Number:

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

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

THROUGH: Jon Hutchings, Public Works Director

FROM: Kraig Olason, Senior Planner, Stormwater/NPDES

DATE: May 5, 2018

RE: Amendment 1 to existing Tetra Tech Contract #201803018 for Birch Bay Drive
Outfall Improvement design

Enclosed for your review and signature are two (2) originals of the contract amendment number one (1) for contract number 201803018 between Tetra Tech, Inc. and Whatcom County for additional design assistance with the Birch Bay Drive Outfall Improvement Project.

Background and Purpose

In December 2017, the failure of a corrugated metal outfall pipe on Point Whitehorn caused significant slope failure on a steep bluff to the shoreline, posing a critical public safety issue and the potential loss of personal property. The replacement of this outfall was originally scheduled for construction in 2021, but this pipe failure called for emergency action. Tetra Tech was hired in March 2018 (LOA 2018-SW-05) to conduct a hydrologic and hydraulic analysis and provide conceptual design options for repair. The results of that effort indicated that the most feasible design option was to re-route stormwater flows from this outfall further north along Birch Bay Drive (approximately 1500 feet) and outfall into a tributary of Terrell Creek.

Contract No. 201803018 involves the engineering design of this conveyance system and preparation of construction documents and bid package needed to construct these improvements. We recently learned that multiple utility projects are planned for this area, which requires that a future BBWARM project (Birch Bay Drive and Petticoat Lane Storm Drain Improvements PW-2) be designed now to ensure that its construction won’t result in major water utility relocations. Therefore, Amendment 1 to this contract includes supplemental engineering services for the design of an additional 1500 feet of drainage ditch along Birch Bay Drive toward Holeman Avenue. The Birch Bay Drive Outfall Improvement project was identified as a high priority capital improvement project in the Point Whitehorn Subwatershed Master Plan, the Six-Year Water Resources Improvement Program (WRIP) and by recommendation of the Birch Bay Watershed and Aquatic Resources Management (BBWARM) Advisory Committee. Tetra Tech was chosen through a competitive selection process (RFQ 17-01).

Funding Amount and Source

Contract total of $83,810.00 will be funded by existing authority in the BBWARM district budget (cost center 169250, work order 19852). Please contact Kraig Olason at extension 6301, if you have any questions or concerns regarding the terms of this agreement.
| Originating Department: | Public Works |
| Division/Program: (i.e. Dept. Division and Program) | Stormwater-BBWARM 907690 |
| Contract or Grant Administrator: | Kraig Olason, Senior Planner |
| Contractor's / Agency Name: | Tetra Tech |

| Is this a New Contract? | Yes x No ☐ |
| If not, is this an Amendment or Renewal to an Existing Contract? | Yes ☐ No x |
| Original Contract #: | 201803018 |

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

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

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

| Is this contract the result of a RFP or Bid process? | Yes x No ☐ |
| If yes, RFP and Bid number(s): | 17-01 |
| Contract Cost Center: | 169250 WO# 19852 |

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

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

| Contract Amount: (sum of original contract amount and any prior amendments): | $58,508.00 |
| This Amendment Amount: | $25,302.00 |
| Total Amended Amount: | $83,810.00 |

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

Summary of Scope: This scope of work includes supplemental engineering services to accommodate an enlarged project area for the design of the Birch Bay Drive Outfall Improvements project.

| Term of Contract: | Expiration Date: 6/1/19 |
| | 2. Attorney signoff: Daniel L. Gibson |
| | 3. AS Finance reviewed: bbennett |
| | 4. IT reviewed (if IT related): |
| | 5. Contractor signed: |
| | 6. Submitted to Exec.: |
| | 7. Council approved (if necessary): |
| | 8. Executive signed: |
| | 9. Original to Council |
| | Date: 5/4/18 |
| | Date: 05/10/18 |
| | Date: 5/16/18 |
| | Date: 5-17-18 |
| | Date: 5-23-18 |
Amendment No. 1
Whatcom County Contract No. 2018-03018
CONTRACT BETWEEN WHATCOM COUNTY AND
Tetra Tech, Inc.

THIS AMENDMENT is to the Contract between Whatcom County and Tetra Tech, Inc., dated April 11, 2018 and designated "Whatcom County Contract No. 2018-03018". In consideration of the mutual benefits to be derived, the parties agree to the following:

This Amendment does not extend the term of this Agreement and increases the maximum consideration by $25,302.00 to a total consideration of $83,810.00, as shown in Exhibit B-1 and B-1.1, see attached.

This Amendment also adds the following to the Scope of Work, Exhibit A-1: see attached.

Unless specifically amended by this agreement, all other terms and conditions of the original contract shall remain in full force and effect.

This Amendment takes effect: April 1, 2018, regardless of the date of signature.

IN WITNESS WHEREOF, Whatcom County and Tetra Tech, Inc. have executed this Amendment on the date and year below written.

DATED this ______________ day of ______________, 20__

CONTRACTOR:

Tetra Tech, Inc.

Jerry Scheller, Senior Project Manager

STATE OF WASHINGTON  )
  ) ss.
COUNTY OF WHATCOM  )

On this 17th day of MAY, 2018, before me personally appeared Jerry Scheller to me known to be the Sr. Project Manager of the Tetra Tech and who acknowledged to me the act of signing and sealing thereof.

Erin Walton, printed name, residing at King County, Wn. My commission expires 08-07-20.

NOTARY PUBLIC in and for the State of Washington,

Contract Amendment for Services - Tetra Tech
Birch Bay Drive Outfall Improvement
WHATCOM COUNTY:
Recommended for Approval:

[Signature]
Date 5/23/18
Jon Hutchings
Public Works Director

Approved as to form:

[Signature]
Date 05/23/18
Daniel L. Gibson
Chief Civil Deputy Prosecutor

Approved:

Accept for Whatcom County:

By: ____________________________
Jack Louws, Whatcom County Executive/Signatory for Flood Control Zone District Board of Supervisors

STATE OF WASHINGTON   ) ) ss
COUNTY OF WHATCOM   ) )

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

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

CONTRACTOR INFORMATION:

Tetra Tech, Inc.
Jerry Scheller, Senior Project Manager

1420 Fifth Avenue, Suite 650
Seattle, WA 98101

Contact Phone: 206-883-9414
Contact FAX: 206-883-9301
Contact Email: jerry.scheller@tetratech.com

Contract for Services - Tetra Tech
Birch Bay Drive Outfall Improvement
EXHIBIT “A-1”
INCREASED SCOPE OF WORK

Amendment No. 1 Contract No. 201803018

Supplemental Engineering Design Services

May 10, 2018

This scope of work includes supplemental engineering services for the design of the Birch Bay Drive Outfall Improvements project.

TASK 1 DESIGN OF BIRCH BAY DRIVE OUTFALL IMPROVEMENTS

Birch Bay Drive Outfall Improvements

Replacement of additional 1500 feet of 12-inch pipe from 7009 Birch Bay Drive to the catch basin near the intersection with Holeman Avenue at 6952 Birch Bay Drive, including Type 1L CB’s between every other property along the east side of Birch Bay Drive. Due to the extension of the project, it is anticipated that an additional 8 sheets will be added to the overall construction documents.

Coordination with Cascade Natural Gas

During the planning for the stormwater improvements along Birch Bay Drive, the County has been made aware of a natural gas main extension project planned by Cascade Natural Gas (CNG), adjacent to the stormwater infrastructure. To ensure all utility upgrades and extensions are coordinated during the design efforts, Tetra Tech will provide plan submittals to CNG as well as review and comment on the proposed CNG plans and how they relate to the planned stormwater improvements.
EXHIBIT “B-1”
BUDGET
Amendment No. 1

Contract No. 201803018 Increase in Fee Estimate for Increased Scope and Changed Work

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Subtotal $ 25,302

Original Fee Estimate $ 58,508

Revised Total Fee $ 83,810

(See separate attachment for complete spreadsheet – Exhibit B-1.1)
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<th>Task Description</th>
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**Total Cost:** $0

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**Pickup by Resource**

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**Total:** Pickups: 0

**Total Price:** $0

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**Exhibit B-1.1**

**Price Proposal**

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**Contract for Services - Terra Tech**

**Purpose:** 2009/2011 Birth Day Drive

---

**Document Type:** TAPM

---

**Subcommittee:** Wyomissing County Public Works
**WHATCOM COUNTY COUNCIL AGENDA BILL**

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**TITLE OF DOCUMENT:**
Brief discussion of the upcoming LIFAC recommendation of the level-of-service for the Lummi Island Ferry System.

**ATTACHMENTS:**

<table>
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<th>( ) Yes</th>
<th>(X ) NO</th>
<th>Should Clerk schedule a hearing?</th>
<th>( ) Yes</th>
<th>(X ) NO</th>
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**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.)

Brief discussion with Whatcom County Public Works Department to provide background of the upcoming recommendation by the Lummi Island Ferry Advisory Committee (LIFAC). LIFAC is expected to make a recommendation for the level-of-service for the Lummi Island Ferry System to the County Council on July 24, 2018.

**COMMITTEE ACTION:**

**COUNCIL ACTION:**

<table>
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<tr>
<th>Related County Contract #:</th>
<th>Related File Numbers:</th>
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**Please Note:** Once adopted and signed, ordinances and resolutions are available for viewing and printing on the County’s website at: [www.co.whatcom.wa.us/council](http://www.co.whatcom.wa.us/council).
A Resolution Authorizing Use and Establishing Expenditure Authority for Point Roberts Transportation Benefit District Tax Revenue Funds for Tyee Drive Streetscape Corridor Landscape Maintenance.

ATTACHMENTS:

1. Memorandum to County Executive and Council
2. Point Roberts Community Advisory Committee, Transportation Benefit District Funds Allocation Request letter for Point Roberts Garden Club Tyee Drive Corridor Landscape Maintenance
3. Resolution No. 91-439, Establishing Point Roberts Transportation Benefit District.
4. Proposed Resolution
5. Supplemental Budget Request

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

This Resolution, by the Governing Body of the Point Roberts Transportation Benefit District, authorizes use of District gas tax revenue funds, and establishes an approved 2018 budget, not to exceed $20,000, to spend District tax revenue funds for the purpose of recurring landscape vegetation maintenance work within the Tyee Drive streetscape corridor between Benson Road and Gulf Road.

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
Honorable Members of the Whatcom County Council / Governing Body of the
Point Roberts Transportation Benefit District

Through: Jon Hutchings, Public Works Director

From: Joseph Rutan, P.E., County Engineer/Assistant Director
Brian Walker, Senior Engineering Technician, Public Works

Date: May 16, 2018

Re: Point Roberts Transportation Benefit District Tax Revenue Funds Allocation for
Tyee Drive Streetscape Corridor Landscape Vegetation Maintenance Work

Requested Action
Public Works respectfully requests approval of the attached Resolution and associated Supplemental
Budget Request authorizing the use of Point Roberts Transportation Benefit District gas tax revenue
funds, and establishing spending authority budget for 2018.

Background and Purpose
The Point Roberts Community Advisory Committee (PRCAC), with the concurrence and support of Public
Works staff, are requesting budget authority to spend Point Roberts Transportation Benefit District funds
for the purpose of engaging in contracted landscape vegetation maintenance work within the Tyee Drive
streetscape. For about ten years, the Point Roberts Garden Club, in cooperation with Whatcom County
Public Works, has utilized private funding and volunteer labor to maintain this community focal point in the
local transportation system on Tyee Drive from Benson Road to Gulf Road. Due to an aging volunteer
base in the Garden Club, the Point Roberts community has requested that Transportation Benefit District
funds be utilized to assist financing the ongoing maintenance of this streetscape by hiring a contractor to
perform the necessary specialized landscape maintenance work to care for ornamental flower beds,
shrubs and street trees.

Funding Amount and Source
Total costs for a maintenance contract in 2018 are estimated not to exceed $20,000, and is requested to
be allocated with budget authority from the Point Roberts Transportation Benefit District ‘gas tax’ funds.
The Point Roberts Transportation Benefit District was established in 1991, per Resolution No. 91-439, and
collects a one-cent per gallon tax on gasoline sales within the District boundary, to be used for
transportation purposes as allowed by state law. Funding of recurring landscape maintenance in future
years beyond 2018, shall be established per future resolutions requesting budget authority from the Point
Roberts Transportation Benefit District Governing Body.

Please contact Brian Walker, Senior Engineering Technician in Public Works Design/Construction at
(360) 778-6266 if you have any questions or concerns regarding this request.
March 28, 2018

Members of Whatcom County Council
County Executive Jack Louws
Whatcom County Executive Offices
311 Grant Avenue
Bellingham, WA 98225

RE: Point Roberts Community Advisory Committee, Transportation Benefit District Funds Allocation Request for Tyee Drive Streetscape Corridor Landscape Maintenance Work

Dear Councilors and Executive Louws;

In January, 2010, and by unanimous consent, Whatcom County Council passed Ordinance number 2010-008 establishing the Point Roberts Community Advisory Committee (PRCAC). Its role—simply put—was to represent the needs and issues specific to the Point Roberts community as one voice. As the elected chair of that organization, and with the unanimous consent of PRCAC (relevant minutes attached), I’m pleased to present a plan for your consideration and approval, which utilizes a portion of accumulated Transportation Benefit District (TBD) funding for the ongoing care and maintenance of the Point’s Tyee Beautification Corridor; a collaborative effort between the Point Roberts Garden Club and Whatcom County Public Works.

Perhaps our communities’ signature and best respected civic organization, the Point Roberts Garden Club utilizes private funding and volunteer labor in the promotion of gardening events and activities—both on public and private properties—which focus on the natural beautification of our community. Approximately ten years ago, and with the assistance of TBD funding through the county, the Garden Club commenced the Tyee Beautification Corridor Project, in which an approximately 1000 yard stretch of Tyee Road—our communities’ primary access corridor—was stripped of a blight of broken concrete and invasive weeds and was transformed into a landscape of native trees, foundation plants and flowers. Obviously, ongoing maintenance of such a project has been a formidable task, but such has been achieved largely through the coordinated efforts of a group of dedicated Garden Club volunteers. Unfortunately, as the volunteer base has aged, the work has begun to overwhelm them, and, without third party assistance, the corridor will decline and the investment degrade.

Approval of this project will apportion approximately one to two percent of existing TBD funds into paying a professional landscaper to cost-effectively compliment the efforts of the volunteers while protecting a decades’ worth of investment.
By copy of this memo, I would like to acknowledge the efforts of both the Garden Club executive and its president, Scott Hackleman, as well as the excellent leadership on this file provided by Messers Joe Rutan and Brian Walker and their staff at the counties’ Public Works Department. I’m quite pleased to answer any questions or address any issues that you may have.

Many thanks in advance, from the entire Point Roberts community, for your consideration of this proposal.

Kind Regards

[Signature]

Jeffrey Christopher

Chair; Point Roberts Community Advisory Committee
SUBJECT:

A resolution adopting for Point Roberts Transportation Benefit District a one cent ($0.01) per gallon tax on the sale of gasoline within the boundaries of said District; designating the revenues for street maintenance and construction purposes; providing for the method of collection by Whatcom County; providing for a penalty for late payment; and repealing or amending any ordinances and resolutions in conflict herewith.

ATTACHMENTS:

Resolution

Public Hearing Needed? Yes/xx/No/_/

SUMMARY STATEMENT:

This resolution formally adopts the Point Roberts Transportation Benefit District one cent per gallon gas tax as approved by the voters at the general election of November 5, 1991. The resolution also sets forth the collection process, penalties and interest and records required.

ORIGINATOR'S RECOMMENDED ACTION:

COMMITTEE ACTION (including dates):

COUNCIL ACTION (including dates):
1/7/92: Resolution approved with amendment, 7-0.

Related File Numbers: Ordinance or Resolution Number: R92-002
SPONSORED BY: __Consent____

PROPOSED BY: __Executive____

INTRODUCTION DATE: __12/3/91____

A Resolution by the Governing Body of the
Point Roberts Transportation Benefit District

RESOLUTION NO. 92-002

A RESOLUTION ADOPTING FOR POINT ROBERTS TRANSPORTATION
BENEFIT DISTRICT A ONE CENT ($0.01) PER GALLON TAX ON THE SALE OF
GASOLINE WITHIN THE BOUNDARIES OF SAID DISTRICT, DESIGNATING
THE REVENUES FOR STREET MAINTENANCE AND CONSTRUCTION
PURPOSES; PROVIDING FOR THE METHOD OF COLLECTION BY WHATCOM
COUNTY; PROVIDING FOR A PENALTY FOR LATE PAYMENT; AND
REPEALING OR AMENDING ANY ORDINANCES AND RESOLUTIONS IN
CONFLICT HEREWITH.

WHEREAS, a new chapter has been added to RCW Title 82 to allow transportation
benefit districts which have within its boundaries an international border crossing to enact
a local option gas tax within the district boundaries; and,

WHEREAS, the proposal for enactment of the local option gasoline tax was
approved by the voters of the Point Roberts Transportation Benefit District at the general
election of November 5, 1991;

NOW, THEREFORE, BE IT RESOLVED by the legislative body of the Point
Roberts Transportation Benefit District as follows:

SECTION 1. There shall be levied upon and shall be collected from and paid as provided
in this resolution a tax of one cent ($0.01) per gallon tax on the retail sale of gasoline within
the boundaries of the Point Roberts Transportation Benefit District.

SECTION 2. Gasoline to be taxed under this resolution is motor vehicle fuel or special fuel
as defined by RCW Chapters 82.36 and 82.38 as now existing or as may hereinafter be
amended.

SECTION 3. The gross proceeds of the tax collected under this resolution, less amounts
deducted by Whatcom County for administration and collection expenses, if any, shall be
used solely for transportation purposes as is allowed by state law within said District
boundaries.

SECTION 4. COLLECTION OF TAX. The administration and collection of tax imposed
by this resolution shall be coordinated by the Whatcom County Treasurer acting ex officio
and independently as the treasurer of the District as required by RCW 36.73.020. Remittance of the amount due shall be accompanied by a completed tax return form as may be described and provided by the Treasurer. Tax may be collected at least quarterly but, in any event, not more frequently than monthly. The taxpayer shall be required to swear and affirm that the information given on the return is true and correct. The Point Roberts Transportation Benefit District, through the Treasurer’s office, may adopt from time to time such rules and regulations as may be reasonable and necessary to enable the collection of the gas tax as anticipated herein.

SECTION 5. PAYMENT. The taxes imposed by this resolution shall be computed and remitted to the Point Roberts Transportation Benefit District along with the required form on the basis of activity during each calendar month and shall be due and payable by the 25th day of the following month, or payment period as designated by the Treasurer, by check, money order or cash. If payment is made by draft or check, the tax shall not be deemed paid until the draft or check is honored in the usual course of business; nor shall the acceptance of any sum by the Treasurer be an acquittance of discharge of the tax unless the amount paid is the full amount due.

SECTION 6. DELINQUENT PAYMENT OF TAX/PENALTY. If full payment of any tax or fee due under this resolution is not received by the Treasurer on or before the date due, there shall be added to the amount due a penalty of eighteen percent (18%) of the delinquent amount.

Failure to make payment in full of all tax amounts, and penalties, within sixty (60) days following the date the tax amount initially became due shall be a violation of this section and shall constitute a debt to the Point Roberts Transportation Benefit District, and may be collected by court proceedings the same as any other debt in like amount which shall be in addition to all other existing remedies.

SECTION 7. RECORDS REQUIRED. Each business engaged in the sale of gasoline, as defined in Section 1, shall maintain records regarding the sale of gasoline which truly, completely and accurately disclose all information necessary to determine the tax liability hereunder during each tax period (month). Such records shall be kept and maintained for a period of not less than three (3) years.

All books and records kept in accordance with this section shall be subject to, and made available for inspection and audit at any time upon demand by the Treasurer for purposes of enforcing the provisions of this resolution.

The monthly report may be submitted to the Treasurer along with the form for the payment of taxes.

SECTION 8. GAS TAX LIEN. The Point Roberts Transportation Benefit District reserves the right to file a lien with the Whatcom County Auditor against the real property
distributing said retail gasoline within the District for which a tax is owing and delinquent under this resolution. Once a tax delinquency under this resolution has been reduced to judgement and a lien has been filed therefore, as provided for therein, this gas tax lien may be enforced in accordance with the priorities and procedures for the enforcement of real estate mortgages, as provided under the laws of the State of Washington, that does now exist or as may hereinafter be amended.

SECTION 9. OTHER TAXES. The tax herein levied shall be additional to any license fee or tax imposed or levied under any law or any other ordinance of Whatcom County, except as herein otherwise expressly provided.

SECTION 10. TAX REVENUE TO BE USED FOR STREET MAINTENANCE AND CONSTRUCTION. The revenue collected pursuant to this resolution shall be used for the maintenance and construction of streets within the Point Roberts Transportation Benefit District.

SECTION 11. All ordinances or parts of ordinances in conflict herewith are hereby repealed.

SECTION 12. If any section, subsection, clause or phrase of this resolution is for any reason held to be invalid or unconstitutional, such decision shall not affect the validity of the remaining portions of this resolution.

SECTION 13. This resolution shall be in force from and after its passage by the legislative body of the Point Roberts Transportation Benefit District, if approved, otherwise, as provided by law and five (5) days after the date of publication.

APPROVED this 7th day of January, 1992.

ATTEST: WHATCOM COUNTY, WASHINGTON

Ramona Reeves, Council Clerk

Daniel M. Warner, Chairman

APPROVED AS TO FORM:

Civil Deputy Pros. Atty.
RESOLUTION NO. ____________.

AUTHORIZING USE AND ESTABLISHING EXPENDITURE AUTHORITY FOR
POINT ROBERTS TRANSPORTATION BENEFIT DISTRICT TAX REVENUE FUNDS
FOR TYEE DRIVE STREETSCAPE CORRIDOR LANDSCAPE MAINTENANCE

WHEREAS, pursuant to RCW 36.73.020, the Whatcom County Council established the Point
Roberts Benefit District (hereinafter referred to as District) by Ordinance 91-043; and

WHEREAS, the operations of the District are governed by the Whatcom County Council acting ex
officio and independently; and

WHEREAS, pursuant to RCW 42.30, the District is subject to the Open Public Meeting Act; and

WHEREAS, the District intends to authorize use of Point Roberts Transportation Benefit District
tax revenue funds for landscape vegetation maintenance work within the bounds of the District in an open
public meeting; and

WHEREAS, this budget request will establish spending authority of District tax revenue funds in an
open public meeting; and

WHEREAS, the District intends to approve its 2018 budget in an open public meeting; and

NOW, THEREFORE, BE IT RESOLVED by the legislative body of the Point Roberts
Transportation Benefit District that use of District tax revenue funds is authorized, and expenditure authority
approved with a 2018 budget of $20,000.

ADOPTED this _____ day of ____________, 2018

ATTEST:

WHATCOM COUNTY COUNCIL
WHATCOM COUNTY, WASHINGTON

Dana Brown-Davis, Clerk of the Council

Rud Browne, Council Chair

APPROVED AS TO FORM:

Chief Civil Deputy Prosecutor
Supplemental Budget Request

Public Works

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Administration

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Expenditure Type: One-Time

Year: 2018

Add'l FTE: □
Add'l Space: □
Priority: 1

Name of Request: Point Roberts TBD - Tyee Dr Landscape Maintenance

Department Head Signature (Required on Hard Copy Submission): X

Date: 5/16/16

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1a. Description of request:

The Point Roberts Community Advisory Committee (PRCAC), with the concurrence and support of Public Works staff, are requesting budget authority to spend Point Roberts Transportation Benefit District (TBD) funds for the purpose of engaging in contracted landscape vegetation maintenance work within the Tyee Drive streetscape. For about ten years, the Point Roberts Garden Club, in cooperation with Whatcom County Public Works, has utilized private funding and volunteer labor to maintain this community focal point in the local transportation system on Tyee Drive from Benson Road to Gulf Road.

Total costs for a maintenance contract in 2018 are estimated not to exceed $20,000, and is requested to be allocated with budget authority from the Point Roberts Transportation Benefit District ‘gas tax’ funds. Funding of recurring landscape maintenance in future years beyond 2018, shall be established per future resolutions requesting budget authority from the Point Roberts Transportation Benefit District Governing Body.

1b. Primary customers:

The primary customers benefitting from this budget request is the public within the Point Roberts community.

2. Problem to be solved:

Due to an aging volunteer base in the Point Roberts Garden Club, the Point Roberts community has requested that TBD gas tax funds be utilized to assist in financing the ongoing maintenance of the Tyee Drive streetscape by hiring a professional landscape contractor to perform the necessary specialized vegetation maintenance work to care for ornamental flower beds, shrubs and street trees.

3a. Options / Advantages:

Utilizing TBD funds to pay for a professional landscape contractor is a cost-effective way to compliment the efforts of the community Garden Club volunteers while protecting the existing investment the streetscape beautification of one of the Point Roberts communities’ primary transportation corridors.

3b. Cost savings:

Without additional financial support via TBD funds expenditure to provided contracted landscape maintenance services for Tyee Drive streetscape landscaping, the vegetation will become overgrown, resulting in additional cost burden on Whatcom County maintenance crews to manage the landscaping to assure the safety of traveling public. Whatcom County crews will likely remove the ornamental trees, shrubs and flower bed vegetation within the streetscape and replace it with low-maintenance treatments such as mowed grass.

4a. Outcomes:

Establishing spending authority and budget for expenditure of TBS funds will allow the streetscape

Tuesday, May 15, 2018

Rpt: Rpt Suppl Regular

131
Supplemental Budget Request

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<td>Cost Center 170</td>
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<td>Originator:  Point Roberts Citizen Adviso</td>
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landscaping to remain in its current form, enhance the overall beautification of the Point Roberts community, and provide maintenance cost savings for Whatcom County.

4b. Measures:

5a. Other Departments/Agencies:
County Maintenance and Operations crews will be in contact with the landscaping contractor to manage the landscapoe maintenance needs.

5b. Name the person in charge of implementation and what they are responsible for:
Brian Walker, Senior Engineering Technician at Whatcom County Public works will be in charge of coordination and administration of the landscape maintenance contract, with advise from the Point Roberts Garden Club members on contract scope and specifications.

6. Funding Source:
Funds will come from the Point Roberts Transportation Benefit District ‘gas tax’ funds established per Whatcom County Resolution No. 92-002. The current fund balance is just over $1,000,000.
Amend the Point Roberts and Wiser Lake LAMIRD requirements in the Whatcom County Zoning Code (WCC 20.80.100(1)).

**ATTACHMENTS:**

1. Memorandum
2. Draft Ordinance with Exhibit A
3. Planning Commission Findings
4. Draft Planning Commission Minutes

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

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

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

The Whatcom County Council will consider:

1. Proposed amendments to the Point Roberts LAMIRD requirements of the Whatcom County Zoning Code (WCC 20.80.100(1)) that would allow “Auto/Equipment Repair,” where permitted by the underlying zoning classification, and set maximum building sizes for this use.
2. Proposed amendments to the Wiser Lake LAMIRD requirements (WCC 20.80.100(1)) that would allow “Manufacturing/Fabrication,” where permitted by the underlying zoning classification, and set maximum building sizes for this use.

**COMMITTEE ACTION:**

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**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.
Memorandum

May 16, 2018

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

FROM: Matt Aamot, Senior Planner

THROUGH: Mark Personius, Director

RE: Point Roberts and Wiser Lake LAMIRD Requirements (PLN2018-00007)

The Growth Management Act (GMA) authorizes counties to allow "limited areas of
more intensive rural development" (LAMIRDs) in the rural element of a
comprehensive plan. However, the GMA states "Any development or
redevelopment in terms of building size, scale, use, or intensity shall be consistent
with the character of the existing areas. . ." (RCW 36.70A.070(5)(d)(i)(C)). An
existing LAMIRD area or existing use is one that was in existence on July 1, 1990.

The Whatcom County Council adopted a new section in the Zoning Code (WCC
20.80.100) entitled "LAMIRD Requirements" in 2012 (amended in 2015). This new
Zone Code section implemented the GMA requirement that new uses within
LAMIRDs must be consistent with the building sizes that existed in 1990.
Specifically, this code section sets maximum individual building sizes and maximum
sizes for all buildings on a given site within the Rural Community LAMIRD
designation.

During the LAMIRD review process, the Planning and Development Services
Department assembled a document entitled Whatcom County Rural Element Update
LAMIRD Report" (2012, updated 2013). This LAMIRD report included Appendix F
entitled "1990 Commercial and Public Uses." Appendix F is a table showing the
commercial, industrial, and public uses existing in 1990 within LAMIRDS, including
the Point Roberts and Wiser Lake LAMIRDs.

The LAMIRD report formed the basis for the square footage limits in WCC
20.80.100(1). For example, the LAMIRD report identified that the largest
"storage/warehouse" use existing in Point Roberts in 1990 was 3,286 square feet.
Therefore, this maximum size for new storage/warehouse uses in Point Roberts was
inserted into WCC 20.80.100(1) to achieve consistency with the GMA. Assembling
the LAMIRD report was a large task and the report took, by necessity, a somewhat
broad-brush approach to defining the square footage allowed in each land use
category. Therefore, WCC 20.80.100(1) may be amended to reflect more specific information that becomes available on uses that existed in 1990.

Recently, it was brought to the attention of the County’s Long Range Planning staff that more specific information was available for the Point Roberts LAMIRD and the Wiser Lake LAMIRD. Based upon review of this information, staff proposed the following changes to WCC 20.80.100(1):

- **Point Roberts LAMIRD Requirements** - Allow “Auto/Equipment Repair,” where permitted by the underlying zoning classification, and set maximum building sizes for this use; and

- **Wiser Lake LAMIRD Requirements** - Allow “Manufacturing/Fabrication,” where permitted by the underlying zoning classification, and set maximum building sizes for this use. Reduce the maximum building sizes for the “Storage/Warehouse” uses.

The Whatcom County Planning Commission held a public hearing on April 26, 2018 and made one change to the staff proposal. The Planning Commission did not recommend reducing the maximum building sizes for “Storage/Warehouse” uses in Wiser Lake LAMIRD table.

Thank you for your review and consideration of the proposed code changes. We look forward to discussing the changes with you.
PROPOSED BY: Planning & Development Services
INTRODUCTION DATE: June 5, 2018

ORDINANCE NO. ______________

ADOPTING AMENDMENTS TO
THE POINT ROBERTS AND WISER LAKE
LAMIRD REQUIREMENTS

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

WHEREAS, The County Council considered Planning Commission recommendations; and

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

FINDINGS OF FACT

Background Information

1. The subject proposal amends the Whatcom County Zoning Code (Title 20) by:

   a. Modifying the Point Roberts LAMIRD requirements (WCC 20.80.100(1)) to allow "Auto/Equipment Repair," where permitted by the underlying zoning classification, and set maximum building sizes for this use; and

   b. Modifying the Wiser Lake LAMIRD requirements (WCC 20.80.100(1)) to allow "Manufacturing/Fabrication," where permitted by the underlying zoning classification, and set maximum building sizes for this use.

2. A Determination of Non-Significance was issued by the SEPA Responsible Official on April 10, 2018.

3. The Planning Commission held a public hearing on the subject amendments on April 26, 2018.

4. Pursuant to WCC 20.90.050, proposed zoning code amendments are evaluated for consistency with the Whatcom County Comprehensive Plan.
Growth Management Act

5. The Growth Management Act authorizes counties to allow "limited areas of more intensive rural development" (LAMIRDS) in the rural element of a comprehensive plan (RCW 36.70A.070(5)(d)).

6. The Growth Management Act states, with regard to LAMIRDS, "Any development or redevelopment in terms of building size, scale, use, or intensity shall be consistent with the character of the existing areas. . ." (RCW 36.70A.070(5)(d)(i)(C)). An existing area or existing use is one that was in existence on July 1, 1990 (RCW 36.70A.070(5)(d)(v)(A)).

Whatcom County Comprehensive Plan

7. The Whatcom County Comprehensive Plan map designates the Point Roberts LAMIRD as a Rural Community.

8. The Whatcom County Comprehensive Plan map designates the Wiser Lake LAMIRD as a Rural Community.

9. Whatcom County Comprehensive Plan policies include:

Policy 2JJ-1: Areas designated as Rural Communities shall meet the criteria stated in this chapter and the requirements of RCW 36.70A.070(5)(d)(i), which describes limited areas of more intensive rural development consisting of the infill, development, or redevelopment of existing commercial, industrial, residential, or mixed use areas, including necessary public facilities and public services to serve the limited area.

Policy 2JJ-4: Within the Rural Communities, encourage adequate economic development to provide current and future residents' employment needs, and provide rural residents places to shop, eat, and access to public services.

Policy 2JJ-5: Within Rural Communities development or redevelopment in terms of size, scale, use, or intensity shall be consistent with the character of the area on July 1, 1990.

Policy 2JJ-7: Land uses within Rural Communities, except for industrial uses, should be principally designed to serve the existing and projected rural population.

Point Roberts LAMIRD

10. The Whatcom County Zoning Code's "LAMIRD Requirements" establish maximum floor area per building and maximum combined floor area for all buildings (WCC 20.80.100(1)).
11. The Point Roberts LAMIRD provisions of WCC 20.80.100(1) currently do not specify square footage limitations for “Auto/Equipment Repair” because no such businesses, existing as of 1990, were identified when the LAMIRD Requirements were adopted.

12. Whatcom County issued building permit # 1496 at the Point Roberts Marina in 1981 for a yacht service building (foundation only), which included “boat repair and sales.”

13. Whatcom County issued Building Permit # 2444 for “Completion of yacht service bldg” in 1981.


15. Whatcom County issued building permit # 3987 for interior work on the yacht service building in 1983. Exhibit A of the permit states that approved uses included a boat repair shop. The site plan associated with this permit shows that the yacht repair & service occupied approximately 6,732 square feet (about 4,148 was inside the building and the remaining 2,584 was a covered area attached to the building).

16. The Point Roberts Marina Resort’s VP Development e-mailed the County on March 28, 2018, providing three documents:

   a. A letter from the VP Development stating that the Point Roberts Marina opened in the early 1980s and that there have been five different tenants that have occupied the boat service space since opening.

   b. A 1982 “License Agreement” allowing a company to use parking spaces at the Point Roberts Marina. The exhibit attached to the 1982 License Agreement shows the parking area, but also shows “Yacht Repair & Service” in a portion of the existing building.

   c. A 2016 “Commercial Lease” for general boat repair services including engine repairs, painting, structural repairs and modification, and maintenance in approximately 7,000 square feet in the existing building.

17. The automotive and equipment repair category in the Zoning Code may include marine service and repair (i.e. WCC 20.59.054, 20.61.054, and 20.62.051).

18. The boat service and repair business started in the early 1980s and continues on the site today.

19. Since the boat repair business, which may come under the auto/equipment repair category, existed in the Point Roberts LAMIRD in 1990, the use may be inserted in WCC 20.80.100(1).
Wiser Lake LAMIRD

20. The Whatcom County Zoning Code’s “LAMIRD Requirements” establish maximum floor area per building and maximum combined floor area for all buildings (WCC 20.80.100(1)).

21. The Wiser Lake LAMIRD provisions of WCC 20.80.100(1) currently do not specify square footage limitations for “Manufacturing/Fabrication” because no such businesses, existing as of 1990, were identified when the LAMIRD Requirements were adopted.

22. Whatcom County Planning and Development Services issued a “Verification on Nonconforming Use” in 1998 (File # NON98-00002). This Verification was for manufacturing/fabrication uses on Lot 1 of the Scholten Short Plat, 7157 Guide Meridian, which is within the Wiser Lake LAMIRD.

23. An e-mail from Whatcom Land Use Consulting, LLC dated March 23, 2018 states that a total of 6,368 square feet of the buildings on the site was used for manufacturing/fabrication businesses in 1990.

24. Since manufacturing/fabrication use existed in the Wiser Lake LAMIRD in 1990, it may be inserted in WCC 20.80.100(1).

CONCLUSION

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

Section 1. Amendments to the Whatcom County Zoning Code (Title 20) are hereby adopted as shown on Exhibit A.

Section 2. Adjudication of invalidity of any of the sections, clauses, or provisions of this ordinance shall not affect or impair the validity of the ordinance as a whole or any part thereof other than the part so declared to be invalid.

ADOPTED this ______ day of ______________, 2018.

WHATCOM COUNTY COUNCIL
WHATCOM COUNTY, WASHINGTON

ATTEST:

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

APPROVED as to form:

__________________________  __________________________
( ) Approved  ( ) Denied

__________________________  __________________________
Civil Deputy Prosecutor  Jack Louws, Executive

Date: ______________________

Page 5 of 5
Exhibit A

20.80.100 LAMIRD requirements.

(1) Building Size in Rural Communities. Within areas designated in the Comprehensive Plan as rural community, which are limited areas of more intensive development as described in RCW 36.70A.070(5)(d)(i), permitted maximum building sizes shall be in accordance with building sizes that existed in each area on July 1, 1990, as shown in the following table.

Maximum floor area per building, in square feet

(Maximum combined floor area for all buildings, in square feet)

<table>
<thead>
<tr>
<th></th>
<th>Retail/Office/Restaurant/Lodging</th>
<th>Storage/Warehouse</th>
<th>Auto/Equipment Repair</th>
<th>Public/Community</th>
<th>Manufacturing/Fabrication</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Acme</strong></td>
<td>2,734</td>
<td></td>
<td>2,070</td>
<td>17,784</td>
<td></td>
</tr>
<tr>
<td></td>
<td>(2,734)</td>
<td></td>
<td>(2,070)</td>
<td>(17,784)</td>
<td>(21,896)</td>
</tr>
<tr>
<td><strong>Axton &amp; Guide Meridan</strong></td>
<td>4,800</td>
<td></td>
<td>2,160</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>(4,800)</td>
<td></td>
<td>(2,160)</td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Birch Bay-Lynden &amp; V.V.</strong></td>
<td>2,784</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>(3,684)</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Cain Lake</strong></td>
<td>2,060</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>(2,060)</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Custer</strong></td>
<td>3,968</td>
<td></td>
<td>3,300</td>
<td>46,451</td>
<td></td>
</tr>
<tr>
<td></td>
<td>(3,968)</td>
<td></td>
<td>(3,300)</td>
<td>(46,451)</td>
<td></td>
</tr>
<tr>
<td><strong>Deming</strong></td>
<td>11,790</td>
<td>2,400</td>
<td>1,392</td>
<td>30,099</td>
<td></td>
</tr>
<tr>
<td></td>
<td>(18,757)</td>
<td>(2,400)</td>
<td>(1,392)</td>
<td>(30,099)</td>
<td>(79,512)</td>
</tr>
</tbody>
</table>
Maximum floor area per building, in square feet

(Maximum combined floor area for all buildings, in square feet)

<table>
<thead>
<tr>
<th></th>
<th>Retail/Office/Restaurant/Lodging</th>
<th>Storage/Warehouse</th>
<th>Auto/Equipment Repair</th>
<th>Public/Community</th>
<th>Manufacturing/Fabrication</th>
</tr>
</thead>
<tbody>
<tr>
<td>Diablo</td>
<td>513 (513)</td>
<td></td>
<td></td>
<td>10,872 (10,872)</td>
<td></td>
</tr>
<tr>
<td>Glacier</td>
<td>3,500 (7,888)</td>
<td></td>
<td></td>
<td>3,150 (3,150)</td>
<td></td>
</tr>
<tr>
<td>Hinotes Corner</td>
<td>6,636 (9,036)</td>
<td>1,500 (1,500)</td>
<td></td>
<td>19,856 (19,856)</td>
<td></td>
</tr>
<tr>
<td>Kendall</td>
<td>7,000 (7,000)</td>
<td></td>
<td></td>
<td>3,340 (3,340)</td>
<td></td>
</tr>
<tr>
<td>Laurel</td>
<td>10,700 (11,000)</td>
<td>10,260 (10,260)</td>
<td></td>
<td>21,950 (63,360)</td>
<td>17,670 (23,590)</td>
</tr>
<tr>
<td>Lummi Peninsula</td>
<td></td>
<td>7,800 (18,540)</td>
<td></td>
<td></td>
<td>7,280 (7,280)</td>
</tr>
<tr>
<td>Maple Falls</td>
<td>8,020 (8,020)</td>
<td>4,620 (4,620)</td>
<td></td>
<td>8,822 (10,082)</td>
<td></td>
</tr>
<tr>
<td>Newhalem</td>
<td>3,218 (3,218)</td>
<td></td>
<td></td>
<td>4,810 (12,981)</td>
<td>16,284 (28,924)</td>
</tr>
<tr>
<td>Nugents Corner</td>
<td>18,221 (19,499)</td>
<td></td>
<td></td>
<td>3,240 (3,240)</td>
<td></td>
</tr>
</tbody>
</table>
Maximum floor area per building, in square feet

(Maximum combined floor area for all buildings, in square feet)

<table>
<thead>
<tr>
<th></th>
<th>Retail/Office/Restaurant/</th>
<th>Storage/</th>
<th>Auto/Equipment</th>
<th>Public/</th>
<th>Manufacturing/Fabrication</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Lodging</td>
<td>Warehouse</td>
<td>Repair</td>
<td>Community</td>
<td></td>
</tr>
<tr>
<td>Point Roberts</td>
<td>34,704</td>
<td>3,286</td>
<td>6,732</td>
<td>11,246</td>
<td></td>
</tr>
<tr>
<td></td>
<td>(34,704)</td>
<td>(3,286)</td>
<td>(6,732)</td>
<td>(11,246)</td>
<td></td>
</tr>
<tr>
<td>Pole &amp; Guide Meridian</td>
<td>6,400</td>
<td>4,548</td>
<td></td>
<td>4,000</td>
<td></td>
</tr>
<tr>
<td></td>
<td>(6,400)</td>
<td>(5,556)</td>
<td></td>
<td>(4,000)</td>
<td></td>
</tr>
<tr>
<td>Sandy Point</td>
<td></td>
<td></td>
<td></td>
<td>1,428</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td>(1,428)</td>
<td></td>
</tr>
<tr>
<td>Smith &amp; Guide Meridian</td>
<td>5,866</td>
<td>5,900</td>
<td>9,600</td>
<td>22,042</td>
<td></td>
</tr>
<tr>
<td></td>
<td>(7,068)</td>
<td>(5,900)</td>
<td>(17,100)</td>
<td>(22,042)</td>
<td></td>
</tr>
<tr>
<td>Sudden Valley</td>
<td>6,348</td>
<td></td>
<td></td>
<td>30,140</td>
<td></td>
</tr>
<tr>
<td></td>
<td>(10,320)</td>
<td></td>
<td></td>
<td>(44,945)</td>
<td></td>
</tr>
<tr>
<td>Van Wyck</td>
<td>3,480</td>
<td>1,904</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>(3,480)</td>
<td>(1,904)</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Wiser Lake</td>
<td>24,690</td>
<td>11,222</td>
<td>2,130</td>
<td>6,368</td>
<td></td>
</tr>
<tr>
<td></td>
<td>(24,690)</td>
<td>(12,374)</td>
<td>(2,130)</td>
<td>(6,368)</td>
<td></td>
</tr>
</tbody>
</table>

(2) Within areas designated in the Comprehensive Plan as rural community, a public community facility that serves a predominantly rural area may exceed the maximum floor area and maximum combined floor area given for public/community uses in subsection (1) of this section, subject to a conditional use permit per WCC 20.84.200.
(3) Within areas designated in the Comprehensive Plan as rural business, which are limited areas of more intensive development as described in RCW 36.70A.070(5)(d)(iii), new nonresidential uses are subject to a maximum building size of 7,000 square feet, except in the Birch Bay-Lynden/I-5 area where new nonresidential uses are subject to a maximum building size of 12,000 square feet, which is considered “small-scale” relative to existing uses in that area. For buildings in which nonresidential uses existed on July 1, 2012, building size expansion to no greater than 8,000 square feet is permitted, except in the Birch Bay-Lynden/I-5 area, where building size no greater than 20,000 square feet is permitted.

(4) Within a rural business designation, a larger building size for new nonresidential development is permitted if a conditional use permit is granted per WCC 20.84.200. A conditional use permit for a larger building size shall be subject to a finding that:

(a) The larger building size will not cause the need for additional public facilities to be provided in the area;

(b) The proposal is consistent with the Comprehensive Plan policies regarding the rural business designation; and

WHATCOM COUNTY
PLANNING COMMISSION

Point Roberts and Wiser Lake
LAMIRD Requirements

FINDINGS OF FACT AND REASONS FOR ACTION

Background Information

1. The subject proposal amends the Whatcom County Zoning Code (Title 20) by:
   a. Modifying the Point Roberts LAMIRD requirements (WCC 20.80.100(1)) to allow "Auto/Equipment Repair," where permitted by the underlying zoning classification, and set maximum building sizes for this use; and
   b. Modifying the Wiser Lake LAMIRD requirements (WCC 20.80.100(1)) to allow "Manufacturing/Fabrication," where permitted by the underlying zoning classification, and set maximum building sizes for this use.

2. A Determination of Non-Significance was issued by the SEPA Responsible Official on April 10, 2018.

3. The Planning Commission held a public hearing on the subject amendments on April 26, 2018.

4. Pursuant to WCC 20.90.050, proposed zoning code amendments are evaluated for consistency with the Whatcom County Comprehensive Plan.

Growth Management Act

5. The Growth Management Act authorizes counties to allow "limited areas of more intensive rural development" (LAMIRDs) in the rural element of a comprehensive plan (RCW 36.70A.070(5)(d)).

6. The Growth Management Act states, with regard to LAMIRDs, "Any development or redevelopment in terms of building size, scale, use, or intensity shall be consistent with the character of the existing areas. . ." (RCW 36.70A.070(5)(d)(i)(C)). An existing area or existing use is one that was in existence on July 1, 1990 (RCW 36.70A.070(5)(d)(v)(A)).
Whatcom County Comprehensive Plan

7. The Whatcom County Comprehensive Plan map designates the Point Roberts LAMIRD as a Rural Community.

8. The Whatcom County Comprehensive Plan map designates the Wiser Lake LAMIRD as a Rural Community.

9. Whatcom County Comprehensive Plan policies include:

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Point Roberts LAMIRD

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a. A letter from the VP Development stating that the Point Roberts Marina opened in the early 1980s and that there have been five different tenants that have occupied the boat service space since opening.

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17. The automotive and equipment repair category in the Zoning Code may include marine service and repair (i.e. WCC 20.59.054, 20.61.054, and 20.62.051).

18. The boat service and repair business started in the early 1980s and continues on the site today.

19. Since the boat repair business, which may come under the auto/equipment repair category, existed in the Point Roberts LAMIRD in 1990, the use may be inserted in WCC 20.80.100(1).

Wiser Lake LAMIRD

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22. Whatcom County Planning and Development Services issued a “Verification on Nonconforming Use” in 1998 (File # NON98-00002). This Verification was for manufacturing/fabrication uses on Lot 1 of the Scholten Short Plat, 7157 Guide Meridian, which is within the Wiser Lake LAMIRD.

23. An e-mail from Whatcom Land Use Consulting, LLC dated March 23, 2018 states that a total of 6,368 square feet of the buildings on the site was used for manufacturing/fabrication businesses in 1990.

24. Since manufacturing/fabrication use existed in the Wiser Lake LAMIRD in 1990, it may be inserted in WCC 20.80.100(1).

CONCLUSION

The subject zoning amendments are consistent with the Whatcom County Comprehensive Plan.

RECOMMENDATION

Based upon the above findings and conclusions, the Whatcom County Planning Commission recommends approval of the following amendments to the Whatcom County Zoning Code:

Exhibit A, amending the LAMIRD Requirements of WCC 20.80.100(1).

WHATCOM COUNTY PLANNING COMMISSION

Nicole Oliver, Chair

Becky Boxx, Secretary

5/9/18

Date

5/9/18

Date

Commissioners present at the April 26, 2018 meeting when the vote was taken: Kelvin Barton, Atul Deshmene, Gary Honcoop, Jon Maberry, Natalie McClendon, Dominic Moceri, and Nicole Oliver.

Vote: Ayes: 7, Nays: 0, Abstain: 0, Absent: 1, Vacant Position: 1. Motion carried to adopt the above amendments.
Exhibit A recommended by the Planning Commission
has been omitted because it is the same as
Exhibit A in the draft ordinance
Call To Order: The meeting was called to order, by Whatcom County Planning Commission Chair, Nicole Oliver, in the Whatcom County Northwest Annex at 6:30 p.m.

Roll Call
Present: Nicole Oliver, Natalie McClendon, Gary Honcoop, Kelvin Barton, Atul Deshmene, Dominic Moceri, Jon Maberry
Absent: Stephen Jackson

Staff Present: Mark Personius, Matt Aamot, Jessie Postma

Department Update
Mark Personius updated the commission on the following:
- County Council schedule

Open Session for Public Comment
There was no public comment.

Commissioner Comments
There were no commissioner comments

Approval of Minutes
March 8, 2018: Commissioner Maberry changed page two, line 26 to read:
Commissioner Moceri stated he was disappointed in this. Wells aren’t necessarily an easier...

Commissioner McClendon changed page 4, line 10 to read: 2 wells that produce 40 gallons per million minute and...

Commissioner Barton moved to approve as amended. Commissioner McClendon seconded. The motion carried.

April 12, 2018: Commissioner Honcoop moved to approve as written. Commissioner McClendon seconded. The motion carried.

Public Hearing
File #PLN2018-00007:
(1) Proposed amendments to the Point Roberts LAMIRD requirements of the Whatcom County Zoning Code (WCC 20.80.100(1)) that would to allow “Auto/Equipment Repair,” where permitted by the underlying zoning classification, and set maximum building sizes for this use.
(2) Proposed amendments to the Wiser Lake LAMIRD requirements (WCC 20.80.100(1)) that would allow “Manufacturing/Fabrication,” where permitted by the underlying zoning classification, and set maximum building sizes for this use, and reduce the maximum building sizes for “Storage/Warehouse” uses.

Matt Aamot presented the staff report.

The GMA was adopted in 1990. At that time, the GMA drew a distinct line between UGAs and Rural areas, which it still does. But, there were existing rural towns, crossroads, and neighborhoods that were developed more intensely than the 5, 10, or 20 acre lots that were thought of as Rural in character. So, the GMA was amended in 1997 to allow counties to recognize these intensively developed rural areas, now known as LAMIRDS. However, the GMA also put limitations on new development in LAMIRDs. The building size, scale, use, or intensity of new development had to be consistent with the uses that existed in the area in 1990, when the GMA was adopted.

The Whatcom County Comp Plan now contains provisions relating to LAMIRDS. One of the LAMIRD designations in the Comp Plan is called “Rural Community.” There are a number of Rural Community designations throughout the County, including:

- Point Roberts; and
- The Wiser Lake area.

The County Comp Plan contains a number of policies for Rural Communities, including Policy 2JJ-4 which encourages economic development in these areas.

County Comp Plan Policy 2JJ-5 reiterates the GMA’s requirements that new development in LAMIRDs must be consistent with development that existed in the area in 1990.

One of the GMA requirements is that the size of new buildings in a LAMIRD must be consistent with the sizes that existed in 1990. This GMA requirement is implemented in the County Zoning Code by a table showing:

1. Maximum floor area for individual buildings; and
2. Maximum floor area for all buildings combined.

The Point Roberts LAMIRD does not currently have a size limitation for “Auto/Equipment Repair,” because no such businesses had been identified when the LAMIRD rules were adopted in 2012.

The County assembled a LAMIRD Report in 2012, and updated that report in 2013. Appendix F of the LAMIRD Report identifies parcels that had commercial uses as of 1990 – but, this report did not identify any auto/equipment repair businesses in Point Roberts. Our Current Planning staff pointed out that there was a longstanding boat repair business at the Point Roberts Marina. With a little research, we found a series of building permits for this use that were issued between 1981 and 1983. Current Planning also pointed out that some of auto/equipment repair provisions in the Zoning Code specifically cover marine service and repair (so, the marine category can fit.
within the auto/equipment repair category). Therefore, we are proposing to add this
use to the LAMIRD table. The square footage, of 6,732, was estimated from a 1983
building permit plan in the County’s files.

The Wiser Lake LAMIRD does not currently have a size limitation for
“Manufacturing/Fabrication” because no such businesses had been identified when the
LAMIRDs rules were adopted.

As mentioned, the County issued a LAMIRD Report in 2012-2013. Appendix F of this
report did not identify any manufacturing/fabrication businesses in Wiser Lake Area as
of 1990. However, a local land use consultant pointed out that there were longstanding
fabrication businesses on the west side of the Guide Meridian, south of Wiser Lake.
As we researched this, we found a verification of nonconforming use that the County
issued in 1998. Additionally, Land Use consultant, Jamie White, provided more detailed
information on the square footage of these fabrication businesses. Therefore, we are
proposing to add this use to the LAMIRD table. This one is a little different that Point
Roberts. The building was recognized in the 2012 LAMIRD table, but it was classified
entirely as a storage/warehouse facility.

There were storage uses in part of the building.

However, there were also manufacturing/fabrication uses in part of the building.

So, the square footage added to the manufacturing category, had to be subtracted
from the storage category.

In summary, the proposal would:

1. Modify the Point Roberts LAMIRD requirements to set maximum building sizes
   for “Auto/Equipment Repair;”
2. Modify the Wiser LAMIRD requirements to set maximum building sizes for
   “Manufacturing/Fabrication;” and
3. Modify the Wiser Lake LAMIRD by reducing the maximum building sizes for
   “Storage/Warehouse” uses.

The hearing was opened to the public.

Gordon Nielsen, Whatcom County: Has an 8,200 square foot building at Point Roberts.
They are in non-compliance because of the size. He would like to see the allowable size
in the regulations be more so his building is in compliance.

Jamie White, Whatcom Land Use Consulting: Representing Scholten Roofing. The
company has been at its current location since the 1950's. However, the area is not
zoned for manufacturing or fabrication which is clearly an error. The county issued the
business a permit as a non-conforming use in 1998 which legitimizes the use and must
have been an oversight when they did the LAMIRD.

The public hearing was closed.

Commissioner Moceri asked what prompted the changes.
Mr. Aamot stated Jamie White brought up the Wiser Lake issue and some citizens from Point Roberts brought the issue to staff.

Commissioner Honcoop stated he did not like the Wiser Lake proposal. It is not written to the intent of the LAMIRDs. During the LAMIRD process it was all about the buildings, then the uses were identified to the buildings. There was never a split in the building. The proposal steals from one to give to another.

Commissioner McClendon agreed that they should not be choosing between whether is storage, warehouse or manufacturing.

Mr. Aamot stated that is a different methodology than has been used in all the other LAMIRDs because you are using one building for two different categories.

Commissioner McClendon stated that at some point in the past someone made a judgment call on what the use was. It could have easily been judged to be some other use. Why can’t you put it in both?

Commissioner Oliver asked what the point was behind subtracting a total.

Mr. Aamot stated it was because there was not 11,000 feet of warehousing and 11,000 feet of manufacturing in 1990.

Commissioner Moceri asked if it is accurate to say they are splitting the building.

Mr. Aamot said yes.

Commissioner Honcoop stated they can’t start dividing up buildings. That is not what happened during the LAMIRD process. This is like split zoning because you are dividing the use.

Commissioner Moceri asked how the original square footage used was originally calculated.

Commissioner Honcoop stated they did not go through that process.

Commissioner Moceri asked if they took a number a put it on both if it would cause issues.

Mr. Aamot stated he did not know. They would have to think about the implications. What does size, scale and intensity of use mean?

Commissioner McClendon asked why they can’t just look at a size and not take into consideration what they do in it.

Mr. Aamot stated different uses in the buildings have different impacts, which is why they have to look at that.
Commissioner Moceri asked if double uses could be used to get a bigger building.

**Commissioner Deshmane moved to change the table to read:**

<table>
<thead>
<tr>
<th>Wiser Lake</th>
<th>24,690 (24,690)</th>
<th>4,854 11,222</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>(6,006) (12,374)</td>
<td>2,130 (2,130)</td>
</tr>
</tbody>
</table>

Commissioner Honcoop seconded.

The motion carried (ayes-7, nays-0).

Commissioner Honcoop moved to delete finding #25 based on the change to the table and recommend approval of the proposal as amended.

Commissioner Barton seconded.

Roll Call Vote: Ayes-Barton, Deshmane, Honcoop, Maberry, McClendon, Moceri, Oliver; Nays-0; Abstain-0; Absent-Jackson.

The meeting was adjourned at 7:50 p.m.

Minutes prepared by Becky Boxx.

WHATCOM COUNTY PLANNING COMMISSION ATTEST:

Nicole Oliver, Chair

Becky Boxx, Secretary
Title of Document:
Council direction on Resolution 2018-015 relating to the Cherry Point Urban Growth Area.

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.)

The Whatcom County Council approved Resolution 2018-015 on April 24, 2018. This Resolution, relating to major permits in the Cherry Point Urban Growth Area, states that “The Whatcom County Council will work with staff to develop the proposed Comprehensive Plan and development regulation amendments. The proposed amendments will be reviewed by the Council’s Committee of the Whole, which will provide for public comment.”

Committee Action:
5/8/2018: Held in Committee
5/22/2018: Held in Committee

Council Action:
5/22/2018: 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. 2018-015

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:

- The Whatcom County Council will work with staff to develop the proposed Comprehensive Plan and development regulation amendments. The proposed amendments will be reviewed by the Council's Committee of the Whole, which will provide for public comment.

- The proposed amendments will undergo SEPA review.

- The Whatcom County Planning Commission will hold a town hall meeting and a public hearing prior to issuing recommendations on the proposed amendments.

- The Whatcom County Council will hold a public hearing prior to adopting an ordinance relating to the amendments.

Approved this ___ day of April, 2018.

ATTEST:

[Signature]
Dana Brown Davis, Clerk of the Council

[Signature]
Rud Browne, Council Chair

APPROVED AS TO FORM:

[Signature]
Kara R. Frakes
Civil Deputy Prosecutor
## TITLE OF DOCUMENT:
Amendments to WCC 8.11, Solid Waste Recycling and Collection District and WCC 8.10, Solid Waste and Residential Recycling Collection regarding Solid Waste Collection in Point Roberts, WA.

## ATTACHMENTS:
1) Memo to Executive, 2) Draft Ordinance, 3) Exhibit A: Amendment to WCC 8.11, Solid Waste Recycling and Collection District, 4) Exhibit B: Amendment to WCC 8.10, Solid Waste and Residential Recycling Collection

## 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.)

It was requested on May 8, 2018 to introduce for public hearing amendments to WCC 8.11, Solid Waste Recycling and Collection District and WCC 8.10, Solid Waste and Residential Recycling Collection regarding solid waste collection in Point Roberts, WA. The amendments would remove the exemption provision for mandatory curbside collection, require monthly participation in curbside collection at a minimum level of service, and collect payment for monthly curbside collection as a fee on the annual property tax statement. The purpose is to protect human health and the environment by increasing levels of service, reducing costs, reducing illegal dumping, increasing recycling rates and ensuring stability and continuity of service provision in an area of low density, high seasonal occupancy and high operational costs.

## COMMITTEE ACTION:
5/22/2018: Forwarded to Council for introduction

## COUNCIL ACTION:
5/22/2018: Introduced 7-0

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

AMENDMENTS TO WCC 8.11, SOLID WASTE RECYCLING AND COLLECTION DISTRICT AND WCC 8.10, SOLID WASTE AND RESIDENTIAL RECYCLING COLLECTION REGARDING SOLID WASTE COLLECTION IN POINT ROBERTS, WA

WHEREAS, as per RCW 81.77, Solid Waste Collection Companies and WAC 480-70, Solid Waste and/or Refuse Collection Companies, the Washington Utilities and Transportation Commission (WUTC) is the jurisdictional regulatory authority for all solid waste collection companies in Washington State; and,

WHEREAS, WUTC by law regulates solid waste collection companies as 'investor-owned utilities' subject to rigorous tariff-based services and rate structure oversight, with annual financial reporting and targeted fixed rates of return; and,

WHEREAS, in 2009 the solid waste collection company operating in Point Roberts ceased to be economically viable and discontinued collection services; and,

WHEREAS, in the 2010 WUTC Final Order, Docket TG-081576, WUTC specifically identified the County provision for exemption from mandatory collection services as a primary contributing factor to the discontinuation of services in Point Roberts, and strongly recommended a review of local regulatory requirements; and,

WHEREAS, provision of solid waste collection in Point Roberts continues to be marginally economically viable, with repeat discontinuation of services being a probable outcome; and,

WHEREAS, as a result of the 2010 WUTC Final Order, the approved 2016 Whatcom County Comprehensive Solid and Hazardous Waste Management Plan states that a review of solid waste collection in Point Roberts will be conducted; and,

WHEREAS, in May 2016 staff engaged with the Point Roberts Community Advisory Committee (PRCAC) to conduct the review, which was subsequently comprised of an initial on-line community solid waste survey, fourteen PRCAC meeting discussions, nine PRCAC staff presentations, an informational mailer to 2,300 property owners, and a Town Hall meeting; and,

WHEREAS, as a result of this review and public process, PRCAC recommends 1) removal of the existing provision for exemption from collection services, 2) requiring participation in collection services at a minimum service level of twice monthly pickup of a
32 gallon can and source separated recyclables, and 3) including the WUTC approved monthly service charge as a fee on the annual property tax statement; and,

WHEREAS, staff concurs that these recommendations are protective of human health and the environment by increasing levels of service, reducing costs, reducing illegal dumping, increasing recycling rates, and ensuring stability and continuity of service provision in a challenging area of low density, high seasonal occupancy and high operational costs; and,

WHEREAS, as per WCC 8.11, Solid Waste Recycling and Collection District, the Whatcom County Council is the governing body of the recycling and collection district; and,

NOW, THEREFORE, BE IT ORDAINED by the Whatcom County Council that WCC 8.11, Solid Waste Recycling and Collection District is amended as shown in Exhibit A attached hereto and that WCC 8.10, Solid Waste and Residential Recycling Collection is amended as shown in Exhibit B attached hereto.

ADOPTED this ____ day of __________, 2018.

ATTEST:

WHATCOM COUNTY COUNCIL
WHATCOM COUNTY, WASHINGTON

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

WHATCOM COUNTY EXECUTIVE
WHATCOM COUNTY, WASHINGTON

APPROVED AS TO FORM:

__________________________
Civil Deputy Prosecutor

__________________________
Jack Louws, County Executive

( ) Approved  ( ) Denied

Date Signed: __________________________

Page 2
EXHIBIT A

Chapter 8.11
SOLID WASTE RECYCLING AND COLLECTION DISTRICT

Sections:
8.11.010 District created - Determinations and findings.
8.11.020 Collection mandatory - Starting date.
8.11.030 Procedure to obtain exemption.
8.11.040 Enforcement - Civil penalty.
8.11.050 Governing body designated - Election.
8.11.060 Severability.

8.11.010 District created - Determinations and findings.
The Whatcom County solid waste recycling and collection district (the "district") is hereby created to make solid waste and recycling collection mandatory in Whatcom County in furtherance of the objectives of the county's plan. The district is formed, in part, in light of the formation of a solid waste disposal district pursuant to RCW Chapter 36.58 and Chapter 8.13. The county council has determined that the unincorporated areas of the county cannot meet their solid waste management objectives, including recycling goals, without the formation of a collection district. The recycling and collection district shall include all unincorporated areas except the Diablo/Newhalem area of Whatcom County and shall be implemented compatibly with cities and towns which require mandatory collection within their limits, all as provided in interlocal agreements executed with the county. All municipalities in the county have executed interlocal agreements with the county as shown in Appendix A of the ordinance codified in this chapter, which appendix is incorporated herein by reference. The county council in forming the recycling and collection district determines and finds:

A. All residences and businesses within the county are beneficiaries of the county solid waste and recycling management program and receive substantial and essential public service by having available on a continuing and standby basis healthful, safe and reliable solid waste disposal facilities;
B. The county has experienced increasing health and safety problems due to improper handling of solid waste. These problems include but are not limited to air pollution, litter and possible groundwater contamination. Requiring that transportation and disposal of solid waste be
performed by qualified providers of collection service in compliance with the law and regulations is necessary for the immediate protection of the public health-and safety;
C. The state has set waste reduction and recycling as the highest priorities in managing solid waste streams. In order to develop workable programs of waste reduction and recycling, the county and municipalities need mandatory collection to make curbside collection and other source separation feasible;
D. The cost of operating Whatcom County’s solid waste and recycling management program may be met in part by imposing an excise tax on the charges paid for solid waste collection by each residential dwelling and by each business or institution in the taxing district, as authorized by Chapter 8.13; and
E. Those who knowingly fail to comply with the requirements of this chapter shall be liable as provided below for a civil penalty and for related attorneys’ fees and costs in order to reduce the environmental degradation and public health risks associated with noncompliance. (Ord. 90-96 § 1).

8.11.020 Collection mandatory – Starting date.
Solid waste and recycling collection shall become mandatory for owners of all developed property within the recycling and collection district on a date which the county executive has certified for implementation of the mandatory collection program. Such date shall be determined by the county executive after consultation with staff of the solid waste division, who shall have consulted with haulers, concerning the administrative feasibility of implementation. Such date shall occur on the first day of a month, and shall not be sooner than the first day of the month following the approval of the ordinance codified in this chapter, nor later than one year following such approval. (Ord. 90-96 § 2).

8.11.030 Procedure to obtain exemption.
A. At least 60 days prior to the date of implementation of mandatory solid waste and recycling collection, the solid waste division shall provide reasonable notice to all residences and businesses that mandatory collection will be implemented. Such notice shall state how requests for exemption may be filed. Such notice shall be issued in coordination with certificated haulers.
B. Any person who wishes an exemption from the provisions or application of this chapter may file an affidavit with the solid waste manager which states substantively as follows:
   I swear or affirm that I should be exempt from the requirements of universal recycling and solid waste collection because I am disposing of my waste in
an environmentally sound way.
This affidavit is subject to periodic verification by the solid waste manager or his/her designee. Effective January 1, 2019 requests for exemptions for single-family residences and multi-family dwellings located in Point Roberts will not be approved, and existing exemptions in Point Roberts will terminate.
C. Within 30 days after implementation of mandatory collection, the solid waste manager shall provide a report to the county executive containing findings on the number of exemptions that have been requested, the grounds stated for such exemptions, and the actions taken on the requests. Within 60 days after implementation of mandatory collection, the county executive shall report the findings to the county council, together with any recommendations for further legislative action on exemptions which the county executive believes are appropriate. (Ord. 90-96 § 3).

8.11.040 Enforcement – Civil penalty.
A. If any residence, business, or institution, not otherwise exempt from mandatory collection, refuses to pay for such mandatory collection, the county may, upon the request of a certificated hauler, through the prosecuting attorney’s office commence appropriate action to enforce the provisions of this chapter. The prevailing party shall be entitled to an award of reasonable attorney’s fees and costs in any such action.
B. Any person who knowingly fails to subscribe to or pay for solid waste and recycling collection service without having obtained an exemption shall be liable in addition to actual damages, for a penalty to the county in an amount equal to any past due bill for solid waste and recycling collection service not to exceed $500.00, plus an additional penalty of not less than $100.00 nor more than $200.00 which shall not be suspended or deferred. (Ord. 90-96 § 4).

8.11.050 Governing body designated – Election.
The Whatcom County council shall be the governing body of the recycling and collection district. The electors of said district shall be all registered voters residing within the district. (Ord. 90-96 § 5).

8.11.060 Severability.
The invalidity or unenforceability of any portion of this chapter shall not affect the other provisions thereof, and this chapter shall be construed in all respects as if such invalid or unenforceable provision were omitted. (Ord. 90-96 § 6).
EXHIBIT B

Chapter 8.10
SOLID WASTE AND RESIDENTIAL RECYCLING COLLECTION

Sections:
8.10.010 Purpose.
8.10.020 Findings.
8.10.030 Definitions.
8.10.040 Single-family residential garbage collection.
8.10.050 Residential recycling collection.
8.10.060 Nonresidential and multifamily garbage collection.
8.10.070 Submittal of documents and notices.
8.10.080 Notice to Utilities and Transportation Commission.
8.10.090 Modification of collection schedules.
8.10.100 Severability.

8.10.010 Purpose.
A. Policies expressed in Whatcom County's 2008 Comprehensive Solid and Hazardous Waste Management Plan ("plan") make waste reduction and recycling the preferred methods of handling solid waste. The purpose of this chapter is to specify service levels and rate structures for recycling and solid waste collection that encourage recycling and waste reduction, that protect the public health and safety, and to ensure that, to the maximum extent practicable, only the remainder after separation should be incinerated or landfilled.

B. Certain service levels and rate structures for solid waste and recycling collection are hereby established in Whatcom County to further the objectives of the plan, including a high level of waste reduction and recycling; to ensure the provision of such solid waste collection and disposal systems and services as are in the public interest; and to secure a healthful environment for all citizens of Whatcom County. (Ord. 2014-035 Exh. A; Ord. 2003-018; Ord. 2001-041; Ord. 2001-34; Ord. 97-067; Ord. 95-045).

8.10.020 Findings.
The county council, in establishing service levels and rate structure principles, determines and finds:
A. Waste reduction and recycling measures contemplated by the plan promote the health, safety, and welfare of residents by encouraging the reuse of products and reducing the use of incineration and landfill facilities.

B. State and federal laws and regulations have increased the responsibility of local governments to manage solid waste systems in a manner that protects public health and safety.

C. The state and the county have set waste reduction and recycling as the highest priorities in managing solid waste. In order to make programs for waste reduction, curbside recycling and other source separation feasible, rate structures must make it cost-effective for residents and businesses who generate small amounts of waste to participate in such programs, and all nonresidential accounts must be offered the option of subscribing to recycling service.

D. It is the policy of the county that collected recyclable materials be processed locally whenever practicable and that they be utilized according to the following priorities: (1) reuse intact materials in their original form for their original purposes; (2) recycle materials back into their original form for their original purpose; (3) recycle materials for other uses and preserve the future ease of recyclability; and (4) reuse materials for single end uses that do not allow or that inhibit further recycling.

E. Adoption of the ordinance codified in this chapter is necessary for the protection of natural resources and the environment, the immediate preservation of the public health and welfare and the support of governmental activities. (Ord. 2014-035 Exh. A; Ord. 2003-018; Ord. 2001-041; Ord. 2001-34; Ord. 97-067; Ord. 95-045).

8.10.030 Definitions.
As used in this chapter:

A. "Carrier" means a common, contract or private carrier as defined by RCW 81.80.010.

B. "Certificated hauler" means solid waste collection companies.

C. "Executive committee" means the group of seven mayors and the county executive as established and governed by interlocal agreements between the county and cities in July 1989.

D. "Multifamily dwelling" means a residential dwelling containing five or more units on one lot or parcel.
E. “Nonresidential account” means a building or facility that is not occupied as a permanent residence including, but not limited to, commercial and industrial businesses, schools, hospitals, government buildings, recreation facilities, and transportation facilities.

F. “On-call service” means garbage pickup service and drop-off recycling on other than regularly scheduled days, from a dwelling unit that is a seasonal vacation or weekend home. On-call garbage service does not include roadside recycling service and tends to be on a variable infrequent basis.

G. “Recyclables” and “recyclable materials” mean those solid wastes that are separated for recycling or reuse as identified in this chapter.

H. “Seasonal vacation or weekend home” is defined as a secondary residence used only for weekend or vacation use and not as a full-time or primary residence.

I. “Single-family residence” means a residential dwelling containing four or fewer dwelling units on one lot or parcel. Where two, three, or four units are on one lot or parcel, each lot or parcel/unit shall be considered as an individual single-family residence.

J. “Solid waste” shall have the meaning given to it by RCW 70.95.030.


8.10.040 Single-family residential garbage collection.

A. Solid waste collection companies shall perform collection and hauling of garbage from single-family residences that request collection service in unincorporated portions of Whatcom County. Service to single-family residences shall be provided on a schedule of either weekly, every-other-week or monthly collection. In Point Roberts only, seasonal vacation or weekend residents will be encouraged to participate in recycling and have the option of on-call service.

B. Garbage containers provided by and for single-family residences shall be 30 to 32 gallons and 15 to 20 gallons. Solid waste collection companies may also offer 60- or 90-gallon
containers. A specific size within the 15- to 20-gallon “mini-can” range shall be approved by each company and shall be consistent within its certified service area. Ninety-gallon can service shall be available only on a weekly or every-other-week basis. The design of all containers within each service area shall be subject to approval by the solid waste collection company certified for that area.

C. Collection rate structures shall be designed to encourage waste reduction and recycling and to comply with the plan. (Ord. 2014-035 Exh. A; Ord. 2003-018; Ord. 2001-041; Ord. 2001-34; Ord. 97-067; Ord. 95-045).

D. Effective January 1, 2019 single-family residences located in Point Roberts, with on-site sewage systems, shall no longer be exempt from mandatory curbside collection services. As a minimum level of service, the minimum required curbside collection service shall be every other week garbage collection of a 32 gallon can and three-bin source separated recyclables. The cost of the minimum level of service, as per the approved UTC tariff, shall be billed as an annual fee on the property tax bill, at the rate of one minimum level of service per single family residence. Service levels above the minimum level of service, as may be requested of the service provider, for larger cans, increased frequency of pickup, carry out or other services, will be invoiced directly by the service provider as per the approved UTC tariff.

8.10.050 Residential recycling collection.
A. Solid waste collection companies shall collect source-separated recyclables from all residences in unincorporated portions of Whatcom County that receive regularly scheduled garbage collection. All single-family residences shall be provided with recycling collection at least every other week and on the same day of the week as garbage collection. Service to multifamily residences shall be provided at least every other week. The solid waste collection company shall provide residents who have completed the garbage exemption process the opportunity to subscribe to recycling-only collection service without subscribing to garbage collection. Recycling-only customers will be charged the full cost of recycling collection service plus an appropriate administrative/billing fee. In Point Roberts only, single-family residences are defined as permanently yearround occupied buildings and every other week recycling collection does not have to be on the same day as garbage pickup. All single-family residences located in Point Roberts meeting the definition of seasonal vacation or weekend homes, as defined under WCC 8.10.030(H), are exempt from curbside recycling collection.
B. The solid waste collection company shall provide recycling containers to each residence at the customer’s request. Container design and use shall be subject to the prior administrative approval of the county. The Utilities and Transportation Commission, by law, will establish fair, just, reasonable, and sufficient rates for solid waste collection companies under Chapter 81.77 RCW. The company shall deliver all containers to the dwelling unit unless otherwise directed by the county.

C. 1. Solid waste collection companies shall collect, and recycling containers shall be designed to hold, the following materials:

   a. Newspaper;
   b. Mixed waste paper;
   c. Aluminum containers;
   d. Tin-plated steel containers;
   e. Glass containers;
   f. All plastic bottles; all remaining plastic containers are eligible as approved by the county and the solid waste collection company;
   g. Yard Waste. Collection of this material is deferred pending further amendments to this chapter.

2. The following materials shall also be collected when placed adjacent to set-out containers:

   a. Corrugated cardboard;
   b. Scrap metal no longer than 24 inches in any dimension or heavier than 35 pounds per piece;
   c. Lead-acid batteries that show no signs of leakage;
   d. Used motor oil in sealed containers;
   e. Nothing in this section shall prohibit the solid waste collection company from picking up additional items at the company’s discretion.
D. Materials shall be collected on the improved public road nearest to the residence (or mutually agreed upon location) when properly set out on the designated collection day. The solid waste collection company is not required to collect materials at any particular hour. The collector is not required to enter private property to collect material while an animal considered or feared to be vicious is loose. The resident shall confine such an animal on collection day.

E. In case of missed collection, the solid waste collection company shall investigate and, if the missed collection is verified, shall arrange for the collection of the uncollected recyclable material within one business day after the complaint is received, unless otherwise agreed by the company and customer. All solid waste collection companies shall add staff as needed to answer questions and respond to complaints from 8:00 a.m. to 5:00 p.m. on collection days.

F. A solid waste collection company subject to regulation by the UTC as to rates and service shall not charge, demand, collect, or receive a different compensation from its customers than the applicable UTC-established rates (Chapter 81.26 RCW).

G. Solid waste collection companies and recycling companies shall take reasonable actions in marketing recyclable materials to implement the county’s policies regarding local processing and priorities of use. All materials collected shall be processed and marketed such that no recyclable material is landfilled, incinerated, or disposed of in any way other than recycling. The companies shall adopt collection procedures and technologies to minimize the cross-contamination or non-recyclability of collected materials.

H. The county, in consultation with solid waste collection companies and purchasers of recyclable materials, shall establish promotional strategies by which the companies shall inform the public about recycling collection service. The county may adopt, and pay for, additional promotional strategies if they wish. Requirements imposed by the UTC are not promotional strategies for purposes of this section.

I. It is unlawful for any person, other than the solid waste collection companies as authorized by this chapter, to collect, remove, haul, or dispose of recyclable materials set out for collection pursuant to this section without first obtaining the consent of the occupant or owner of the premises. Any violation of this subsection shall constitute a misdemeanor and, upon conviction, violators shall be punished by a fine of not less than $500.00. Each day of such violation, and violation at each dwelling unit, shall be deemed a separate and independent offense. (RCW 70.95.235)
J. The business name and telephone number of the collector shall be clearly visible on each side of each vehicle used to provide residential recycling service. The collector shall contain, tie, or enclose all collected materials to prevent leaking, spilling, or littering.

K. If the county executive determines that a solid waste collection company has materially failed to comply with the requirements or policies of this chapter, the county executive shall provide the company with a written notice specifying the noncompliance and affording the company 60 days to cure the noncompliance; provided, however, that the solid waste collection company shall not be required to cure any noncompliance that is caused by an event or condition, including a threat to the public health or safety, that is beyond the company’s control. At the discretion of the county executive, the period for cure may be extended. If the solid waste collection company fails to cure, the county may contract for the provision of residential recycling service pursuant to RCW 36.58.040 in the area served by the company.

L. Should the county or the solid waste collection company determine that there is no reasonable market for a material and/or the cost of recycling that material is unreasonable, they can petition the executive to eliminate the requirement for that material to be collected as a recyclable. The executive has full discretion whether to accept or deny the request. The executive must state the period of time the exemption will be allowed. (Ord. 2014-035 Exh. A; Ord. 2003-018; Ord. 2001-041; Ord. 2001-34; Ord. 97-067; Ord. 95-045).

8.10.060 Nonresidential and multifamily garbage collection.
A. Solid waste collection companies shall perform collection and hauling of garbage from nonresidential and multifamily accounts in Whatcom County.

B. Container sizes for nonresidential and multifamily accounts shall be approved by the solid waste collection company.

C. Rate structures for multifamily garbage collection shall be designed to encourage waste reduction and recycling and to comply with the plan.

D. Solid waste collection companies shall bill each customer at least once every three months. (Ord. 2014-035 Exh. A; Ord. 2003-018; Ord. 2001-041; Ord. 2001-34; Ord. 97-067; Ord. 95-045).
8.10.070 Submittal of documents and notices.

A. Whenever a solid waste collection company files a proposed tariff revision with the UTC, the company shall simultaneously provide the county with copies of the proposed tariff and all nonproprietary supporting materials submitted to the UTC any time prior to approval of the tariff. Such materials include but are not limited to any correspondence or other information concerning rate calculation parameters and details, tariff sheet application and adjustments, and annual reports.

B. 1. All solid waste collection companies, recycling collectors and processors, transfer facilities, and disposal facilities shall provide the county with the following quarterly information on April 20th, July 20th, October 20th, and January 20th for each of the previous three months and, where appropriate and practical, separately listed for each city and unincorporated area of the county:

   a. Daily disposal tonnages to and from municipal disposal facilities for each primary disposal or processing method, transfer stations, and convenience centers;

   b. Monthly disposal tonnages from industrial and other private landfills;

   c. Monthly recycling tonnages per material from all recycling collectors and processors;

   d. Solid waste collection, disposal, and recycling collection and processing service contracts and amendments within incorporated and unincorporated areas of the county; and

   e. A log of all customer complaints about recycling, specifying the date, nature of complaint and resolution for each complaint.

2. In addition, all solid waste collection companies shall provide the county with the following information regarding residential recycling and, where appropriate and practical, separately listed for single-family and multifamily residences broken out by city/county:

   a. Monthly tonnages and, if available, volumes of materials collected by type of material collected, and revenues/costs by type of material;

8.10.080 Notice to Utilities and Transportation Commission.
The Whatcom County council, pursuant to RCW 36.58.040, hereby notifies and requests the Utilities and Transportation Commission to carry out and implement the policies and programs specified in this chapter and in the plan in coordination with solid waste collection companies and common carriers through the Commission’s rate setting and oversight authority. (Ord. 2014-035 Exh. A; Ord. 2003-018; Ord. 2001-041; Ord. 2001-34; Ord. 97-067; Ord. 95-045).

8.10.090 Modification of collection schedules.
The provisions of this chapter concerning (1) the frequency of collection of recyclable materials and garbage; (2) service levels in rural areas; and (3) rate structures in the event that the UTC issues an inconsistent order may be modified by agreement of the county executive and all solid waste collection companies, subject to approval by the county council. (Ord. 2014-035 Exh. A; Ord. 2003-018; Ord. 2001-041; Ord. 2001-34; Ord. 97-067; Ord. 95-045).

8.10.100 Severability.
If any portion or section of this chapter or its application to any person or circumstance is held invalid, the remainder of the chapter or the application of the section to other persons or circumstances is not affected. (Ord. 2014-035 Exh. A; Ord. 2003-018; Ord. 2001-041; Ord. 2001-34; Ord. 97-067; Ord. 95-045).

1 Prior legislation: Ords. 90-95, 91-003 and 91-054.
Ordinance amending Whatcom County Code Title 2 Administration and Personnel; Title 9 Public Peace, Morals and Welfare; Title 16 Environment; Title 20 Zoning; Title 21 Land Division Regulations; Title 23 Shoreline Management Program; Title 24 Health; and creating a new Title 22 Land Use and Development Procedures, to relocate and revise procedures for land use and development related project permits and legislative actions.

**ATTACHMENTS:**

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

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

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

**COMMITTEE ACTION:**

2/13/2018: Held in Committee
3/27/2018: Presented, comments received, and discussed
4/10/2018: Presented, discussed, and heard testimony
4/24/2018: Held in Committee
5/22/2018: Amended and forwarded three staff recommendations to introduction

**COUNCIL ACTION:**

1/30/2018: Introduced 7-0
2/13/2018: Held in Committee
2/27/2018: Discussed in SCOTW Held in committee for four weeks (March 27). The focus will be on vesting.
5/22/2018: 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](http://www.co.whatcom.wa.us/council).
Memorandum

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

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

THROUGH: Mark Personius, AICP, Director

DATE: May 24, 2018

SUBJECT: Code Amendment: Land Use and Development Procedures – Title 22

Whatcom County PDS has identified a need to consolidate and clarify Whatcom County permit review procedures to provide the public with a clear and predictable permit review process. This proposed ordinance is developed in accordance with the Washington State Local Project Review Act (Chapter 36.70B RCW), recent Washington State Supreme Court decisions as well as various Washington State jurisdictions. Over several Special Committee of the Whole (SCOTW) meetings, staff has presented and discussed with Council all applicable chapters of proposed Title 22. On the May 22, 2018 SCOTW meeting, Council moved to introduce the proposed ordinance with a public hearing scheduled for June 5, 2018.

In general, the proposed amendments move code from various sections to Title 22, include grammatical improvements and do not alter the substance of the procedures. There are several areas where substantive changes were made to improve clarity and predictability, to remove inconsistencies and to address recent court cases. Those changes are discussed in depth in the staff report, but generally include:

- Vesting and expiration;
- Designate Superior Court as the appeal body for hearing examiner decisions;
- Allow a waiver for preapplication meetings and clarify which project types require a preapplication meeting;
- Add sections to clarify the definition of “quasi-judicial actions;”
- Alter time limits for major project permits and planned unit developments to meet the statutory timeframes in Chapter 36.70B RCW;
- Remove an optional review by Planning Commission for Major Project Permits;
- Reword current WCC 2.33.090(G) to provide clarity and a process for dispute resolution with the director;
- Add specific requirements for written appeal and;
- Standardize review and comment timeframes to 14 or 28 days.
At the May 22, 2018 SCTOW meeting, Council passed a motion to adopt four amendments to the original draft proposal before moving the draft ordinance for introduction. The motion included the following:

- Amending proposed 22.05.160 to clarify the Hearing Examiner’s business rules apply to appeals and the timeframe associated with an appeal of a Hearing Examiner’s decision (21 calendar days, pursuant to RCW 36.70C.040),
- Amending proposed 22.20 to clarify the proposed code interpretation procedure is only intended to be utilized before an applicant submits a project permit application,
- Amending the proposed language in 20.88.130 to strike “planned unit development” and add “major project permit,” and
- Amending proposed 22.05.120(4) to extend the public meeting timeframes when the Council’s schedule cannot accommodate a public meeting for a project permit within the timeframes provided.

In the packet, staff has included the proposed ordinance with the above adopted amendments for a public hearing scheduled on June 5, 2018. Please feel free to contact Amy Keenan at 778-5943 or Nick Smith at 778-5913 with any questions or concerns.

Thank you.

Attachment:
Draft Ordinance – Titles: 2, 9, 16, 20, 21, 22 (clean and strikethrough), 23 and 24
ORDINANCE NO. _____________

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

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

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

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

FINDINGS OF FACT

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

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

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


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

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

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

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

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

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

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

12. RCW 19.27.095(1) states, “A valid and fully complete building permit application for a structure, that is permitted under the zoning or other land use control ordinances in effect on the date of the application shall be considered under the building permit ordinance in effect at the time of application, and the zoning or other land use control ordinances in effect on the date of application.”
13. RCW 58.17.033(1) states, “A proposed division of land, as defined in RCW 58.17.020, shall be considered under the subdivision or short subdivision ordinance, and zoning or other land use control ordinances, in effect on the land at the time a fully completed application for preliminary plat approval of the subdivision, or short plat approval of the short subdivision, has been submitted to the appropriate county, city, or town official.”

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

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

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

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

18. The Whatcom County Comprehensive Plan supports streamlining regulations.

**CONCLUSIONS**

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

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

Section 1. Amendments to the Whatcom County Code are hereby adopted as shown on the following Exhibits:

- Exhibit A: Title 22 - Land Use and Development Procedures
- Exhibit B: Title 2 - Administration and Personnel
- Exhibit C: Title 9 - Public Peace, Morals and Welfare; Title 15 - Building Codes; Title 16 - Environment; Title 23 - Shoreline Management Program; Title 24 - Health
- Exhibit D: Title 20 - Zoning
- Exhibit E: Title 21 - Land Division Regulations

ADOPTED this ________ day of ________________, 2018.

WHATCOM COUNTY COUNCIL
WHATCOM COUNTY, WASHINGTON

ATTEST:

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

APPROVED as to form:

( ) Approved   ( ) Denied

__________________________________________  __________________________________________
Civil Deputy Prosecutor                           Jack Louws, Executive

Date: ___________________________
Whatcom County
Planning & Development Services
Staff Report

Land Use and Development Procedures Amendment

I. BACKGROUND INFORMATION

File # PLN2016-00008

File Name: Land Use and Development Procedures

Applicants: Whatcom County Planning and Development Services (PDS)

Summary of Request: Amend Whatcom County Code to add a new Title 22 Land Use and Development Procedures, and amend Titles 2, 9, 15, 16, 20, 21, 23, and 24 to move procedural content to the new Title 22.

Location: County-wide.

Staff Recommendation: Approval. The proposal adds clarity to the County's project permit procedures and is intended to make processing of various applications more efficient.

Background
In 1995 the state adopted legislation regarding procedures for county land use and development applications (ESHB 1724; 36.70B RCW). The intent of the legislation was to ensure that applications were processed in a timely, predictable manner, and that different applications involving the same project could be consolidated. Whatcom County Code adopted a new Chapter 2.33 in 1996 in response to the 1995 state legislation. This new chapter contained many of the project permit review procedures, but many procedural sections remained in various sections of the County code, including Title 15 Building and Codes, Title 16 Environment, Title 20 Zoning, Title 21 Land Division Regulations, Title 23 Shoreline Management and Title 24 Health. These procedural sections typically involve requirements for application materials, review timelines, legal notifications, public hearings, and appeals.

With these requirements scattered throughout the code, there are some overlaps and inconsistencies. Staff now proposes consolidating all land use and development procedures in a new Title 22. (The County Council rescinded the...
previous Title 22, the Guide Meridian Improvement Plan, as part of a series of code amendments made in conjunction with the 2016 Comprehensive Plan update process, Ord. 2016-035).

II. ZONING CODE AMENDMENT

Overview by Chapter
Staff proposes a new Title 22 Land Use and Development Procedures to contain administrative procedures that are now located throughout different titles and chapters in Whatcom County Code, eliminating redundancy and, in some cases, inconsistency between code chapters. In addition, staff proposes amendments to the code chapters showing the removal of procedural sections and revising references to code sections being changed.

The overall purpose of the proposed amendments is to make the code clearer and easier for the public to use, and to improve efficiency and clarity in processing applications for project permits and legislative actions.

The new Title 22 would be made up of five chapters. The first chapter, 22.05 Project Permit Procedures, would consolidate procedures for project permits in one place. Project permits are defined in RCW 36.70B.020(4) as:

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

This chapter would generally follow the project permit process in chronological order and provide a new table listing the steps required for each type of project permit application. Some highly detailed requirements currently found in the code (for example, a list of items that need to be shown on a site plan and how many copies of the plan to submit) are proposed to be removed from code and consolidated into an Administrative Manual that can be updated without requiring a code amendment.

The second chapter, 22.10 Legislative Procedures, combines procedures for comprehensive plan amendments and zoning amendments (including both zoning map changes and code text amendments), from current Chapters 2.160 and 20.90, respectively. The goal is to make the process easier to understand, especially when a zoning amendment requires a comprehensive plan amendment and both are processed at the same time.

The third chapter would be 22.15 Code Compliance Procedures, consolidating...
code enforcement procedures from Chapter 20.94 with other enforcement procedures scattered throughout the code. For this process, this chapter title will be reserved as a placeholder for when the separate process of consolidating those procedures is completed at a later date.

The fourth chapter, **22.20 Land Use and Development Code Interpretation Procedures**, would add procedures for citizens to request PDS interpretations of the County’s land use and development codes to clarify conflicting or ambiguous wording. Interpretation procedures commonly appear in other jurisdictions’ codes, but Whatcom County Code has no such provision. The proposed language for this relatively short chapter borrows wording from the City of Bellingham’s code.

The fifth chapter, **22.25 Land Use and Development Fees**, would place the fee provisions, now located in the general provisions of Title 20 Zoning, in Title 22, where it would apply to all development related titles of the County Code. These fee provisions include references to the Unified Fee Schedule, and procedures for refunds.

**Substantive Changes**
For the most part, these amendments move procedural provisions from one part of the County Code to another (often making grammatical improvements) but does not alter the substance of the procedures. However, in some instances, staff proposes substantive changes in the procedures to improve clarity and predictability in the permitting process or to remove inconsistencies with state law. These proposed substantive changes are detailed below.

**WCC Chapter 22.05 Project Permit Procedures**

- **WCC 22.05.060 and 20.05.140** – The proposed changes to **vesting and expiration** regulations are among the most significant changes in the draft amendments. Under state law, vesting refers to the “zoning or other land use control ordinances” a particular project permit must adhere to. In order to ensure fairness and predictability, those rules are established (vest) for a project as of the time a complete application, even if changes are made to those rules later.

The County’s vesting rules are currently located in WCC 20.04.31. Because vesting principles apply to applications beyond those described in Title 20 Zoning, and are in many places unclear in meaning, PDS proposes moving the vesting provisions to the new Title 22, which would apply to all land use and development projects, and making the wording clearer. The revised wording in the proposed 22.05.060 uses the state law’s phrase, “zoning or other land use control ordinances” so that County regulations will be consistent with state statute and case law. Several recent court decisions have interpreted what types of regulations are
included within that phrase (See the Municipal Research and Services Center's "Vested Rights Overview" at mrcsc.org) and interpreted when vesting applies. Proposed WCC 22.05.060 also clearly designates the date on which vesting occurs in various circumstances throughout the land use process. Proposed WCC 22.05.060(7) clarifies that vesting is in effect until withdrawal or expiration of the application.

Proposed subsection (3) would prevent the requirement of a preapplication meeting from delaying vesting, provided the preapplication materials are complete enough that a project permit can be applied for within 30 days of the preapplication notice of site-specific requirements. This is consistent with the West Main Assocs. vs. Bellevue decision.

Subsection (4) would extend vesting from an approved land use permit to a complete building permit application. Current code does not contain clear vesting procedures after approval of a land use permit. The proposed language is drafted from similar language found in Snohomish County and the City of Bellingham.

Under subsection (5), the 5- or 7-year vesting that applies specifically to long plats in RCW 58.17.170 is proposed to be extended to short plats and binding site plans in Whatcom County. State law does not appear to extend building permit vesting to short subdivisions or binding site plans (see the Alliance vs. Ellensburg decision). Staff is proposing to match short subdivision timeframes to the state allowance for long subdivisions which is consistent with approvals related to critical areas reports and other development standards.

Subsection (6) clarifies that building and fire code vest at the time of complete building permit application, whereas land use controls (e.g. zoning and critical areas) vest with the original project permit (e.g. subdivision or conditional use permit), which is consistent with the current 20.04.031(3)(d).

Subsection (7) clarifies that, except for applications described in subsections (5) and (6), vesting runs with the application until the application is denied, expires or is withdrawn.

Expiration of applications is covered in proposed 22.05.140. It provides time frames for applications to move to the next step of approval or implementation, or expire. This is intended to provide for consistent, predictable outcomes and establish clear expectations between the applicant and the County. This section would allow two years from date of approval to take action on the application before it expires with a possible one year extension. A project permit application can also be expired if there is no response to the notice of additional requirements.
- WCC 22.05.020(1)/22.05.110(5) - **Appeals of hearing examiner decisions would go directly to Superior Court** rather than County Council on most project permits. This is more consistent with the quasi-judicial role of the hearing examiner and legislative role of the council.

- WCC 22.05.020(1)/22.05.040(6) – This would require **preapplication meetings for more types of projects** (specifically administrative use permits and conditional use permits) and allow the meetings to be scheduled within 30 (currently 20) days of applicant’s request. The 30-day time frame is consistent with the current Shoreline Master Program and will allow additional time for staff site visits and review. In addition, the amendment would give the director or designee the **option to waive the preapplication meeting**, which is not in the current code other than in Title 15.

- WCC 22.05.040(8) – This amendment would allow staff **14 calendar days** (currently 10 days) to **issue comments and site-specific submittal requirements** to the applicant following pre-application meeting. This change will result in the comment response date to be within the work week rather than falling on a weekend.

- WCC 22.05.070(4)(b) Would remove language that requires the **notice of application to be sent to neighbors at least 15 days prior** to the public hearing. Current code (2.33.030) and RCW 36.70B.110 requires the notice of application within 14 days of the determination of completeness and solicits for comments early in the review process. The hearing date is generally unknown at the time the notice of application is issued.

- WCC 22.05.090(4) and 22.05.120(4) – Staff proposes adding these sections to clarify that applications meeting the definition of **quasi-judicial actions** in RCW 42.36 must be processed in accordance with the Appearance of Fairness Doctrine described in that chapter of state law.

- WCC 22.05.100(3) **Staff report to the Hearing Examiner** due 10 (currently 17) calendar days before the public hearing. This is consistent with the notice of hearing requirements.

- WCC 22.05.120(4)(b) and (c) For Major Project Permits and Planned Unit developments, **time limits for the Hearing Examiner to file a recommendation with the County Council and for the County Council to hold a public meeting** are both currently 45 calendar days. These limits make it highly unlikely the permit would be processed within the required 120 days, as required by state law (RCW 36.70B.080) and the new WCC 22.05.130(1). This section changes the limits to 21 and 28 calendar days, respectively, with the possibility for the County Council to
increase the time limit for holding the public meeting if it makes findings that a specified amount of additional time is needed to process a specific application or project type, as authorized by RCW 36.708.080(1). This would allow more time for the few large, complex projects while requiring a shorter time for the majority of applications.

- WCC 22.05.120(5)(c) – An optional additional review by the Planning Commission is proposed for omission because that review would make it highly unlikely the permit would be processed within the 120 days. State law and this section of WCC require that there can be only one public record hearing. That hearing is done by the Hearing Examiner and any subsequent meeting by the County Council (or currently the Planning Commission) is only for discussion and must be based entirely on the record established by the Hearing Examiner.

- WCC 22.05.130 – The proposal would revise the current 2.33.090(G), which is not clearly worded but apparently states an application is automatically approved if not processed within the prescribed timelines. This provision is not supported by state law, and could place an application in unclear legal status if it gains approval without meeting State or County regulations. Staff instead proposes a process which holds the County accountable for following permit review procedures by allowing for a meeting with the director for dispute resolution, potentially including refund of applications fees.

- WCC 22.05.160 – This section would add specific requirements for a written appeal, copied from the City of Bellingham’s code.

**WCC Chapter 22.10 Legislative Action Procedures**

- WCC 22.10.020 – Docketing methods would include a majority vote by County Council, addition by Planning and Development Services (PDS), a suggestion by a citizen to PDS, which PDS could place on the docket if it is not quasi-judicial, and an application by a citizen. This is similar to the current list of docketing options, except the suggested amendment is proposed to be distinguished from a citizen application, and the Planning Commission would not be able to directly docket an application (though nothing would prevent individual members from submitting suggestions or applications as citizens).

- WCC 22.10.030(4) – Similar to the proposed 22.05.090(4), staff proposes this section to clarify that the actions that meet the state law’s definition of quasi-judicial actions in RCW 42.36.010 are subject to the Appearance of Fairness Doctrine. An example would be an application for a zoning map amendment that would affect a single lot.
• WCC 22.10.050 – Staff proposes removing the requirement that the applicant provide stamped envelopes because PDS now prepares the mailed notices.

• WCC 22.10.060(1) – Staff proposes deleting from the list of Comprehensive Plan consistency review criteria the current requirement that UGA expansions require acquisition of development rights. Staff believes this criterion may be inconsistent with RCW 82.02.

• WCC 22.10.060(2) – Staff proposes adding a requirement that the Planning Commission and County Council make a finding that a proposed amendment is consistent with the Comprehensive Plan in order to approve the application.

WCC Chapter 22.20 Land Use and Development Code Interpretation Procedures

• Current Whatcom County Code does not prescribe a procedure for requesting or appealing an interpretation of the code. The proposed wording is largely borrowed from the Bellingham Municipal Code (BMC 21.10.270) with the addition of a provision to publish interpretations on the County’s web site.

WCC Chapter 22.25 Land Use and Development Fees

• This chapter would contain the fee provisions now contained in WCC 20.04.090 - .092 so that it would apply to other development-related titles of the Whatcom County Code. Aside from clarifying that these fee provisions apply to the other development-related titles of the code, no changes to these fee provisions are proposed.

III. COMPREHENSIVE PLAN EVALUATION

The Whatcom County Comprehensive Plan supports streamlined regulations in Chapter 2:

Regulations
It is very important to Whatcom County citizens to maintain local control over land use decisions. Regulations should be clear, concise, and predictable with enough flexibility to allow for reasonable and efficient decision making. Regulations should be enforced. Promote and maintain incentive programs to encourage land to be used in ways that meet community goals.

Goal 2D: Refine the regulatory system to ensure accomplishment of desired land use goals in a fair and equitable manner.

.....
Policy 2D-1: Eliminate unnecessary regulations.
Policy 2D-2: Eliminate regulations that could be more effectively achieved through incentive or education programs.
Policy 2D-3: Streamline development regulations to eliminate unnecessary time delays.
Policy 2D-4: Coordinate permitting requirements among jurisdictions to minimize duplication and delays.

IV. PROPOSED FINDINGS OF FACT AND REASONS FOR ACTION

Staff recommends the Planning Commission adopt the following findings of fact and reasons for action:

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

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

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


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

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

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

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

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

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

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

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

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

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

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

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

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

18. The Whatcom County Comprehensive Plan supports streamlining regulations.

V. PROPOSED CONCLUSIONS

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

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

VI. RECOMMENDATION

Planning and Development Services recommends the Planning Commission forward the proposed amendments to the County Council with a recommendation of approval.

ATTACHMENTS

A. Draft amendments adding WCC Title 22 Land Use and Development Procedures (clean and with redlines)
B. Draft amendments to WCC Title 2 Administration and Personnel
C. Draft amendments to WCC Title 9 Public Peace, Morals and Welfare, Title 15, Title 16 Environment, Title 23 and Title 24 Health
D. Draft amendments to WCC Title 20 Zoning
E. Draft amendments to WCC Title 21 Land Division Regulations
Exhibit A:
Title 22 (clean version)
EXHIBIT A

Whatcom County Code Title 22

AMENDMENTS

Title 22
Land Use and Development Procedures

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

Sections:
22.05.010 Purpose and applicability.
22.05.020 Project permit processing table.
22.05.030 Consolidated permit review.
22.05.040 Preapplication conference.
22.05.050 Application and determination of completeness.
22.05.060 Vesting.
22.05.070 Notice of application.
22.05.080 Posting of application.
22.05.090 Open record hearings.
22.05.100 Consistency review and recommendations.
22.05.110 Final decisions.
22.05.120 Recommended decisions to county council.
22.05.130 Permit review timeframes.
22.05.140 Expiration of project permits.
22.05.150 Permit revocation procedure.
22.05.160 Appeals.
22.05.170 Annual Report.
22.05.180 Interpretation, conflict, and severability.

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

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

22.05.020 Project Permit Processing Table
(1) Marked boxes in the table below indicate the required general steps for processing all project permit applications or administrative actions. The requirements for each step listed in the top row of the table are provided in WCC sections 22.05.040 through 22.05.160, as indicated. Specific requirements for each project permit can be found through the references given in the table.
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<th>Site Posting Required (see 22.05.080)</th>
<th>Notice of Open Record Hearing Required (see 22.05.090)</th>
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Check marks indicate a step is required; reference letters refer to the notes in subsection (2).
(2) Project Permit Processing Table Notes. As indicated in the table in subsection (1), project permits are subject to the following additional requirements:

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

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

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

(d) Pursuant to WCC 23.60 and 23.70, final administrative determinations or decisions as appropriate shall be filed with, or approved by, the Washington State Department of Ecology.

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

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

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

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

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

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

22.05.040 Preapplication conference.
The purpose of a preapplication conference is to assist applicants in preparing development applications for submittal to the county by identifying applicable regulations and procedures. It is not intended to provide a staff recommendation on future permit decisions. Preapplication review does not constitute acceptance of an application by the county nor does it vest an application, unless otherwise indicated in Whatcom County Code.
(1) A preapplication conference is required as indicated in WCC 22.05.020, unless the director or designee grants a written waiver. For other permits, the applicant may request a preapplication conference.

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

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

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

(5) The county shall invite the appropriate city to the preapplication meeting if the project is located within that city’s urban growth area or which contemplates the use of any city utilities. Notice shall also be given to appropriate public agencies and public utilities, if within 500 feet of the area submitted in the application.

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

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

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

(2) Upon submittal by the applicant, the county will accept the application and note the date of receipt. Receipt of an application does not constitute approval of the project proposal.

(3) Within 14 calendar days of receiving the application, the county shall provide to the applicant a written determination which states either that the application is complete or the application is incomplete. To the extent known by the county, other agencies of local, state, or federal government that may have jurisdiction shall be identified on the determination.
(4) A project permit application is complete when it meets the submittal requirements of the department’s administrative manual, includes items identified through the preapplication conference process and contains sufficient information to process the application even if additional information will be required. A determination of completeness shall not preclude the county from requiring additional information or studies at any time prior to permit approval. A project permit application shall be deemed complete under this section if the county does not issue a written determination to the applicant that the application is incomplete by the end of the 14th calendar day from the date of receipt.

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

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

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

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

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

22.05.060 Vesting.

(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.

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

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

(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.

(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.

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

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

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

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

(c) The identification of other permits not included in the application to the extent known by the county;

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

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

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

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

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

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

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

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

(i) For sites within urban growth areas: Application notice shall be sent to all property owners within 300 feet of the external boundaries of the subject property as shown by the records of the county assessor;
(ii) For sites outside urban growth areas: Application notice shall be sent to all property owners within 1,000 feet of the external boundaries of the subject property as shown by the records of the county assessor.

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

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

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

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

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

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

(1) Open record hearing notice.

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

(b) Within two days of the published notice the applicant shall be responsible for posting three copies of the notice in a conspicuous manner on the property upon which the use is proposed. Notices shall be provided by the hearing examiner.
(c) An affidavit verifying distribution of the notice must be submitted to the hearing examiner two working days prior to the open record hearing.

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

(e) The applicant shall pay all costs associated with providing notice.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

22.05.120 Recommended decisions to county council.
(1) For Type IV applications per WCC 22.05.020 the hearing examiner’s recommendations to the county council may be to grant, grant with conditions or deny an application. The hearing examiner’s recommendation may include conditions, modifications or restrictions as may be necessary to make the application compatible with its environment, carry out the objectives and goals of the Comprehensive Plan, statutes, ordinances and regulations as well as other official policies and objectives of Whatcom County.
(2) Each recommended decision of the hearing examiner for an application identified as a Type IV application per WCC 20.05.020 shall be in writing to the clerk of the county council and shall include findings and conclusions based upon the record to support the decision. Such findings and conclusions shall also set forth the manner in which the decision carries out and conforms to the county’s Comprehensive Plan and complies with the applicable statutes, ordinances or regulations.

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

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

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

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

(c) The county council shall conduct the following within the specified timeframes, except as provided in subsection (iii):

(i) Hold a public meeting, not an open record public hearing, to deliberate on the project application within 28 calendar days after receiving the hearing examiner’s recommendation.

(ii) Issue a final written decision within 21 calendar days of the public meeting.

(iii) The county council may exceed the time limits in subsection (i) or (ii) if the county council meeting schedule does not accommodate a meeting within the above timeframes, or if the county council 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).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(c) The county may extend notice of final decision on the project if the county can document legitimate reasons for such a delay. In such a case the county shall provide written notice to the applicant at least 14 calendar days prior to the deadline for the original notice of final decision. The notice shall include a statement of reasons why the time limits have not been met and a date of issuance of a notice of final decision.
(2) If an applicant believes a project permit application has not been acted upon by the county in a timely manner or otherwise consistent with this chapter, the applicant or authorized representative may request a meeting with the director to resolve the issue. Within 14 calendar days of the meeting, the director shall:

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

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

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

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

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

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

(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 xxx xx, 2020 [two years after the effective date of this ordinance].

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

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

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

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

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

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

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

(iii) A statement identifying each alleged error and the manner in which the decision fails to satisfy the applicable decision criteria;
(iv) The specific relief requested; and
(v) Any other information reasonably necessary to make a decision on the appeal.

(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.

(c) A party who fails to appeal within 14 calendar days is barred from appeal, per WCC 2.11.

(d) The Business Rules of the Hearing Examiner shall govern appeal procedures.

   i) The Hearing Examiner shall have the authority granted in the Business Rules, and that authority is incorporated herein by reference. See also, WCC 2.11.220.

(2) The applicant, any party of record, or any county department may appeal any final decision of the hearing examiner to Superior Court or other body as specified by WCC 22.05.020. The appellant shall file a written notice of appeal within 21 calendar days of the final decision of the hearing examiner, as provided in RCW 36.70C.040.

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

22.05.180 Interpretation, conflict and severability.

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

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

LEGISLATIVE ACTION PROCEDURES

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

**22.10.030 Processing of docketed amendments.**

(1) The department shall review docketed comprehensive plan and development regulation amendment applications as provided below:

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

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

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

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

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

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

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

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

(a) The initial adoption of a subarea plan,

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**22.10.060 Approval criteria.**

(1) In order to approve a comprehensive plan amendment, the planning commission and the county council shall find all of the following:
(a) The amendment conforms to the requirements of the Growth Management Act, is internally consistent with the county-wide planning policies and is consistent with any interlocal planning agreements.

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

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

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

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

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

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

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

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Chapter 22.15

CODE COMPLIANCE PROCEDURES

(Reserved)

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Chapter 22.20

LAND USE AND DEVELOPMENT CODE INTERPRETATION PROCEDURES

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 in the absence of a pending project permit.

(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 prior to project permit application.
A person may request an interpretation of the code prior to submission of a project permit. The person 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. Interpretations of a pending project permit shall be made through the applicable permitting process as established in WCC 22.05.

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 a preapplication.

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

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

(1) The applicable provisions of the code including their purpose and context;
(2) The impact of the interpretation on other provisions of the code;
(3) The implications of the interpretation for development within the county as a whole; and

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

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

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

LAND USE AND DEVELOPMENT FEES

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

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

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

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

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

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

(1) Subdivision plat application;

(2) Rezone application;
(3) Shoreline substantial development permit, variance or conditional use;

(4) Major development permit;

(5) Conditional use permit;

(6) Variance;

(7) Planned unit development.

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

(1) Fees for Project Permits.

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

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

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

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

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

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

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

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

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

(3) Withdrawal of an application shall constitute full surrender of any express or implied rights inherent in an application which has been perfected and accepted by the planning and development services department or its designees.
Exhibit A:
Title 22 (mark-up version)
EXHIBIT A

Whatcom County Code Title 22

AMENDMENTS

Title 22

Reserved Land Use and Development Procedures

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

Sections:
22.05.010 Purpose and applicability.
22.05.020 Project permit processing table.
22.05.030 Consolidated permit review.
22.05.040 Preapplication conference.
22.05.050 Application and determination of completeness.
22.05.060 Vesting.
22.05.070 Notice of application.
22.05.080 Posting of application.
22.05.090 Open record hearings.
22.05.100 Consistency review and recommendations.
22.05.110 Final decisions.
22.05.120 Recommended decisions to county council.
22.05.130 Permit review timeframes.
22.05.140 Expiration of project permits.
22.05.150 Permit revocation procedure.
22.05.160 Appeals.
22.05.170 Annual Report.
22.05.180 Interpretation, conflict, and severability.

233.010 22.05.010 Purpose and applicability.
A. (1) The purpose of this chapter is to combine and consolidate the application, review, and approval processes for project permits and appeals as defined in WCC 20.97.321, consolidate the application, review, and approval processes for land development in Whatcom County in a manner that is easily understood and concise. It is further intended for this chapter to comply with state direction the provisions of Chapter 36.70B RCW. These procedures provide for a consolidated land use permit process and integrate the environmental review process with the procedures for review of land use decisions.

B. (2) This chapter describes how the county will apply to the processing of project permit applications for development 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.

233.020 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 233.050; and
   2. A final decision is made by the county pursuant to WCC 233.090:
      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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Check marks indicate a step is required; reference letters refer to the notes in subsection (2).
(2) Project Permit Processing References Table Notes. As indicated in the table in subsection (1), project permits are subject to the following additional requirements:

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

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

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

(d) Pursuant to WCC 23.60 and 23.70, final administrative determinations or decisions as appropriate shall be filed with, or approved by, with the Washington State Department of Ecology.

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

(f) Building permit 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.

(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.
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.
C. The consolidated permit review may combine an open record hearing on one or more permits with an open record appeal hearing on other permits.
2.33.030-22.05.040 Preapplication conference.

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

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

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

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.
F. (5) The applicant may provide additional information to facilitate more detailed review. See WCC 2.33.040, Application submittal information, for additional submittal information, the department's administrative manual for additional submittal information.

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

(75) The county Whatcom County planning and development services staff shall invite the appropriate city to the preapplication meeting if the project is located within that city’s urban growth area. Invitation to the pre-application meeting for a project permit short plat or preliminary plat adjacent to or within one mile of the municipal boundaries of a city, or which contemplates the use of any city utilities, Notice shall also be given, to appropriate public agencies and public utilities, if within 500 feet of the area submitted in the application.

(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 preapplication meeting, an associated project permit application is not filed with the county within one year of the notice of site-specific submittal requirements per subsection (6) or the application is substantially altered, the applicant shall be subject to a new preapplication review with a corresponding fee, unless waived per WCC 22.05.040(1).

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

2.33.050 22.05.050 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 2.33.040, Application submittal information.
D. When an application is determined to be complete, the county shall proceed as follows:
   1. Issue a determination of completeness either via postal service or directly provided to the applicant within 14 days of accepting a project permit application.
2. To the extent known, identify other agencies that may have jurisdiction over the project permit application. A list of agencies shall be included in the determination of completeness.

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

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

1. The county will notify the applicant that the application is incomplete and indicate what is necessary to make the application complete.
2. The applicant shall have 90 days from the date that the notification was issued to submit the necessary information to the county. This period shall be extended at the applicant’s request in 90-day increments.
3. Upon receipt of the requested additional information, the county shall have 14 days to make a determination and notify the applicant.
4. If the applicant does not submit the necessary information to the county in writing within the 90-day period, the county shall make findings and issue a decision that the application is rejected.

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

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

H. A project permit application shall be deemed complete under this section if the county does not provide a written determination to the applicant that the application is incomplete within 14 days from the date of submittal as required in subsection E of this section. (Ord. 96-031 §1).

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

2) Upon submittal by the applicant, the county will accept the application and note the date of receipt. Receipt of an application does not constitute approval of the project proposal.

3) Within 14 calendar days of receiving the application, the county shall provide to the applicant a written determination which states either that the application is 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.

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

20.04.031-22.05.060 Vesting of permits.

(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.

(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 finding 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.

(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 Permit;
(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.

(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.

(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.

(1) Project Permits Defined. For the purpose of this section, "project permit" and "project permit application" shall be as defined in RCW 36.79B.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.
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 a determination of completeness and at least 15 calendar days prior to the open record hearing. The date of notice shall be the date of mailing.

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

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, an application notice shall be sent to all property owners within 300 feet of the external boundaries of the subject property as shown by the records of the county assessor. Applicants shall submit, with their completed application, a stamped envelope with a typed address for each of the above-referenced property owners;

b.(ii) For sites outside urban growth areas: At least 12 days prior to the scheduled hearing date, an 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.²

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

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

F.(6) With the exception of substantial development permit applications and major project permit applications for mitigation banks, a public comment period shall be 15 calendar days following the date of notice of application. Substantial development permit applications and major project permit applications for mitigation banks require a 30-calendar day period. All public comments received on the notice of application must be received by the department of planning and
development services by 4:30 p.m. on or before the last day of the comment period. The county may require the applicant to shall pay the cost of providing notice.

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

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

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

2.33.11922.05.090 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(3)(B)(7).

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.)

\(\text{E-(c)}\) An affidavit verifying distribution of the notice must be submitted to the county hearing examiner two working days prior to the open record hearing.

\(\text{D-(d)}\) 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.

\(\text{E-(e)}\) The applicant shall pay all costs associated with providing notice shall be paid by the applicant.

\subsection{\text{20.92.220(2)}} \text{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. This restriction does not apply to an appeal of a determination of significance as provided in RCW 43.21C.075.

\subsection{\text{20.92.221(3)}} \text{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.

\subsection{\text{2.33.080.22.05.100}} \text{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.

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.

20.92.40022.05.110 Final decisions.
(1) The director or designee's administrator's final decision on all Type I or II applications shall be in the form of a written determination or permit. The determination or permit may be granted subject to conditions, modifications, or restrictions that are necessary to comply with all applicable codes.

20.92.410 Final decision conditions—Applications and appeals.
(2) The hearing examiner’s final decision on all Type III applications 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 superior court, except as otherwise specified in WCC 22.05.020. The appellant shall file a written notice of appeal at the county council office within 10 business days of the final decision of the hearing examiner. Any parties of record from the hearing examiner’s proceedings who wish to continue to be considered parties of record must register with the county council in writing no later than 10 days after the date of the notification of appeal letter which is sent from the hearing examiner’s office. The notification of appeal letter will be sent from the hearing examiner’s office within three working days of receiving written notification from the county council office that an appeal has been filed.

20.92.300 22.05.120 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.

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.

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.

20.88.215 A written notice of the scheduled public hearing shall be mailed not less than 10 working days prior to the hearing as follows:
(1) For sites within urban growth areas: Notice shall be mailed to each property owner within 300 feet of the external boundaries of the subject property as shown by the records of the county assessor;
(2) For sites outside urban growth areas: Notice shall be mailed to each property owner within 1,000 feet of the external boundaries of the subject property as shown by the records of the county assessor.
Also notice of the hearing shall be published in a newspaper of general circulation in the area of the proposed project at least 10 working days prior to the public hearing. Notice shall consist of time and date of hearing, and brief description of the property and the proposed project. Further, signs meeting the approval of the zoning administrator shall be erected on each frontage of the project site by the applicant not less than 10 working days prior to the hearing.
(4) For major project permits the following shall apply:

20.88.220(a) The recommendation of the hearing examiner regarding planned unit developments and major project permits shall be based upon the criteria set forth in WCC 20.85.33588.130 and 20.858.335130., respectively. (1) through (7).

20.92.520(b) The hearing examiner shall file the recommendation with the clerk of the county council within 21 calendar days following the conclusion of the open record hearing. shall, upon receipt of the recommended decision on a major project permit, process that recommendation in the manner set forth in the major project permit chapter of this title (Chapter 20.88 WCC).

20.88.225(c) The county council shall conduct the following within the specified timeframes, except as provided in subsection (iii):

(i) Hold a public meeting, not an open record public hearing, to deliberate on the project application within 28 calendar days after receiving the hearing examiner’s recommendation. ed decision has been filed, the county council shall do one of the following: (ii) Issue a final written decision within 21 calendar days of the public meeting.
(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 calendar days of the meeting, issue a final written decision.
(iii) The county council may exceed the time limits in this subsection (i) or (ii) if the county council meeting schedule does not accommodate a meeting within the above timeframes, or if the county council 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).

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.

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

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 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 WCC 20.88.130(1) through (7).

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

2.33.090 22.05.130 Notice of final decision and permit review 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) The county shall issue a notice of final decision for all permit types, on, including procedures for administrative appeal and notice that affected property owners may request a change in valuation for property tax purposes, to the applicant, the Whatcom County assessor, and any person who requested notice or submitted substantive comments on the application within 120 calendar days of the date the department determined the application complete, except as provided below:

(a) The following time periods shall be excluded from the calculation of the number of days elapsed:
1-(i) Any period during which the applicant has been required by the county to correct plans, perform required studies, or provide additional, required information through a notice of additional requirements, per WCC 22.05.100(3), 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-(ii) Any period during which an environmental impact statement is being prepared following a determination of significance pursuant to Chapter 43.21C RCW and WCC Title 16;

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

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.

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

4-(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-(i) 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.

9-(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 2.33.090.

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.

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).

(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 xxx xx, 2020 [two years after the effective date of this ordinance]1.

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 20.92.250subsection (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 divisionthe 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 divisiondirector 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.

1 Code publishing – Insert specific date - two years from the effective date of this Ordinance.
(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.

(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.

(c) A party who fails to appeal within 14 calendar days is barred from appeal, per WCC 2.11.

(d) The Business Rules of the Hearing Examiner shall govern appeal procedures.

1) The Hearing Examiner shall have the authority granted in the Business Rules, and that authority is incorporated herein by reference. See also, WCC 2.11.220.

(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 days of the final decision of the hearing examiner, as provided in RCW 36.70C.040. 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

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.
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 initiated proposed by a citizen-party other than the county council or the department per WCC 22.10.020(3).

(b) the amendment is consistent with state and federal regulations, and

(e) 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.

20.90.05022.10.030 Processing of initiated-docketed amendments.

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

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

2-(b) The department of planning and development services shall conduct environmental review under SEPA and prepare a staff report including recommendations and/or options for each initiated docketed amendment to this title and/or the official zoning map. Both the report and the result of the environmental review shall be forwarded to the appropriate hearing 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 web site no fewer than 10 calendar days prior to the hearing. The notice shall include the date, time, place, and subject of the hearing.
(2) For public hearings involving a quasi-judicial zoning map amendment application, per WCC 22.10.030D, the county shall provide the following notice in addition to the requirements of subsection A of this section: 20.90.045 (1) Notice shall be published once in the official county newspaper at least 10 days prior to the hearing. The county shall prepare the notice and the applicant shall pay for the notice.

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

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

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

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

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

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

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

(5)(d) For sites within 4,500 feet of the runway of Lynden Airport or Floatahaven 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:

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

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

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

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

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

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)

Chapter 22.20
LAND USE AND DEVELOPMENT CODE INTERPRETATION PROCEDURES

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 in the absence of a pending project permit.

(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 prior to project permit application.
Anyone may request an interpretation consistent with the provisions of this chapter. Any person may requesting an interpretation of the code prior to submission of a project permit. The person 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. Interpretations of a pending project permit shall be made through the applicable permitting process as established in WCC 22.05.

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 preapplication.

(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

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

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

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

(a) Title 15 Building and Construction,

(b) Title 16 Environment,

(c) Title 17 Flood Damage Prevention,

(d) Title 20 Zoning,

(e) Title 21 Land Division Regulations,

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

(g) Title 23 Shoreline Management.

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

20.04.091 22.25.030 Reduced application fees.
When any given project requires more than one of the following permits or
applications, the total amount of fees shall be reduced by 25 percent of the
required aggregate permit and application fees; provided any fees required for
processing of an EIS shall not be included as part of the total amount of fees to be
reduced by 25 percent.

(1) Subdivision plat application;

(2) Rezone application;
Title 22 Amendments

(3) Shoreline substantial development permit, variance or conditional use;

(4) Major development permit;

(5) Conditional use permit;

(6) Variance;

(7) Planned unit development.

20.04.0922.25.040 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:
Title 2
EXHIBIT B

Whatcom County Code Title 2
Administration and Personnel

AMENDMENTS

Title 2
ADMINISTRATION AND PERSONNEL

Chapters:

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2.11 Repealed Hearing Examiner

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2.33 Permit Review Procedures Reserved

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2.160 Comprehensive Plan Amendments Reserved

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Chapter 2.02
COUNTY COUNCIL

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2.02.160 Hearing examiner.
The county council shall administer an annual contract for hearing examiner services. The duties of the hearing examiner are established in Chapter 20.922.11 WCC.

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Chapter 2.11

INFORMATION CENTER (Repealed by Ord. 93.042)

HEARING EXAMINER

Sections:

20.922.11.010 Purpose.
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20.92.2402.11.235 Additional powers.
20.92.2452.11.240 Limited jurisdiction.

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

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

(2) The need to better protect and promote the interest of the public and private elements of the community.
(3) The need to expand the principles of fairness and due process in open record hearings.

20.922.11.100 Hearing examiner office.

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

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

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

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

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

20.922.11.200 Hearing examiner – Duties and powers.

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

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

(2) Planned unit developments;

(3) Development Agreements, as authorized in RCW 36.70B Site-specific rezones; including those processed as major project permits, PUDs and/or concomitant rezones;
(4) Such other permits as may be required from the county along with subsection (1) or (2) of this section for a given project. Applications where a major project permit is required shall be processed as set forth in Chapter 20.88 WCC. Where the hearing examiner would normally make a final decision to approve or deny an accompanying permit, the decision shall instead be in the form of a recommendation and accompany the hearing examiner’s recommendation on the major project permit or planned unit development to the county council for final approval;

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

20.922.11.210 Final decisions.

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

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

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

(3) Applications for zoning ordinance conditional use permits.

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

(5) Applications for shoreline management substantial development permits not accompanied by a major project permit when an open record hearing is required.

(6) Applications for variances from the terms of the Whatcom County Shoreline Management Program.

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

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

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

(10) Applications for flood damage prevention variances.

(11) Appeals from SEPA determinations of significance, determinations of nonsignificance, and mitigated determinations of nonsignificance.
(12) Preliminary subdivisions and subdivision variances.

(13) Preliminary binding site plan proposals.

(14) Application for variances from the provisions of WCC Title 22.
(1514) Revocation proceedings involving previously approved zoning conditional use permits, shoreline management substantial project permits and shoreline conditional use permits.

(1615) Applications to continue operations of nonconforming adult businesses pursuant to WCC 20.83.015.

(1716) Appeals of decisions relating to water service issues under Section 9.2 of the Coordinated Water System Plan.

(1817) Appeals from any orders, requirements, permits, decisions or determinations made by an administrative official relating to essential public facilities.

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

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

20.92.2302.11.225 Department reports.
The hearing examiner may request reports from appropriate staff. See WCC 2.33.080-22.05.100 for details.

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

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

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

20.92.850 Public hearing process for development agreements under the Growth Management Act.
(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

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

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

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

1. The county shall make a determination of completeness pursuant to WCC 2.33.050; and

2. A final decision is made by the county pursuant to WCC 2.33.090:
   a. Within 90 days of a determination of completeness if the project is exempt from SEPA review unless a shorter review period is provided in other provisions of the Whatcom County Code;
   b. Within 120 days of a determination of completeness if the project is subject to SEPA review unless a shorter review period is provided in other provisions of the Whatcom County Code;
B. Planned unit development permits; provided, that the county shall make a determination of completeness pursuant to WCC 2.33.050;
C. Major development permits; provided, that the county shall make a determination of completeness pursuant to WCC 2.33.050;
D. Concomitant rezones; provided, that the county shall make a determination of completeness pursuant to WCC 2.33.050;
E. Legislative actions including standard map amendments, comprehensive plans or other related plans and regulations.

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

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

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

D. It is the responsibility of the applicant to initiate a preapplication conference through a written request or other means allowed by the technical administrator. The request shall, at a minimum, include the following written information:

   1. Property owner’s name, address, phone number, fax number;
   2. Applicant/project representative name, address, phone number, fax number;
   3. Project site parcel number;
   4. Project site address (if available);
   5. Written description of the project;
   6. One copy of the current deed to the property;
   7. A site plan drawn at a scale of one inch equals 100 feet or larger that includes the following:
      a. North arrow;
      b. Scale;
      c. All existing and proposed property lines with dimensions of parcel;
      d. Location and size of existing and proposed structures 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 Whatecon County Development Standards, in applicable state law or WACs and in any site-specific conditions resulting from a preapplication conference.

The submittal information for each permit type constitutes the information necessary to determine whether an application is complete pursuant to WCC 2.33.050, Permit receipt and determination of completeness.

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

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

2.33.050 Permit receipt and determination of completeness.

A. An application shall meet all submittal requirements before the proposal is submitted to the county for review. Upon submittal by the applicant, the county will accept the application and note the date of receipt. Receipt of an application does not constitute approval of the project proposal.
B. Within 14 days of accepting the application, the county shall make a determination of completeness or issue a determination that the application is incomplete.

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

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

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

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

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

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

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

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

3. Upon receipt of the requested additional information, the county shall have 14 days to make a determination and notify the applicant.

4. If the applicant does not submit the necessary information to the county in writing within the 90-day period, the county shall make findings and issue a decision that the application is rejected.

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

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

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

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

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

C. Notice shall include:

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

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

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

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

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

6. Any other information determined appropriate by the county;

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

8. A statement of the limits of the public comment period, the right of any person to comment on the application within a 15-day time period (30 days for substantial development permits and major project permits for mitigation banks), receive notice of and participate in any hearings, request a copy of the decision once made and to appeal a decision when allowed by law. In addition, the statement shall indicate that any person wishing to receive personal notice of any hearings must notify the hearing examiner’s office within 15 days (30 days for substantial development permits and major project permits for mitigation banks) of the date of the notice of application.

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

1. The notice shall be published once in the official county newspaper. The applicant shall bear the responsibility of paying for such notice;
2. Additional notice shall be given using the following method:
   a. For sites within urban growth areas: At least 12 days prior to the
      scheduled hearing date, application notice shall be sent to all property
      owners within 300 feet of the external boundaries of the subject property
      as shown by the records of the county assessor. Applicants shall submit,
      with their completed application, a stamped envelope with a typed
      address for each of the above referenced property owners;
   b. For sites outside urban growth areas: At least 12 days prior to the
      scheduled hearing date, application notice shall be sent to all property
      owners within 1,000 feet of the external boundaries of the subject
      property as shown by the records of the county assessor. Applicants shall
      submit, with their completed application, a stamped envelope with a typed
      address for each of the above referenced property owners;

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

E. Notices of application should be sent to neighboring cities and other agencies or
   tribes that will potentially be affected, either directly or indirectly, by the proposed
   development. (The county shall be responsible for such notification.)

F. With the exception of substantial development permit applications and major
   project permit applications for mitigation banks, a public comment period shall be
   15 days following the date of notice of application. Substantial development permit
   applications and major project permit applications for mitigation banks require a
   30-day period. All public comments received on the notice of application must be
   received in the department of planning and development services by 4:30 p.m. on
   or before the last day of the comment period. The county may require the applicant
   to pay the cost of providing notice.

G. No SEPA threshold determination shall be issued until the expiration of the public
   comment period established for the notice of application. This condition shall not
   apply if a determination of significance is made by the county.

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

2.33.070 Notice of an open record hearing:
   A. A notice of open record hearing shall be published by the hearing examiner once
      in the official county newspaper at least 10 days prior to an open record hearing.
      The notice shall consist of the date, time, place, and type of the hearing. In
      addition, personal notice shall be provided to any person who has requested such
      notice in a timely manner, consistent with WCC 2.33.060(C)(8).
   B. Additional notice shall be given within two days of the published notice by
      posting of three copies of the notice in a conspicuous manner on the property upon
which the use is proposed. (Notices shall be provided by the county. The applicant shall be responsible for posting.)

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

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

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

2.33.080 Consistency review and staff report.
A. Fundamental land use planning choices made in adopted comprehensive plans and development regulations shall serve as the foundation for project review. During project review, the review authority shall determine if the project proposal is consistent with the county’s comprehensive plan, other adopted plans, existing regulations and development standards. The review authority shall at a minimum use four criteria for determining consistency, as follows:

1. Type of land use permitted on the site;

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

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

4. Character of the development.

B. The county may conduct a more specific evaluation in addition to the evaluation of the four main categories listed in subsection (A) of this section in considering project consistency when other criteria are required by federal, state or local regulations.

C. County staff shall file one consolidated report with the hearing examiner at least 17 days prior to a scheduled hearing. The staff report shall address the proposed development or action, summarizing the comments and recommendations of county departments, affected agencies, special districts and public comments received within the 15-day or 30-day comment period as established in WCC 2.33.060(F). The report shall also provide an evaluation of the project proposal for consistency as indicated in this section. The staff report shall include findings, conclusions, and proposed recommendations for response to the proposal.

D. The conclusions of a consistency determination made under this section shall be documented in the project permit decision.

2.33.090 Permit review limitations and notice of final decision.
A. Unless otherwise exempted in WCC 2.33.020 or subsection (C) of this section, the county shall issue a notice of final decision on a project permit application as follows:
1. Within 90 days of a determination of completeness if the project is exempt from SEPA review unless a shorter review period is provided in other provisions of the Whatcom County Code;

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

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

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

1. Any period during which the applicant has been required by the county to correct plans, perform required studies, or provide additional, required information:
   a. The period shall be calculated from the date the county notifies the applicant of the need for additional information until the date the county receives the additional information. The county shall have 14 days after the date the information has been provided to the county to determine adequacy of the information;
   b. If the information submitted by the applicant under this subsection is insufficient, the county shall notify the applicant of the deficiencies and the provisions of this section shall apply as if a new request for information has been made;

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

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

4. The period specified for administrative appeals of development standards as provided in WCC 12.08.035(1);

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

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

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

1. Requires an amendment to the Whatcom County comprehensive plan or a development regulation in order to obtain approval.
2. Requires approval of a new fully-contained community as provided in RCW 36.70A.350, a master planned resort as provided in RCW 36.70A.360, or the siting of an essential public facility as provided in RCW 36.70A.200.

3. Is substantially revised by the applicant, including all redenisions 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.
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 C:
Titles 9, 15, 16, 23 and 24
EXHIBIT C

Whatcom County Code Title 9
Public Peace, Morals and Welfare

Whatcom County Code Title 15
Building Codes

Whatcom County Code Title 16
Environment

Whatcom County Code Title 23
Shoreline Management Program

Whatcom County Code Title 24
Health

AMENDMENTS

Whatcom County Code Title 9
Public Peace, Morals and Welfare

Chapter 9.52
EROTIC DANCE STUDIOS

9.52.160 Appeals to the council.
Interested parties may appeal adverse decisions of the hearing examiner to the county council, under the provisions of Whatcom County Code Chapter 20.92.600 22.05.

Whatcom County Code Title 15
Building Codes
Chapter 15.04

15.04.010 Adoption of referenced codes.
15.04.015 Department of building safety.

15.04.016 Project Permit Review Procedures.

15.04.020 Amendments to the International Building Code.
15.04.030 Amendments to the International Residential Code.
15.04.040 Amendments to the International Fire Code.
15.04.050 Permit expirations and violations of the above-referenced codes.

15.04.016 Project Permit Review Procedures
All applications for project permits shall be reviewed and processed in accordance with WCC 22.05, except as otherwise stated within this title. Appeals of Title 15 fire and building code requirements shall be made to the board of appeals per current building code. The hearing examiner shall be the appeal body for appeals of non-fire and building code requirements associated with project permits required by this Title.

15.04.020 Amendments to the International Building Code.

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

To obtain the permit, the applicant shall first file an application therefor in writing on a form furnished by the department of building safety for that purpose. Such application shall and shall include all items as stated in the department’s administrative manual.
1. Identify and describe the work to be covered by the permit for which application is made.
2. Describe the land on which the proposed work is to be done by legal description, street address or similar description that will readily identify and definitely locate the proposed building or work.
3. Indicate the use and occupancy for which the proposed work is intended.
4. Be accompanied by construction documents and other information as required in Section 107.
5. State the valuation of the proposed work.
6. Be signed by the applicant, or the applicant’s authorized agent.
7. Include signature by the applicant or the applicant’s authorized agent of a statement for guarantee of fee payment. The statement must be signed in the presence of County staff or staff will provide a statement which includes verification of signature by a licensed notary public.
8. Provide verification of approval to connect to a public sewer system or a septic system installation permit issued by the Whatcom County Environmental Health Department for any permit application that requires sewage disposal. The approval to connect or issued septic system permit shall be specific to the project application.
9. Provide additional data and information in the designated sequence, as required by the Building Official.

15.04.030 Amendments to the International Residential Code.

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

To obtain the permit, the applicant shall first file an application in writing on a form provided by the department and shall include all items as stated in the department’s administrative manual.

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

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

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

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

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

5. State the valuation of the proposed work.
6. Be signed by the applicant, or the applicant's authorized agent.

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

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

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

Whatcom County Code Title 16
Environment

Chapter 16.08
STATE ENVIRONMENTAL POLICY ACT (SEPA)

Chapter 16.16
CRITICAL AREAS

ARTICLE 2. ADMINISTRATIVE PROVISIONS

16.16.205 Authorizations Required.
A. No action shall be taken by any person, company, agency, governmental body (including Whatcom County), applicant, owner, or owner's agent, which results in any alteration of a critical area or its setback or buffer without prior authorization by submitting an application to the Technical Administrator and obtaining either the required permit or an approval of a notice of activity, as specified herein.

B. No land use development permit, construction permit, or land division approval required by County ordinance shall be granted until the County decision-maker has determined that the applicant has complied with the applicable purposes, requirements, objectives, and goals of this chapter including the mitigation standards set forth in WCC 16.16.260.
C. Project permits must comply with the substantive and procedural requirements of this chapter and the procedural requirements of Chapter 2.33 WCC shall comply with all provisions of this chapter, Title 22 and the department’s administrative manual.

16.16.215 Relationship to Other Jurisdictions.
A. Permit applicants are responsible for complying with all federal, state, tribal, and local regulations that may pertain to a proposed development. Compliance with the provisions of this chapter does not necessarily constitute compliance with other regulations and permit requirements.

B. In cases where other agencies have jurisdiction over critical areas and the technical administrator determines that the permit conditions imposed by such agencies are no less protective and satisfy the requirements of this chapter, those permit conditions may be substituted as the conditions of approval for the requirements of this chapter. Such agencies may include, but are not limited to, the Lummi Nation; the Nooksack Tribe; the United States Army Corps of Engineers; the United States Environmental Protection Agency; the United States Fish and Wildlife Service; the National Marine Fisheries Service or NOAA Fisheries; and the Washington State Departments of Ecology, Natural Resources, and Fish and Wildlife.

C. The County shall make detailed written findings required by Chapter WCC 2.33 22.05 and WCC 16.16.250 when adopting conditions of another jurisdiction’s permit. Such requirements shall be a condition of critical area approval and enforceable by the County. In the event that there is a conflict between permit requirements and the standards of this chapter, the more restrictive standards shall apply.

16.16.240 Technical Administrator and Hearing Examiner Authority.
The technical administrator is the Whatcom County director of planning and development services or his/her designee. The hearing examiner is appointed by the County Council. The technical administrator and the County Hearing Examiner shall administer and enforce the provisions of this chapter pursuant to the following:

A. The technical administrator shall have the primary responsibility for reviewing development proposals for compliance with this chapter and is authorized to approve, deny, or condition permits in accordance with the standards set forth herein. The technical administrator shall also have the following authority:
   1. Authority to convene an interdisciplinary team to assist in reviewing development proposals or to solicit review from outside experts in accordance with WCC 16.16.245.
2. Authority to grant, condition, or deny reasonable use permits for single-family residential building permits within critical areas and/or their buffers

3. Authority to grant, condition, or deny reasonable use permits for other development proposals that would affect critical area buffers, but not the critical areas themselves

4. Authority to serve a cease and desist order pursuant to WCC 16.16.285 upon a person undertaking activity within a critical area or buffer in violation of this chapter.

5. Any additional responsibility and/or authority specifically provided for in the subsequent articles of this chapter.

B. The technical administrator’s authority shall transfer to another County decision-maker when another decision-maker is specified for a separate project permit. In such cases, the technical administrator shall ensure that all procedural requirements of this chapter are met and shall make a recommendation to the designated decision-maker as to how the provisions of this chapter apply to the permit action, including project permits.

C. The Whatcom County hearing examiner is hereby vested with responsibility and authority to hear appeals and perform the following duties:

1. Authority to grant or deny variances.

2. Authority to grant, condition, or deny reasonable use permits for all developments, except single-family building permits, affecting critical areas.

3. Authority to decide on appeals of administrative decisions including, but not limited to, reasonable use permits issued by the technical administrator.

4. Authority to hold public hearings pursuant to Chapters 20.8422.05 and 20.92 WCC.

D. In granting, revising, or extending a permit, the technical administrator, or hearing examiner, as applicable, may attach such conditions, modifications, or restrictions thereto regarding the location, character, and other features of the proposed development deemed necessary to assure that the development is consistent with criteria set forth in this chapter. In cases involving unusual circumstances or uncertain effects, a condition may be imposed to allow for future review or reevaluation to assure conformance with this chapter. The technical administrator and/or hearing examiner shall render a final decision in accordance with the timelines established in WCC 2.33.09022.05 and 20.92.430, as applicable. All decisions of the technical administrator and hearing examiner may be appealed pursuant to WCC 20.84.240 and 20.92.600WCC 22.05.160.
A. All applicants shall complete a prescreening meeting with the technical administrator prior to submitting an application subject to this chapter. The purpose of this meeting shall be to discuss the requirements for a complete application; the critical area standards and procedures; to review conceptual site plans prepared by the applicant; to discuss appropriate investigative techniques and methods; and to determine reporting requirements.

B. Review and approval of a proposed development within a critical area or its buffer may be initiated through the application for any project permit in Whatcom County.

C. The technical administrator shall be responsible, in a timely manner, to make one of the following determinations regarding critical areas review:

1. Initial Determination. When County critical area maps or other sources of credible information indicate that a site may be located, contain or abut critical areas, critical area buffers or setbacks the technical administrator shall require technical studies in accordance with that critical area’s specific Article.

2. Determination of Impacts. The technical administrator shall use best available science, including but not limited to the County’s critical areas maps, his/her field investigation results, his/her own knowledge of the site, information from appropriate resource agencies, or documentation from a scientific or other credible source to determine if the project will more probably than not adversely impact a critical area or its buffer. Identified adverse impacts shall be fully mitigated in accordance with WCC 16.16.260.

3. Determination of Compliance. If the applicant demonstrates to the satisfaction of the Technical Administrator that the project meets the provisions of this chapter and is not likely to adversely affect the functions and values of critical areas or buffers or provides mitigation to reduce the adverse impact to meet no net loss of the function and values of critical areas or its buffer, the technical administrator shall make the determination that the proposal complies with this chapter.

4. Decision to Approve, Condition, or Deny. The technical administrator shall review all pertinent information pertaining to the proposed development and shall approve, approve with conditions, or deny the permit based on their review, and shall provide a detailed written decision. This determination shall be included in the project review record for the project permit in accordance with Chapter 2.3322.05 WCC.

16.16.261 Alternative or Innovative Mitigation Plans.
A. The County shall consider and may approve alternative or innovative mitigation plans for major developments (as defined in Article 9 of this chapter), planned
unit developments (pursuant to Chapter 20.85 WCC), and/or development agreements (pursuant to RCW 36.70B.170 through 36.70B.210).

B. If approved, said plan shall be used to satisfy the requirements of this chapter and provide relief and/or deviation as appropriate from the specific standards and requirements thereof; provided, that the standards of impact avoidance and minimization shall remain as guiding principles in the application of these provisions and when it is demonstrated that all of the following circumstances exist:

1. The proponent(s) demonstrate the organizational and fiscal capability to carry out the purpose and intent of the plan;

2. The proponent(s) demonstrate that long-term management, maintenance, and monitoring will be adequately funded and effectively implemented;

3. There is a clear likelihood for success of the proposed plan based on supporting scientific information or demonstrated experience in implementing similar plans;

4. In terms of functional value, the proposed mitigation plan results in equal or greater protection and conservation of critical areas functions, services, and values than would be achieved using parcel-by-parcel regulations and/or traditional mitigation approaches;

5. The plan is consistent with the general purpose and intent of this chapter, the Shoreline Management Program (WCC Title 23), and the comprehensive plan;

6. The plan shall contain relevant management strategies considered effective and within the scope of this chapter and shall document when, where, and how such strategies substitute for compliance with the specific standards herein; and

7. The plan shall contain clear and measurable standards for achieving compliance with the purposes of this chapter, a description of how such standards will be monitored and measured over the life of the plan, and a fully funded contingency plan if any element of the plan does not meet standards for compliance.

C. Alternative mitigation plans shall be reviewed concurrently with the underlying land use permit(s) and decisions to approve or deny such plans shall be made in accordance with the underlying permit process. The plan shall be reviewed by the technical administrator to ensure compliance with the general purpose and intent of this chapter and to ensure accuracy of the data and effectiveness of proposed management strategies. In making this determination the technical administrator shall consult with the State Departments of Fish and Wildlife, Ecology, Natural Resources, and/or other local, state, federal, and/or tribal agencies or experts. If the technical administrator finds the plan to be complete,
accurate, and consistent with the purposes and intent of this chapter, the designated decision-maker shall solicit comment pursuant to the public notice provisions of Chapter 2.332.05 WCC prior to final approval/denial of permission of the plan to substitute for the requirements and standards of this chapter.

.......

16.16.262 Watershed-Based Management Plans.
A. The County may consider watershed-based management plans sponsored by watershed improvement districts, other special purpose districts, or other government agencies.

B. If approved, said plan shall be used to satisfy the requirements of this chapter and provide relief and/or deviation as appropriate from the specific standards and requirements thereof; provided, that the standards of impact avoidance and minimization shall remain as guiding principles in the application of these provisions and when it is demonstrated that all of the following circumstances exist:

1. The proponent(s) demonstrate the organizational and fiscal capability to carry out the purpose and intent of the plan;

2. The proponent(s) demonstrate that long-term management, maintenance, and monitoring of the watershed will be adequately funded and effectively implemented;

3. There is a clear likelihood for success of the proposed plan based on supporting scientific information or demonstrated experience in implementing similar plans;

4. In terms of functional value, the proposed mitigation plan results in equal or greater restoration, protection, and conservation of the impacted critical areas than would be achieved using parcel-by-parcel regulations and/or traditional mitigation approaches;

5. The plan is consistent with the general purpose and intent of this chapter, the comprehensive plan, and an approved watershed plan prepared pursuant to Chapter 90.82 RCW (the State Watershed Management Act) or the plan is prepared under other local or state authority that is consistent with the goals and policies of an applicable and approved watershed plan prepared pursuant to Chapter 90.82 RCW;

6. The plan shall contain relevant management strategies considered effective and within the scope of this chapter and shall document when, where, and how such strategies substitute for compliance with the specific standards herein; and

7. The plan shall contain clear and measurable standards for achieving compliance with the purposes of this chapter, a description of how such
standards will be monitored and measured over the life of the plan, and a fully funded contingency plan if any element of the plan does not meet standards for compliance.

C. Watershed-Based Management Plans shall be approved by the County Council by ordinance and appended to this chapter. The process for approval shall be as follows:

1. The plan shall be reviewed by the technical administrator to ensure compliance with the purposes of this chapter, the Whatcom County Shoreline Management Program (WCC Title 23), and with the comprehensive plan, and to ensure accuracy of the data and effectiveness of proposed management strategies. In making this determination the technical administrator shall consult with the State Departments of Fish and Wildlife, Ecology, Natural Resources, and/or other local, state, federal, and/or tribal agencies or experts.

2. If the technical administrator finds the plan to be complete, accurate, and consistent with the purposes and intent of this chapter, the designated decision-maker shall solicit comments pursuant to the public notice provisions of Chapter 2.33-22.05 WCC prior to final approval/denial of permission of the plan to substitute for the requirements and standards of this chapter.

3. The designated decision-maker shall not approve watershed-based management plans that conflict with Chapter 90.82 RCW.

16.16.263 Mitigation Banking.
A. The County may approve mitigation banking as a form of compensatory mitigation for wetland and habitat conservation area impacts when the provisions of this chapter require mitigation and when it is clearly demonstrated that the use of a bank will provide equivalent or greater replacement of critical area functions and values when compared to on-site mitigation; provided, that all of the following criteria are met:

1. Banks shall only be used when they provide significant ecological benefits including long-term conservation of critical areas, important species, habitats and/or habitat linkages, and when they are consistent with the County Comprehensive Plan and create a viable alternative to the piecemeal mitigation for individual project impacts to achieve ecosystem-based conservation goals.

2. The bank shall be established in accordance with the Washington State Draft Mitigation Banking Rule, Chapter 173-700 WAC or as revised, and Chapter 90.84 RCW and the federal mitigation banking guidelines as outlined in the Federal Register, Volume 60, No. 228, November 28, 1995. These guidelines establish the procedural and technical criteria that banks must meet to obtain state and federal certification.
3. Preference shall be given to mitigation banks that implement restoration actions that have been identified formally by an adopted shoreline restoration plan, watershed planning document prepared and adopted pursuant to Chapter 90.82 RCW, a salmonid recovery plan or project that has been identified on the Watershed Management Board Habitat Project List or by the Washington State Department of Fish and Wildlife as essential for fish and wildlife habitat enhancement.

B. Mitigation banks shall require a major project permit in accordance with Chapter 20.88 WCC and shall be subject to a formal review process including public review as follows:

1. The bank sponsor shall submit a bank prospectus for County review. The prospectus shall identify the conceptual plan for the mitigation bank, including:
   
a. The ecological goals and objectives of the bank;
   
b. The rationale for site selection, including a site map and legal description of the prospective bank site;
   
c. A narrative demonstrating compliance with the Whatcom County comprehensive plan, associated development standards and this chapter, shoreline restoration plan, watershed planning documents prepared and adopted pursuant to Chapter 90.82 RCW, and/or the salmonid recovery plan;
   
d. A description of the existing site conditions and expected changes in site conditions as a result of the banking activity, including changes on neighboring lands;
   
e. A conceptual site design;
   
f. A description of the proposed protective mechanism such as a conservation easement; and
   
g. Demonstration of adequate financial resources to plan, implement, maintain, and administer the project.

2. The technical administrator shall review the bank prospectus either by participating in the state’s Mitigation Bank Review Team (MBRT) process and/or by hiring independent, third-party expertise to assist in the review.

3. If the technical administrator determines that the bank prospectus is complete, technically accurate, and consistent with the purpose and intent of this chapter, s/he shall forward the prospectus to the County Council for initial review. If the proposed bank involves conversion of agricultural land to nonagricultural uses, the County Council shall seek a recommendation from
the Agricultural Advisory Committee as to whether the conversion should be allowed. The Committee’s recommendation shall be nonbinding. The County Council may require mitigation for the loss of agricultural lands.

4. If the County Council determines, based on the initial review, that the prospectus is valid, it shall issue a notice to proceed to the bank sponsor. Following receipt of the notice to proceed, the bank sponsor may submit application for a major project permit in accordance with Chapter 20.88 WCC. The notice to proceed shall not be construed as final approval of the bank proposal, but shall indicate approval to proceed with the development of the mitigation bank instrument, which details all of the legal requirements for the bank.

5. Upon receipt of a draft mitigation banking instrument from the bank sponsor and major project permit application, the technical administrator shall review the banking instrument and major project permit in consultation with the MBRT and/or other third-party expert. Following review of the mitigation banking instrument and major project permit, the technical administrator shall make a recommendation to certify and approve, conditionally certify and approve, or deny the bank proposal and major project permit in accordance with the procedures/provisions of Chapters 20.88 and 22.05 WCC.

6. Following receipt of the recommendation, the County Council shall proceed with review in accordance with the procedures/provisions outlined in Chapters 20.88 and 22.05 WCC.

7. The bank sponsor shall be responsible for the cost of any third-party review.

... ... ...

16.16.270 Reasonable Use Exceptions.
A. Permit applicants for a property so encumbered by critical areas and/or buffers that application of this chapter—including buffer averaging, buffer reduction, or other mechanism—would deny all reasonable use may seek approval pursuant to the reasonable use standards and procedures provided in this section.

B. Reasonable Use Standards.

1. Nothing in this chapter is intended to preclude all reasonable economic use of property. If the application of this chapter would deny all reasonable economic use of the subject property, including agricultural use, use or development shall be allowed if it is consistent with the zoning code and the purposes of this chapter.

2. To qualify as a reasonable use, the technical administrator or hearing examiner, as appropriate, must find that the proposal is consistent with all of the following criteria:
a. There is no portion of the site where the provisions of this chapter allow reasonable economic use, including agricultural use or continuation of legal nonconforming uses;

b. There is no feasible alternative to the proposed activities that will provide reasonable economic use with less adverse impact on critical areas and/or buffers. Feasible alternatives may include, but are not limited to, locating the activity on a contiguous parcel that has been under the ownership or control of the applicant since September 30, 2005, change in use, reduction in size, change in timing of activity, and/or revision of project design;

c. Activities will be located as far as possible from critical areas and the project employs all reasonable methods to avoid adverse effects on critical area functions and values, including maintaining existing vegetation, topography, and hydrology. Where both critical areas and buffer areas are located on a parcel, buffer areas shall be disturbed in preference to the critical area;

d. The proposed activities will not result in adverse effects on endangered or threatened species as listed by the federal government or the state of Washington, or be inconsistent with an adopted recovery plan;

e. Measures shall be taken to ensure the proposed activities will not cause degradation of groundwater or surface water quality, or adversely affect drinking water supply;

f. The proposed activities comply with all state, local and federal laws, including those related to erosion and sediment control, pollution control, floodplain restrictions, and on-site wastewater disposal;

g. The proposed activities will not cause damage to other properties;

h. The proposed activities will not increase risk to the health or safety of people on or off the site;

i. The inability to derive reasonable economic use of the property is not the result of segregating or dividing the property and/or creating the condition of lack of use after September 30, 2005;

j. The project includes mitigation for unavoidable critical area and buffer impacts in accordance with the mitigation requirements of this chapter;

k. For single-family residences, the maximum impact area may be no larger than 4,000 square feet. This impact area shall include the residential structure as well as appurtenant development that are necessarily connected to the use and enjoyment of a single-family residence. These appurtenant developments include garages, decks, driveways, parking,
on-site septic systems, and all lawn and non-native landscaping, with the following exceptions:

i. On lots outside of the shoreline jurisdiction, when an extended driveway is necessary to access a portion of a development site with the least impact on critical area and/or buffers, those portions of the driveway shall be excluded from the 4,000 square foot maximum impact area provided that the access road meets the standards of WCC 16.16.620(E) or 16.16.720(C), as applicable.

ii. On lots within the shoreline jurisdiction, when an extended driveway is necessary to access a portion of a development site with the least impact on critical area and/or buffers, approval of those driveway portions shall be sought through a Shoreline Variance (WCC 23.60.030) and demonstrate that the size and location of the driveway is the minimum relief necessary to access the development site.

C. Reasonable Use Procedures.

1. Procedural requirements for reasonable use exception applications shall be as follows:

a. Reasonable use exception applications shall be subject to an open record public hearing; except, that reasonable use exception applications for single-family residential building permits, or for other development proposals that would affect critical area buffers, but not the critical areas themselves, shall be processed administratively by the technical administrator.

b. Reasonable use exception applications that require an open record hearing shall be processed in accordance with Chapter 2.33 WCC and WCC 20.84.23022.05.

c. Reasonable use exception applications that are subject to administrative approval by the technical administrator shall be processed in accordance with WCC 20.84.23522.05.

d. The hearing examiner or technical administrator shall have the authority to set an expiration date for any or all reasonable use approvals. The development proposal must be completed before the approval expires.

e. Any person aggrieved by the granting, denying, or rescinding of a reasonable use exception by the technical administrator or any party of record may appeal the Technical Administrator's decision pursuant to WCC 16.16.280 or the hearing examiner decision pursuant to Chapter 20.9222.05 WCC.

f. Any application for a reasonable use exception or approval which remains inactive for a period of 180 days shall expire and a new application and
repayment of fees shall be required to reactivate the proposal; provided, that the technical administrator may grant a single 90-day extension for good cause. Delays such as those caused by public notice requirements, environmental (SEPA) review, litigation directly related to the proposal, or changes in government regulations shall not be considered as part of the inactive period.

2. All reasonable use exception applications or other approvals shall be subject to the provisions of this chapter, which are in effect at the time of application.

3. Each application for a reasonable use exception shall be accompanied by a fee as stated in the unified fee schedule.

4. In making reasonable use decisions, the technical administrator shall have the authority to require submittal of technical reports in accordance with WCC 16.16.255 and/or 16.16.260(B).

16.16.273 Variances.

Where strict application of dimensional requirements of this chapter renders compliance with these provisions an undue hardship and when no other feasible alternative exists: permit applicants may seek a variance pursuant to WCC 20.84.100. A variance application shall be processed pursuant to WCC 22.05.

A. Where strict application of requirements of this chapter renders compliance with these provisions an undue hardship, permit applicants may seek a variance pursuant to the variance standards and procedures provided in this section.

B. Variance Standards. The hearing examiner may grant a variance from the dimensional requirements in this chapter when the applicant proves by clear, cogent, and convincing evidence all of the following:

1. Because of special circumstances applicable to the subject property, including, but not limited to, size, shape, topography, location, surroundings, and other physical conditions, the application of this chapter precludes development of the property by the property owner as otherwise allowed in WCC Title 20; and;

2. The granting of the variance will not be injurious to the health or safety of the community and every reasonable effort has been made to minimize adverse effects on critical areas; and;

3. The variance does not constitute a grant of special privilege, and is not based upon reasons of hardship caused by previous actions of the current property owner after July 18, 1992, and the proposed modification to a critical area will be the minimum necessary to allow reasonable and economically viable use of the property; and;

4. The project includes mitigation for unavoidable critical area and buffer impacts;

5. No other feasible alternative exists.

C. Variance Procedures.
1. Procedural requirements for variances applications shall be as follows:
   a. Variance applications shall be subject to an open record public hearing, processed in accordance with Chapter 2.33 WCC and WCC 20.84.220.
   b. The hearing examiner shall have the authority to set an expiration date for any or all variance approvals. The development proposal must be completed before the approval expires. The hearing examiner will render a decision pursuant to Chapter 20.92 WCC.
   c. Any party of record may appeal the hearing examiner decision pursuant to Chapter 20.92 WCC.
   d. Any application for a variance that remains inactive for a period of 1-year shall expire and a new application and repayment of fees shall be required to reactivate the proposal; provided, that the technical administrator may grant up to two 1-year extensions for good cause. Delays such as those caused by public notice requirements, environmental (SEPA) review, litigation directly related to the proposal, or changes in government regulations shall not be considered as part of the inactive period.
2. All variance applications shall be subject to the provisions of this chapter that are in effect at the time of application.
3. Each application for a variance shall be accompanied by a fee as stated in the unified fee schedule.
4. In making variance decisions, the hearing examiner shall require submittal of technical reports in accordance with WCC 16.16.255 and/or 16.16.260(B).

16.16.280 Appeals.
A. Final permit decisions made by the technical administrator shall be subject to appeal in accordance with the procedures of Chapter 2.3322.05 WCC and WCC Title 20; provided, that the applicant may request administrative review by the director of planning and development services prior to initiating a formal appeal process. Decisions of conditions applied to specific permits shall be subject to the appeal provisions for that permit. A request for administrative review shall stay the time within which one must file an appeal until a decision on the review is issued.

B. Any person may appeal to the hearing examiner a final administrative order, final requirement, final permit decision, or final determination made; provided, that such appeal shall be filed in accordance with the appeal procedure for the underlying permit. If there is no appealable permit or if the appeal is for a reasonable use permit decision issued by the technical administrator, the appeal shall be filed in writing within 14 calendar days of the date the written decision, order, requirement, or determination is issued and public notice provided, unless the decision is issued as part of a SEPA determination of nonsignificance for which a public comment period is required, in which case a 21-day appeal period shall be provided.

C. The appeal will be upheld if the applicant proves that the decision appealed is clearly erroneous or based upon error of law.
D. The hearing examiner shall have the authority to set an expiration date for any or all appeal approvals. The hearing examiner will render a decision pursuant to Chapter 20.92 WCC.

E. Each application for an appeal of an administrative decision to the hearing examiner shall be accompanied by a fee as stated in the unified fee schedule.

F. Pursuant to WCC 20.92.610, the applicant, any party of record, or any County department may appeal any final decision of the hearing examiner to the County Council. The appellant shall file a written notice of appeal at the County Council office within 10 business days of the final decision of the Hearing Examiner.

G. Any issue not raised in the original appeal filing is thereafter waived.

Whatcom County Code Title 23
Shoreline Management Program

Chapter 23.05
ADMINISTRATIVE PROCEDURES

23.05.010 Administrative procedures: Authority

23.05.020 Purpose.

23.05.030 Administrative procedures.

23.05.010 Administrative procedures Authority.
As described in adopted Whatcom County Ordinance 2008-034, the general administrative sections of Title 23 (Whatcom County Shoreline Management Program) are not part of this program. They are, however, included with the text of this title for consistency and ease of use. Department of Ecology will be notified of any changes to the administrative chapters listed below.

The use of separate local administrative and enforcement procedures is consistent with the 2003 Washington State Shoreline Master Program Guidelines (WAC 173-26-191(2)(a)(iii)(C)), Administrative provisions:
Local governments may include administrative, enforcement, and permit review procedures in the master program or the procedures may be defined by a local government ordinance separate from the master program. In either case, these procedures shall conform to the Shoreline Management Act, specifically RCW 90.58.140, 90.58.143, 90.58.210 and 90.58.220 and to chapter 173-27 WAC.

23.05.020 Purpose.
The purpose of this chapter is to allow Whatcom County to revise local administrative procedures (fees, application meetings, authority of administrator, etc.) without another formal state amendment process. These chapters must still be consistent and remain consistent with the related provisions in the Shoreline Management Act and state shoreline rules (WACs). In the event of a conflict, the state RCW or WAC, as amended, will prevail over the local ordinance.

23.05.030 Administrative procedures.

A. All applications for project permits covered by this title shall be reviewed and processed in accordance with WCC 22.05, except as otherwise stated within this title.

B. The following sections and chapters are part of were adopted by the Whatcom County Administrative Procedures Ordinance 2008-034, and are separate from this title:

WCC 23.60.050 – Minimum application requirements.
WCC 23.60.060 – Preapplication conference.
WCC 23.60.070 – Fees.
WCC 23.60.080 – Notice of application.
WCC 23.60.090 – Permit application review.
WCC 23.60.100 – Consolidated permit review.
WCC 23.60.110 – State Environmental Policy Act (SEPA) compliance.
WCC 23.60.130 – Public hearings.
WCC 23.60.140 – Permit conditions.
WCC 23.60.150 – Notice of decision, reconsideration and appeal.
WCC 23.60.160 – Initiation of development.
WCC 23.60.180 – Rescission and modification.
WCC 23.60.190 – Expiration.
Chapter 23.70 WCC – Administration.
Chapter 23.80 WCC – Legal Provisions.

23.60.050 Minimum application requirements.
A. Where other approvals or permits are required for a use or development that does not require an open record hearing, such approvals or permits shall not be granted until a shoreline approval or permit is granted. All shoreline approvals and permits shall include written findings prepared by the administrator documenting compliance with bulk and dimensional standards and other policies and regulations of this program.
B. A complete application for a substantial development, conditional use, or variance permit shall contain all materials required in the department's administrative manual, at a minimum, the following information: provided, that the administrator may vary or waive these requirements according to as provided in the manual-administrative application requirements and may vary or waive these requirements on a case-by-case basis. The administrator may require additional specific information depending on the nature of the proposal and the presence of sensitive ecological features or issues related to compliance with other county requirements.

1. Applicant/Proponent Information:
   a. The name, address and phone number of the applicant/proponent, applicant's representative, and/or property owner if different from the applicant/proponent.
   b. The applicant/proponent should be the owner of the property or the primary proponent of the project and not the representative of the owner or primary proponent.

2. Property Information:
   a. The property address and identification of the section, township and range to the nearest quarter, quarter section or latitude and longitude to the nearest minute. All applications for projects located in open water areas away from land shall provide a longitude and latitude location.
   b. Identification of the name of the shoreline (water body) that the site of the proposal is associated with.
   c. A general description of the property as it now exists including its use, physical and ecological characteristics, improvements and structures.
   d. A general description of the vicinity of the proposed project including identification of the adjacent uses, structures and improvements, intensity of development and physical characteristics.
   e. A vicinity map showing the relationship of the property and proposed development or use to roads, utilities, existing developments and uses on adjacent properties.

3. A site plan identifying existing conditions consisting of photographs, text, maps and elevation drawings, drawn to an appropriate scale to clearly depict all required information, that shall include:
   a. The boundary of the parcel(s) of land upon which the development is proposed. A survey may be required where substantial questions exist regarding the location of property lines or other important features.
   b. The ordinary high water mark of all water bodies within, located on or adjacent to the project boundary. For any development where a
determination of consistency with the applicable regulations requires a precise location of the ordinary high-water mark, the applicant/proponent shall provide a survey and describe the biological and hydrological basis for the location as indicated on the plan. Where the ordinary high-water mark is neither adjacent to or within the boundary of the project, the plan shall indicate the distance and direction to the nearest ordinary high-water mark of a shoreline.

c. Existing land contours at intervals sufficient to accurately determine the existing character of the property. Areas within the boundary that will not be altered by the development may be indicated as such and contours approximated for that area.

d. Existing critical areas as designated in Chapter 16.16 WCC together with any supporting information consistent with the reporting requirements of Chapter 16.16 WCC.

e. A description of the character of vegetation found on the site, including dominant plant species, vegetation structure, presence of invasive species and related information. A vegetation survey of plant communities may be required.

f. A description of the existing conditions including the ecological functions and processes affecting, maintaining, or influencing the shoreline.

g. The dimensions and locations of all existing structures and improvements including, but not limited to: buildings, paved or graveled areas, roads, utilities, septic tanks and drainfields, and stormwater management facilities.

4. A site plan and supporting information describing the features of the proposed development:

a. The dimensions and locations of all proposed structures and improvements including but not limited to: buildings, paved or graveled areas, roads, utilities, septic tanks and drainfields, material stockpiles or surcharge, and stormwater management facilities.

b. Proposed land contours overlain on existing contours. The contours shall be at intervals sufficient to accurately determine the extent of proposed change to the land that is necessary for the development. Areas within the boundary that will not be altered by the development may be indicated as such and contours approximated for that area.

c. Where applicable, a landscaping plan for the project.

d. Quantity, source and composition of any fill material that is placed on the site whether temporary or permanent.
e. Quantity, composition and destination of any excavated or dredged material.

f. A vicinity map showing the relationship of the property and proposed development or use to roads, utilities, existing developments and uses on adjacent properties.

g. Where applicable, a depiction of the impacts to views from existing residential uses and public areas.

h. A summary characterization of the effects of the project on existing ecological functions and processes in the vicinity of the project. If the project is likely to have adverse effects on shoreline ecological functions or processes, a mitigation plan shall be provided demonstrating measures that will be taken to offset impacts in accordance with the policies in WCC 23.90.030.

i. Where applicable, critical area mitigation plans in accordance with WCC 16.16.260.

j. On all variance applications the plans shall clearly indicate where development could occur without approval of a variance, the physical features and circumstances on the property that provide a basis for the request, and the location of adjacent structures and uses.

5. Shoreline permits shall be applied for on forms provided by the county.

6. Operation and maintenance plan(s) as required pursuant to other applicable sections of this program.

23.60.060 Pre-application conference.
A. Prior to filing a permit application for a shoreline substantial development permit, variance or conditional use permit decision, the applicant shall contact the county to schedule a preapplication conference which shall be held prior to filing the application; provided, that such meetings shall not be required for development activities associated with shoreline restoration projects, agriculture, commercial forestry, or the construction of a single-family residence.

B. The purpose of the preapplication conference is to review and discuss the application requirements with the prospective applicant and provide initial comments on the development proposal. The preapplication conference shall be scheduled by the county, at the request of an applicant, and shall be held in a timely manner, within 30 days from the date of the applicant's request. A project coordinator shall be assigned by the county following the preapplication conference.

C. The administrator may waive the requirement for a preapplication conference if it is determined to be unnecessary for review of an application. Nothing in this section shall be interpreted to require more than one preapplication conference or to prohibit the applicant from filing an application if the county is unable to schedule a preapplication conference within 30 days following the applicant's request.
D. Information presented at or required as a result of the preapplication conference shall be valid for a period of 180 days following the preapplication conference. An applicant wishing to submit a permit application more than 180 days following a preapplication for the same permit application shall be required to schedule another preapplication conference.

E. At or subsequent to a preapplication conference, the county may issue a preliminary determination that a proposed development is not permissible under applicable county policies or regulatory enactments. In that event, the applicant shall have the option to appeal the preliminary determination to the hearing examiner as provided for in WCC 23.60.150 as an alternative to proceeding with a complete application.

23.60.070 Fees.
A. Required fees for all shoreline substantial development permits, shoreline conditional use permits, shoreline variances, statements of exemption, appeals, preapplication conferences and other required reviews and/or approvals shall be paid to the county at the time of application in accordance with the Whatcom County unified fee schedule in effect at that time and WCC 22.25.

B. When any given project requires more than one of the following permits or applications, the total amount of shoreline fees shall be reduced by 25 percent pursuant to WCC 22.25.030:

1. Preliminary plat application.
2. Rezone application.
3. Major development permit.
4. Planned unit development.
5. Binding site plan.

C. When any project requires a shoreline conditional use permit or shoreline variance in addition to a shoreline substantial development permit, the fees for the conditional use or variance shall be reduced by half.

D. In the event that actions of an applicant result in the repetition of the review, inspections and other steps in the approval process, those items or steps repeated shall be charged to and paid by the applicant prior to any further processing of the application by the county. The cost shall be in accordance with the adopted fee schedule.

E. If an application is withdrawn within 30 days of submittal, and no work has commenced at the site of the proposal for which the application was made, a refund of not more than 50 percent of the shoreline fees paid may be granted by the administrator. This amount may be reduced where staff time, public notice and other costs exceed 50 percent of the fees paid.

F. No fees shall be collected from an agency of Whatcom County government.
23.60.080 Notice of application.
A. Upon receipt of a completed shoreline substantial development permit, shoreline variance, or shoreline conditional use permit application, the county shall issue a notice of application for a proposed land use action in the manner set forth in WCC 22.05.070.2-33.060 (Permit Review Procedures) notwithstanding the requirement for an open record public hearing, and to notify the applicant/proponent of his/her notice responsibility under that section.

B. The public comment period for a shoreline substantial development permit, shoreline variance, or shoreline conditional use permit shall be 30 days following the date of notice of application. Public comments may be submitted at any time prior to the closing of the record of an open record predecision hearing or, if no open record public hearing is required, prior to the decision on the project permit.

C. The public hearing shall not be closed to the receipt of written comments prior to 30 days following the date of the notice.

D. Application for any approval or permit not requiring a shoreline substantial development permit, shoreline variance, or shoreline conditional use permit shall be governed by the applicable notice requirement for that permit and shall not be subject to additional notice by this section. Any public comments submitted pursuant to applications for other approvals or permits shall be considered in review of compliance with standards, policies and regulations of this program.

EE. The rights of treaty tribes to resources within their usual and accustomed areas shall be accommodated through the notification and comment provisions of the permit review process. Tribal treaty rights may be addressed through specific permit conditions. Direct coordination between tribes and the applicant/proponent is encouraged.

23.60.090 Permit application review.
A. All shoreline permit applications, exemptions, or other approvals shall be subject to the provisions of this program that are in effect at the time of application.

B. To facilitate review of an application the decision maker shall consider any or all of the following:

1. The application and attached information;

2. The SEPA checklist, threshold determination, environmental impact statement, or other environmental studies and/or documentation;

3. Written comments from interested persons;

4. Information and recommendations from any public agency and from the administrator in cases where the administrator is not the decision maker;

5. Information or comment presented at a public hearing, if held, on the application; and
6. The policy and provisions of the Act and this program including the criteria enumerated in WCC 23.60.010, 23.60.030 and 23.60.040, as applicable.

C. In compliance with the provisions of Chapter 2.33 22.05 WCC 23.60.020, the decision maker shall be responsible to process project permit applications for shoreline substantial development permits, shoreline variance and shoreline conditional use permits in a compliance with the provisions of WCC 22.05 timely manner.

D. The decision maker shall process project permit applications for shoreline statements of exemption shall be processed in accordance with the provisions of WCC 23.60.023(A) and Chapter 22.05 WCC.

E. Any application for a shoreline permit or approval that remains inactive for a period of 180 days shall expire and a new application and repayment of fees shall be required to reactivate the proposal; provided, that the administrator may grant a single 90-day extension for good cause. Delays such as those caused by public notice requirements, State Environmental Policy Act review, litigation directly related to the proposal, or changes in government regulations shall not be considered as part of the inactive period.

F. If a shoreline permit is denied, no reapplication for the same or essentially similar development may be made until one year from the date of denial.

23.60.100 Consolidated permit review.
A. Whenever an application for a project permit under the program requires a project permit or approval under another county permit authority, such as zoning or subdivision, the shoreline project permit application, time requirements and notice provisions for processing the shoreline permit shall apply, in addition to those of other regulatory programs.

B. The provisions of Chapter 2.33 22.05 WCC shall apply to the consolidated application, review and approval of applications that require an open record hearing. Any shoreline use or development that is subject to other approvals or permits that requires an open record hearing under another permit authority, such as zoning or subdivision, shall be subject to consolidated review and the decision maker designated for the open record hearing shall be the decision maker for the consolidated review.

23.60.110 State Environmental Policy Act (SEPA) compliance.
A. Whenever an application for shoreline substantial development permit, shoreline variance, shoreline conditional use permit, or statement of exemption is subject to the rules and regulations of SEPA (Chapter 43.21C RCW), the review requirements of SEPA, including time limitations, shall apply, where applicable.

B. Applications for shoreline permit(s) or approval(s) that are not categorically exempt under SEPA shall be subject to environmental review by the responsible official of Whatcom County pursuant to the State Environmental Policy Act (Chapter 197-11 WAC).
C. As part of SEPA review, the responsible official may require additional information regarding the proposed development in accordance with Chapter 197-11 WAC.

D. Failure of the applicant/proponent to submit sufficient information for a threshold determination to be made shall be grounds for the responsible official to determine the application incomplete.

23.60.120 Burden of proof.
Permit applicants/proponents have the burden of proving that the proposed development is consistent with the criteria set forth in the Act and this program.

23.60.130 Public hearings.
A. The administrator shall determine whether an application requires a public hearing pursuant to the criteria below no later than 15 days after the minimum public comment period provided by WCC 23.60.080. An open record public hearing shall be required for all of the following:

1. The proposal has a cost or market value in excess of $100,000 except for single-family residences, agriculture, commercial forestry and ecological restoration projects; or

2. The proposal would result in development of an area larger than five acres; or

3. The proposal is a new or expanded marina, pier, aquaculture structure, any building over 35 feet high, mine, dam, stream diversion, landfill; or

4. The administrator has reason to believe the proposal would be controversial based on public response to the notice of receipt of application and other information; or

5. The proposal is determined to have a significant adverse impact on the environment and an environmental impact statement is required in accordance with the State Environmental Policy Act; or

6. The proposal requires a variance and/or conditional use approval pursuant to this program; or

7. The use or development requires an open record public hearing for other Whatcom County approvals or permits.

B. An open record public hearing on shoreline permit applications shall be held in accordance with the provisions of Chapter 23.22.05 WCC, unless a continuance is granted pursuant to the rules and procedures of the hearing examiner or other hearing body and subject to time requirements for compliance with the State Environmental Policy Act.

C. Decisions and recommended decisions of the hearing examiner shall be rendered within 10 working days of the date the public hearing record is closed unless the applicant/proponent agrees to an extension of time.
D. Where the county council is the permit decision maker they shall meet to consider the hearing examiner’s recommendation within 21 days of receipt thereof, at a closed record proceeding, at which time it may approve or disapprove the application, or remand the matter to the hearing examiner with instructions.

E. Public hearing requirements for permit appeals shall be processed according to WCC 23.60.150.

23.60.140 Permit conditions.
In granting, revising, or extending a shoreline permit, the decision maker may attach such conditions, modifications, or restrictions thereto regarding the location, character, and other elements of the proposed development deemed necessary to assure that the development will be consistent with the policy and provisions of the Act and this program as well as the supplemental authority provided in Chapter 43.21C RCW as applicable. In cases involving unusual circumstances or uncertain effects, a condition may be imposed to require monitoring with future review or reevaluation to assure conformance with the Act and this program. If the monitoring plan is not implemented, the permittee may be found to be noncompliant and the permit may be rescinded in accordance with WCC 23.60.180.

23.60.150 Notice of decision, reconsideration and appeal.
A. A notice of decision for action on a shoreline substantial development permit, shoreline variance, or shoreline conditional use permit shall be provided to the applicant/proponent and any party of record in accordance with the review procedures of Chapter 233 22.05 WCC and at least 10 days prior to filing such decisions with the Department of Ecology pursuant to WAC 173-27-130. Decisions filed with the Department of Ecology shall contain the following information:

1. A copy of the complete application;

2. Findings and conclusions that establish the basis for the decision including but not limited to identification of shoreline environment designation(s), applicable program policies and regulations and the consistency of the project with appropriate review criteria for the type of permit(s);

3. The final decision of the local government;

4. A completed permit data sheet (see Appendix A of this title); and

5. Where applicable, local government shall also file the applicable documents required by SEPA, or in lieu thereof, a statement summarizing the actions and dates of such actions taken under Chapter 43.21C RCW.

6. When the project has been modified in the course of the local review process, plans or text shall be provided that clearly indicate the final approved plan.

B. Notice of decision for shoreline statements of exemption shall comply with WCC 23.60.023(E) and WCC 22.05.110(1).
C. This program shall only establish standing for parties of record for shoreline substantial development permits, shoreline variances, or shoreline conditional use permits. Standing as a party of record is not established by this program for exempt actions pursuant to WCC 23.60.022; provided, that in such cases standing may be established through an associated permit process that provides for public notice and provisions for parties of record.

D. The applicant/proponent or any party of record may request reconsideration of any final action by the decision maker within 10 days of notice of the decision. Such requests shall be filed on forms supplied by the county. Grounds for reconsideration must be based upon the content of the written decision. The decision maker is not required to provide a written response or modify his/her original decision. He/she may initiate such action as he/she deems appropriate. The procedure of reconsideration shall not preempt or extend the appeal period for a permit or affect the date of filing with the Department of Ecology, unless the applicant/proponent requests the abeyance of said permit appeal period in writing within 10 days of a final action.

E. Appeals to the shoreline hearings board of a decision on a shoreline substantial development permit, shoreline variance or shoreline conditional use permit may be filed by the applicant/proponent or any aggrieved party pursuant to RCW 90.58.180 within 21 days of filing the final decision by Whatcom County with the Department of Ecology.

F. Whatcom County shall consider an appeal of a decision on a shoreline substantial development permit, shoreline variance or shoreline conditional use only when the applicant/proponent waives his/her right to a single appeal to the shoreline hearings board. Such waivers shall be filed with the county in writing concurrent with a notice of appeal within 10 days of a final action. When an applicant/proponent has waived his/her right to a single appeal, such appeals shall be processed in accordance with the appeal procedures of subsection H of this section and shall be an open record hearing before the hearing examiner.

G. Any order, requirement or administrative permit decision, or determination by the administrator based on a provision of this program, except a shoreline substantial development permit, may be the subject of an appeal to the office of the hearing examiner by any aggrieved person. Such appeals shall be processed in accordance with the appeal procedures of subsection H of this section and shall be an open record hearing before the hearing examiner.

H. Appeal Procedures.

1. Appeals shall be filed on forms supplied by the county within 10 calendar days of the issuance of a substantial development permit, shoreline variance or shoreline conditional use permit and within 20 calendar days of any other action of the administrator being appealed.

2. A public hearing on the appeal shall be held within 45 working days following receipt of the application for appeal.
3. Legal notice of the public hearing shall be made by mailing notice of time, date, and location of the hearing to the appellant, any parties of record, the Washington Department of Ecology, and the administrator at least 15 days prior to the hearing.

4. A decision by the hearing examiner shall be mailed within 10 working days of the public hearing to all parties of record unless otherwise mutually agreed to by all parties to the appeal.

5. Any party of record may request a closed record review of the hearing examiner’s decision issued under subsection (H)(4) of this section by the county council. Such an appeal shall be filed with the county council on forms supplied by the county within 10 calendar days of the written decision. If appeal is made to the county council, notice of appeal shall be provided to all parties of record at least 15 days prior to consideration by the county council. The council shall meet to review the hearing examiner’s decision within 21 days of transmittal thereof, at which time it may approve or disapprove the application, or remand the matter to the hearing examiner.

6. The time period for appeal to the shoreline hearings board shall begin after the decision maker has filed the final county decision with the Department of Ecology.

23.60.160 Initiation of development.
A. Development pursuant to a shoreline substantial development permit, shoreline variance, or conditional use permit shall not begin and shall not be authorized until 21 days after the “date of filing” or until all review proceedings before the shoreline hearings board have terminated.

B. Date of Filing.

1. “Date of filing” of a substantial development permit is the date of actual receipt of the decision by the Department of Ecology.

2. The “date of filing” for a shoreline variance or shoreline conditional use permit shall mean the date the permit decision rendered by the Department of Ecology is transmitted by the department to the county and the applicant/proponent.

23.60.170 Revisions.
A. A revision is required whenever the applicant/proponent proposes substantive changes to the design, terms or conditions of a project from that which is approved in the permit and/or statement of exemption. Changes are substantive if they materially alter the project in a manner that relates to its conformance to the terms and conditions of the permit, this program or the Act. Changes that are not substantive in effect do not require a revision.

B. An application for a revision to a shoreline permit shall be submitted to the administrator. The application shall include detailed plans and text describing the proposed changes. The county decision maker that approved the original permit
may approve the request upon a finding that the proposed changes are within the scope and intent of the original approval, and are consistent with this program and the Act.

C. “Within the scope and intent of the original approval” means all of the following:

1. No additional over-water construction is involved except that a pier, dock or floating structure may be increased by 10 percent over that approved under the original approval;

2. Ground area coverage and/or height may be increased a maximum of 10 percent over that approved under the original approval; provided, that the revised approval does not authorize development to exceed the height, impervious surface, setback or any other requirements of this program except as authorized under a variance granted for the original development;

3. Additional or revised landscaping is consistent with any conditions attached to the original approval and with this program;

4. The use authorized pursuant to the original approval is not changed; and

5. The revision will not cause adverse environmental impacts beyond those originally authorized in the approval.

D. Revisions to shoreline permits and statements of exemption may be authorized after the original authorization has expired. Revisions made after the expiration of the original approval shall be limited to changes that are consistent with this program and that would not require a permit under this program. If the proposed change is a substantial development as defined by this program, then a new permit is required. The provisions of this subsection shall not be used to extend the time requirements or to authorize substantial development beyond the time limits or scope of the original approval.

E. A new permit shall be required if the proposed revision and any previously approved revisions in combination would constitute development beyond the scope and intent of the original approval as set forth in subsection C of this section.

F. Upon approval of a revision, the decision maker shall file a copy of the revised site plan and a detailed description of the authorized changes to the original permit with the Department of Ecology together with a final ruling and findings supporting the decision based on the requirements of this section. In addition, the decision maker shall notify parties of record of the action.

G. If the proposed revision is to a development for which a shoreline conditional use or variance was issued, the decision maker shall submit the revision to the Department of Ecology for approval with conditions or denial, and shall indicate that the revision is being submitted under the requirements of this subsection. Under the requirements of WAC 173-27-110(6), the Department shall render and transmit to the decision maker and the applicant/proponent its final decision within 15 days of the date of the Department’s receipt of the submittal from the decision maker.
The decision maker shall notify parties on record of the Department’s final decision. Appeals of a decision of the Department shall be filed in accordance with the provisions of Chapter 461-08C WAC. (Ord. 2009-13 § 1 (Exh. 1)).

23.60.180 Rescission and modification.
A. Any shoreline permit granted pursuant to this program may be rescinded or modified upon a finding by the hearing examiner that the permittee or his/her successors in interest have not complied with conditions attached thereto. If the results of a monitoring plan show a development to be out of compliance with specific performance standards, such results may be the basis for findings of noncompliance.

B. The administrator shall initiate rescission or modification proceedings by issuing written notice of noncompliance to the permittee or his/her successors and notifying parties of record at the original address provided in application review files.

C. The hearing examiner shall hold a public hearing no sooner than 15 days following such issuance of notice, unless the applicant/proponent files notice of intent to comply and the administrator grants a specific schedule for compliance. If compliance is not achieved, the administrator shall schedule a public hearing before the hearing examiner. Upon considering written and oral testimony taken at the hearing, the hearing examiner shall make a decision in accordance with the above procedure for shoreline permits.

D. These provisions do not limit the administrator, the prosecuting attorney, the Department of Ecology or the Attorney General from administrative, civil, injunctive, declaratory or other remedies provided by law, or from abatement or other remedies.

23.60.190 Expiration.
A. The following time requirements shall apply to all substantial development permits and to any development authorized pursuant to a variance, conditional use permit, or statement of exemption:

1. Construction shall be commenced or, where no construction is involved, the use or activity shall be commenced within two years of the effective date of a shoreline permit or exemption or the permit shall expire; provided, that the hearing examiner or administrator, as appropriate, may authorize a single extension for a period of not more than one year based on a showing of good cause if a request for extension has been filed with the hearing examiner or administrator as appropriate before the expiration date of the shoreline permit or exemption, and notice of the proposed extension is given to parties of record and the Department of Ecology.

2. Authorization to conduct development activities shall terminate five years after the effective date of a shoreline permit or exemption; provided, that the hearing examiner or administrator, as appropriate, may authorize a single extension for a period of not more than one year based on a showing of good cause, if a request for extension has been filed with the hearing examiner or
administrator, as appropriate, before the expiration date of the shoreline permit or exemption and notice of the proposed extension is given to parties of record and the Department of Ecology.

3. The effective date of a shoreline permit or exemption shall be the date of last action required on the shoreline permit or exemption and all other government permits and approvals that authorize the development to proceed, including administrative and legal actions on any such permit or approval. The applicant/proponent shall be responsible for informing the county of the pendency of other permit applications filed with agencies other than the county and of any related administrative and legal actions on any permit or approval. If no notice of the pendency of other permits or approvals is given to the county prior to the date of the last action by the county to grant county permits and approvals necessary to authorize the development to proceed, including administrative and legal actions of the county, and actions under other county development regulations, the date of the last action by the county shall be the effective date.

B. Notwithstanding the time limits established in subsections (A)(1) and (2) of this section, upon a finding of good cause based on the requirements and circumstances of the proposed project and consistent with the policies and provisions of this program and the Act, the hearing examiner or administrator as appropriate may set different time limits for a particular substantial development permit or exemption as part of the action to approve the permit or exemption. The hearing examiner may also set different time limits on specific conditional use permits or variances with the approval of the Department of Ecology. The different time limits may be longer or shorter than those established in subsections (A)(1) and (2) of this section but shall be appropriate to the shoreline development or use under review. “Good cause based on the requirements and circumstances of the proposed project” shall mean that the time limits established for the project are reasonably related to the time actually necessary to perform the development on the ground and complete the project that is being permitted, and/or are necessary for the protection of shoreline resources.

C. When permit approval includes conditions, such conditions shall be satisfied prior to occupancy or use of a structure or prior to the commencement of a nonstructural activity; provided, that different time limits for compliance may be specified in the conditions of approval as appropriate.

D. The hearing examiner or administrator as appropriate shall notify the Department of Ecology in writing of any change to the effective date of a permit, authorized by subsections A through C of this section, with an explanation of the basis for approval of the change. Any change to the time limits of a permit other than those authorized by the sections of this program previously listed shall require a new permit application.

**23.70.030 Hearing examiner.**
The Whatcom County hearing examiner is hereby vested with the authority to conduct open record hearings and prepare a record thereof pursuant to WCC 2.11.210.

A. Grant or deny shoreline permits requiring public hearings.

B. Grant or deny variances from this program.

C. Grant or deny conditional uses under this program.

D. For consolidated applications for permits for which the county council is designated as the decision maker, the hearing examiner shall have the authority to hold an open record public hearing and make a recommendation to the county council on shoreline permits as part of a consolidated review as provided in Chapter 2.33 WCC.

E. Decide on appeals of administrative decisions issued by the administrator of this program. (Ord. 2009-13 § 1 (Exh. 1); Ord. 2008-034 § 1 (Exh. 1)).

Whatcom County Code Title 24
Health

Chapter 24.07
ADMINISTRATIVE NOTICE PROCEEDINGS, CIVIL PENALTIES AND ABATEMENT

24.07.090 Hearing and appeals.
A. Notice of Appeal. Any aggrieved person may appeal any administrative notice, any assessment of civil penalty, director's decision or order by submitting to the director a written request for a hearing within 10 working fourteen calendar days of the service of the notice, order or decision. The notice of appeal shall cite the notice, order or decision appealed from and contain a brief statement of the reasons for seeking an appeal hearing.

B. Notice and Timing of Appeal Hearing. After receipt of a notice of appeal, the director shall transmit the notice of appeal, and the notice or decision appealed from, to the hearing examiner. An appeal hearing shall be conducted on the record. Written notice of the time and place of the hearing shall be given at least 10 fourteen calendar working days prior to the date of the hearing to each appealing party, to the director whose notice, order or decision is being appealed, and to all other interested persons who have requested in writing that they be so notified.
1. In the case of an appeal from a notice of contamination issued under Chapter 24.13 WCC, the hearing shall be held not less than 20 days and not more than 30 days after serving of the notice as required by RCW 64.44.030.

C. Conduct of Appeals. All appeals shall be conducted in accordance with Chapter 20.92 WCC, except for timeframes noted in WCC 24.07.090(A) and (B).

D. Combination of Appeal. Whenever possible, the appeal from the director’s administrative notice, order or decision shall be combined with any other appeal from enforcement actions relating to the same subject matter and falling within the jurisdiction of the hearing examiner.
Exhibit D:
Title 20
EXHIBIT D
Whatcom County Code Title 20
Zoning

AMENDMENTS

Title 20
ZONING

Chapters:

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20.90 Amendments Reserved.
20.92 Hearing-Examiner Reserved.

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Chapter 20.04
GENERAL PROVISIONS

Sections:

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20.04.091 Reduced-application-fees:Reserved.
20.04.092 Refund-of-application-fees:Reserved.

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20.04.031 Vesting-of-permits:Reserved
(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.

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 20.92.219(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.
Title 20 Amendments

(May 22, 2018)

(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 road frontages of the subject property so as to be visible to adjacent property owners and to passing motorists. Said notices shall be provided to the applicant by the planning and development services department and shall remain in place for at least 15 days prior to the decision. A signed affidavit of posting shall be returned at least one week prior to the decision. Property owners who have been notified of the proposal shall have a period of 15 days from the date printed on the mailed notice or 15 days from the posting of notice on the property, whichever is later, within which to submit to the planning and development services department a written response in support of or in opposition to all or parts of the proposal.
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. 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.

(ba) The adult business will be consistent with WCC 20.66.131.

(eb) The adult business shall be closed from 2:00 a.m. to 10:00 a.m. if it contains:

(i) An “adult eating or drinking establishment” as defined by WCC 20.97.008(2); or

(ii) An “adult theater” as defined by WCC 20.97.008(3); or

(iii) An “other adult commercial establishment” as defined by WCC 20.97.008(4); or
(iv) One or more viewing booths.

(dc) If the adult business includes one or more viewing booths, the interior of the adult business will incorporate all of the following measures:

(i) Each viewing booth shall have at least a three-foot wide opening where a customer enters and exits the booth that is without doors, physical barriers, or visual barriers; and

(ii) Each viewing booth shall have at least one 100-watt light bulb that is properly working and turned on when business is open. The light bulb shall not be covered or otherwise shielded except with a commercially available lighting fixture. A minimum of one 12-inch by 12-inch durable metal sign shall be located at the entrance to each viewing booth area stating that lights shall remain on; and

(iii) Aisles or hallways adjacent to viewing booths shall be a minimum of five feet wide; and

(iv) There shall be no holes or openings in common walls between viewing booths.

For adult businesses containing one or more viewing booths, a condition of administrative approval shall require an unannounced inspection every six months during business hours by Whatcom County to ensure that measures in subsections (7)(d)(i) through (iv) of this section are being implemented on an ongoing basis.

20.84.236 Revisions to administrative approval use permits.
Planning and development services may approve revisions to administrative approval use permits; provided, that the proposed changes are within the scope and intent of the original permit. “Within the scope and intent of the original permit” shall mean the following:

(1) Lot coverage and height may be increased a maximum of 10 percent from the provisions of the original permit; provided, that revisions involving new structures not shown on the original site plan shall require a new permit; and provided further, that any revisions authorized under this subsection shall not exceed height, lot coverage, setback or any other requirements of the regulations for the area in which the project is located; and provided further, that any revisions authorized under this subsection shall be reviewed for consistency with the relevant chapters and policies in the Comprehensive Plan;

(2) Landscaping may be added to a project without necessitating an application for a new permit; provided, that the landscaping is consistent with conditions (if any) attached to the original permit and is consistent with the regulations for the area in which the project is located;

(3) The use authorized pursuant to the original permit is not changed;
(4) No additional over-water construction will be involved for shoreline conditional use permits;

(5) No substantial increase in adverse environmental impact will be caused by the project revision.

20.84.240 Reserved. Appeals.

The hearing examiner shall have the authority to hear and decide, in conformity with this chapter, appeals from any order, requirement, permit decision or determination made by an administrative official in the administration or enforcement of this chapter where more than one interpretation is possible; provided, that such appeal shall be filed in writing within 14 days of the action being appealed. If an appellant prevails in an appeal of an administrative approval decision, the appellant's appeal fees shall be refunded. The appeal fee on a code violation will be refunded if the appellant can prove by clear and convincing evidence that a violation did not occur. Appeals of administrative approval use permit decisions for adult businesses shall be made directly to the county council pursuant to WCC 20.92.825, and shall not be subject to the provisions of this section.

20.84.250 Reserved. Fees.

Fees for variances, conditional uses, administrative approval uses and appeals shall be as set forth in the Whatcom County Unified Fee Schedule.

20.84.260 Reserved. Date of expiration.

Applications for conditional-use permits, variances, expansions of nonconforming uses, administrative approvals, and any other permits provided for in this chapter shall expire one year after filing of the application if the applicant does not pursue completion of the appropriate process within that time by failing to take any action on the application.

The hearing examiner shall have the authority to fix a date of expiration of any or all approval, or conditions attached thereto, of conditional-use permits, variances, or expansions of nonconforming uses.

Chapter 20.85

PLANNED UNIT DEVELOPMENT

Sections:

20.85.118 Concept plan.
20.85.200 Information submittal.
20.85.201 General provisions. Reserved.
20.85.203 Site plan and supporting maps and graphics. Reserved.
20.85.204 Supplemental information: Reserved.

20.85.301 Planned unit development procedure and approximate processing time: Reserved.
20.85.305 Preapplication conference: Reserved.
20.85.310 SEPA review: Reserved.
20.85.315 Application submittal: Reserved.
20.85.320 Application distribution and review: Reserved.
20.85.325 Technical committee: Reserved.
20.85.330 Zoning administrator: Reserved.
20.85.335 Hearing examiner: Approval Criteria.
20.85.340 County council: Reserved.
20.85.345 Burden of proof: Reserved.
20.85.350 Scope of initial planned unit development approval.
20.85.355 Initial approval time limits.
20.85.360 Installation of improvements.
20.85.365 Final review and approval.
20.85.370 Control of the development after completion.
20.85.375 Enforcement.
20.85.400 Fees.

20.85.118 Concept plan.

Where a planned unit development application represents the first project of the development of a larger site, the applicant may at his/her option submit a concept plan indicating the general development of the remainder of the site. The purpose of the concept plan is to encourage master planning of a site by demonstrating the coordinated relationship of land use activities, roads, utilities and open space for the entire site, and in concert with existing and planned off-site land uses and facilities.

(1) Plan Contents. The concept plan should contain the following elements for the portion of the site not included in the first phase PUD application: elements required in the department’s administrative manual.

(a) The approximate location of future generalized land-use activities including but not necessarily limited to single-family and multifamily residential (approximate density specified); neighborhood, general, tourist and resort commercial; light and heavy industrial; and general manufacturing; and parks including recreational areas, school sites and open space.

(b) The approximate circulation network (both vehicular and pedestrian).

(c) The approximate location of utility corridors, and drainage channels (natural and manmade) and retention/detention areas.

(d) The approximate location of all existing or planned sewer and water mains, arterial and collector roads, and drainage channels and retention/detention areas.
located off-site which is within 300 feet of the site or anticipated to be used for the development of the site.

(2) Plan Status. Unless otherwise provided by agreement between the applicant and zoning administrator, the concept plan shall be nonbinding, and shall not be used as a basis for approving or denying the subject PUD application. However, the plan may be used as a basis to administratively review the arrangement and design of land uses, roads, bicycle and pedestrian pathways, and drainage facilities included in the subject application. (Ord. 2004-007 § 1, 2004).

20.85.200 Information submittal.

The information required on the application, identified in the following sections in the department's administrative manual and contained within the notice of site-specific submittal requirements shall be submitted with planned unit development applications. (Ord. 2004-007 § 1, 2004; Ord. 96-056 Att. A § V2, 1996).

20.85.201 General-provisions. Reserved.

(1) Information submitted for initial review is to be an approximate description indicating the general nature of the proposal. Data shall be based on the applicant's best knowledge or intent of the proposal and shall be sufficiently clear to demonstrate how the project complies with the provisions of this chapter. Information required shall be limited to the area the application includes.

(2) The zoning administrator shall have the authority to waive any portion of the information requirements herein; provided, that the information has been included with a previous rezone request, approved permit or concept plan, and the present PUD application is consistent with the previous action to the extent that the subject data is applicable. (Ord. 2004-007 § 1, 2004; Ord. 96-056 Att. A § V2, 1996).

20.85.202 Textual information. Reserved.

It is anticipated that the level of detail available for individual PUD projects will vary depending on their size and the length of time anticipated for buildout. The applicant must respond to each of the items below but the response may include estimates or approximations where exact figures are not known at this time. All estimates should be based on the applicant's best knowledge or intent of the proposal. When estimates or approximations are used they must be identified as such. The applicant should be aware that any estimates or approximations provided may be used to set development conditions or thresholds.

(1) General Data:

(a) The title and location of the proposed development, together with the names, addresses and telephone numbers of the record owner or owners of the land and the application, and, if applicable, the names, addresses and telephone numbers of any architect, planner, designer or engineer responsible for the preparation of the plan, and of any authorized representative of the applicant.

(b) The legal description of the subject property:
(c) Identify, if known, all special service districts, including fire, school (for residential projects only), drainage and flood control in which the site is located.

(d) Description of the proposed PUD including:

(i) Total area of the PUD;

(ii) Total area of open space and percentage it represents of the total project area;

(iii) Total area of impervious surfacing;

(iv) Number of parcels and/or lease areas, range of parcel size and the size of the smallest parcel;

(v) Proposed ownership of land areas within the PUD both during and after construction;

(vi) Method of achieving compatibility between the PUD and off-site uses and between potentially incompatible on-site uses;

(vii) How density bonus requirements are being met including, when applicable, description of recreation facilities and the proposed method to protect adequate access to sunlight for use by each of the proposed solar energy systems; and

(viii) Development schedule indicating the approximate date when construction of the PUD or stages of the PUD can be expected to begin and be completed.

(e) Copy of all existing deeds, and existing restrictive covenants or other existing legal restrictions which apply to the project site. The applicant may submit a copy of any proposed restrictive covenants that have been drafted.

(f) The names and addresses of all property owners within 300 feet of the site taken from the latest equalized tax roles.

(2) Data for Residential Development:

(a) Proposed number of dwelling units by type and the amount of site area devoted to each type;

(b) Gross density of the dwelling units.

(c) Deleted by Ord. 96-056.

(3) Data for Nonresidential Development:

(a) Description of each type of proposed commercial and industrial use and amount of site area devoted to each type of use;

(b) The proposed number of square feet in gross floor area for each type of commercial and industrial use. (Ord. 2004-007 § 1, 2004; Ord. 96-056 Att. A § V2, 1996).

20.85.203 Site plan and supporting maps and graphics. Reserved.
An initial site plan, at a minimum scale of one inch equals 100 feet or such other scale as may be convenient based on the area covered by the proposal with approval of the administrator, and any supporting graphics, narrative descriptions and maps, to show major details of the proposed PUD. If the initial plan is based on a survey or existing survey data of the subject site, the survey data shall be prepared by a registered land surveyor, registered civil engineer or other professional licensed to conduct surveys. The initial site plan and supporting graphics and maps in combination shall provide a level of detail appropriate to the scale and timing of the project and sufficient to demonstrate how the project complies with the provisions of this chapter.

(1) Proposed name of the development, northpoint, scale, date and address, and telephone number of the preparer of the site plan/supporting maps.

(2) Existing site conditions including water courses, wetland area, floodplains, unique natural features, native vegetation, forest cover and elevation contours of sufficient intervals to indicate the topography of the entire tract for a sufficient distance beyond the boundaries of the proposed development to depict any features within 300 feet which may affect site development. Unless otherwise approved by the administrator, contour information shall be as follows:

(a) Up to 10 percent slopes, two-foot contours.

(b) Over 10 percent to less than 20 percent slopes, five-foot contours.

(c) Twenty percent or greater slopes, 10-foot contours.

(3) Location of all existing lot lines, lease areas and easements, and the location of all proposed lot lines, lease areas, and easements, if known.

(4) The locations and identification of all existing buildings, structures and other improvements. The location or approximate location of proposed buildings including maximum height and type of use.

(5) For residential structures, provide the types and number of residential units in each structure or the range of residential structures proposed together with the range of the type and number of units per structure.

(6) For nonresidential buildings, the gross floor area of each building.

(7) The location and square footage or approximate location and square footage of acreage of all areas to be conveyed, dedicated or reserved as common open spaces, public parks, recreational areas, school sites, and similar public and semi-public uses with notations of proposed ownership included where appropriate.

(8) Landscaping and open space improvements plan or concept.

(9) The existing and proposed circulation system of arterial, collector and/or local streets, including right-of-way street widths, off-street parking areas, service areas, loading areas and major points of access to public rights-of-way (including major point of ingress and egress to the development). Notations of proposed ownership, public or private, shall be included where appropriate.
(10) Location and width of existing and proposed sidewalks and trails.

(11) The proposed treatment of the perimeter of the PUD, including materials and techniques used such as screens, fences and walls.

(12) The location of adjacent utilities including sanitary sewers, water lines and storm drainage facilities intended to serve the development, and a layout of the existing and proposed utilities within the development, if utility plans have been completed. Otherwise indicate the general location of utilities, i.e., roadways, easements, etc.

(13) Existing zoning and Comprehensive Plan boundaries for the site and adjacent property.

(14) Information of contiguous properties within 300 feet of the proposed PUD including:

(a) Existing and, if known, proposed land use and streets; and

(b) Existing structures excluding accessory buildings, ownership tracts and unique natural features of the landscape, if readily accessible.

(15) A vicinity map showing the location of the site and its relationship to surrounding areas, including existing streets, major physiographic and cultural features such as railroads, lakes, streams, shorelines, schools, parks or other prominent features.

(16) If the applicant wishes to incorporate renewable energy features into the PUD, information shall be submitted which will describe the long-term usability of the energy source including:

(a) Solar:

(i) Solar site survey including solar sun chart;

(ii) Shadow diagrams including schematic elevations of pertinent vegetation and structures, and existing major topographical features;

(iii) General description of the solar system identifying type (passive or active), location and size (surface area);

(b) Wind:

(i) Wind data including direction, frequency and intensity;

(ii) Wind disruption information including potential on and off-site building construction, and major topographical features;

(iii) Wind machine location and visual description;

(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;


20.85.284 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 percolation 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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<tr>
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<th>Preapplication Conference</th>
<th>Optional</th>
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<td></td>
<td>Technical Committee</td>
<td>County Council</td>
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<td></td>
<td>SEPA Official</td>
<td>Review Items #1, #2 &amp; #3</td>
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<td>Application Submittal</td>
<td>21 Days</td>
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<td>Written and Graphie</td>
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<td>SEPA Review</td>
<td>14 Days</td>
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<td>(3)</td>
<td>Agency Referral</td>
<td>30 Days</td>
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<td>(4)</td>
<td>Technical Committee</td>
<td>21—28 Days</td>
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<td>(5)</td>
<td>Buildings &amp; Code Administration Staff Report</td>
<td>14 Days</td>
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<td>(6)</td>
<td>Hearing Examiner—Public Hearing</td>
<td>28 Days</td>
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<td>(7)</td>
<td>Initial Approval by County Council</td>
<td>21 Days</td>
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<td>(8)</td>
<td>Installation of Improvements</td>
<td>Up to 3 Years</td>
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<td>(9)</td>
<td>Items #9—#10</td>
<td>Items #9—#10</td>
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<td>(10)</td>
<td>Final Review and Approval</td>
<td>Up to 7 Years</td>
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<td>(11)</td>
<td>or Pre-Agreed Schedule</td>
<td>Items #10—#11</td>
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<td>(12)</td>
<td>Project Development</td>
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(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;
(e) 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.

20.85.330  **Reserved, Zoning administrator.**
Within 14 days after receiving all written input from the technical committee and verifying its sufficiency, the administrator shall forward the application and staff report to the hearing examiner to schedule for public hearing, and shall assemble a recommendation based on the contributions of the technical committee, and other county and noncounty agencies. The recommendation shall be in writing and contain relevant data and proposed findings. Upon submission of the report to the examiner, copies shall be mailed to the applicant and made available to any interested party.

20.85.335  **Hearing examiner - Approval Criteria.**
The hearing examiner shall hold the public hearing on behalf of the county council in the manner required by WCC 20.92.300 and provide written public notice consistent with the requirements for major project permits as provided in WCC 20.92.300.
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.

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 (c) of this section, remand the matter to the technical committee or the hearing examiner, or hold its own public hearing to receive new evidence, studies or plans.

20.85.350 Scope of initial planned unit development approval.
(1) Once the planned unit development receives initial approval pursuant to WCC 20.85.340 22.05, all persons and parties, their successors, heirs, or assigns, who own, have, or will have by virtue of purchase, inheritance or assignment, any interest in the real property within the proposed PUD, shall be bound by the conditions attending the approval of the development and the provisions of this chapter.

(2) Minor adjustments may be made and approved by the zoning administrator, upon consultation with the technical committee, and are those adjustments which may affect the dimensions, location and type of improvements of facilities; provided, the amendment maintains the basic character of the PUD application approved by the county council including general type and location of dwellings and other land use activities, arrangement of buildings, density of the development, and
provisions of the project to meet density bonus and open space requirements; and
provided further, the standards of this chapter are met.

(3) Major adjustments are those which, in the opinion of the zoning administrator,
upon consultation with the technical committee, substantially change the basic
design, density, open space or other requirements of the planned unit
development. When a change constitutes a major adjustment, no building or other
permit shall be issued without prior review and approval by the county council of
such adjustment.

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20.85.400 Fees.
Fees for planned unit developments shall be as set forth in the Whatcom County

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Chapter 20.88
MAJOR PROJECT PERMITS

Sections:
  20.88.010 Purpose.
  20.88.100 Major project permits.
  20.88.200 Procedure.

......

.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 major project permit 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 these 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.

(9).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 20.92 WCC and the requirements set below. This shall be an open record hearing and, per RCW 36.70B.050(2), the county shall hold no subsequent open record hearings. [the 'no more than one hearing' provision is covered in the proposed 22.05.110]

.215.220 through .265 Reserved. [moved to 22.05.145] A written notice of the scheduled public hearing shall be mailed not less than 10 working days prior to the hearing as follows:

(1) For sites within urban growth areas: Notice shall be mailed to each property owner within 300 feet of the external boundaries of the subject property as shown by the records of the county assessor,
(2) For sites outside urban growth areas: Notice shall be mailed to each property owner within 1,000 feet of the external boundaries of the subject property as shown by the records of the county assessor.

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

.220 The recommendation of the hearing examiner shall be based upon the criteria set forth in WSC 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 WSC 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.
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).

Where a project requires a major project permit, that project shall be exempt from the requirement of obtaining a conditional use permit.

Major project permits: Where an applicant has applied for a planned unit development, that project shall be exempt from the requirement to obtain a major project permit.

Chapter 20.90
AMENDMENTS

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. The resolution shall include, as 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. Any suggested revisions shall be forwarded to the county council for review.

20.90.041 The docket.
(1) The docket shall consist of initiated Comprehensive Plan amendments and initiated WCC Title 20 and official zoning map amendments. Together with their supporting application files, the docket shall be maintained by the department of planning and development services and made available for public review during normal business hours.
(2) The county council may remove a proposed amendment from the approved docket by motion, unless the proposed amendment was: (a) initiated by a citizen per WCC 20.90.030(4), (b) the amendment is consistent with state and federal regulations, and (c) the applicant has provided all information required by the planning and development services department. The department shall notify the applicant not less than 30 calendar days prior to consideration of removal from the docket. If the county council has not acted upon a docketed proposed amendment during the year for which it has been docketed, the county council may place the amendment on the following year’s docket.

20.90.045 Notice for quasi-judicial rezones:
Notice of quasi-judicial hearings conducted by the planning commission for zoning map amendments shall be issued in accordance with all of the following provisions:

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

(2) Notice shall be mailed to property owners as follows:

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

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

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

(d) For zoning map amendments that involve rezoning property to a Mineral Resource Land designation: At least 10 days prior to the scheduled hearing date, hearing notice shall be mailed to all property owners within 2,000 feet of the external boundaries of the subject property as shown by the records of the county assessor. The applicant shall submit a stamped envelope with a typed address for each of the above-referenced property owners.
(3) The county shall prepare and the applicant shall post signs giving notice of the hearing in conspicuous locations on the property at least 10 days prior to the hearing.

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

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

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

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

20.90.050 Processing of initiated amendments:
Initiated amendments are reviewed by the department of planning and development services as listed below:

(1) For citizen-initiated amendments, the department of planning and development services will evaluate each application for completeness and may request additional information of the applicant prior to requesting the appropriate hearing body to schedule a public hearing.

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

(a) The staff report shall evaluate the initiated amendment(s) in relationship to the goals, objectives and policies of the Whatcom County Comprehensive Plan; consider environmental implications as identified by the Whatcom County SEPA official and evaluate the proposal’s compliance with any other special provision as provided by WCC 20.90.060. If the proposed amendment includes land within a city’s urban growth area, the staff report shall also address consistency with the applicable city comprehensive plan and the ability of the city to provide needed utility services.
(3) The appropriate hearing body (planning commission or hearing examiner) shall receive the staff’s findings and recommendations for the initiated amendment and shall establish a public comment period during which a public hearing(s) on the amendment shall be scheduled. If the proposed amendment includes land within a city’s urban growth area, it shall be processed in accordance with the adopted interlocal agreement with that city.

(4) At the conclusion of the public comment period, the appropriate hearing body shall evaluate the merits of each amendment in relationship to the goals, policies and objectives of the Comprehensive Plan for compliance with any other special provisions as provided by WCC 20.90.060 and shall make a recommendation as to whether the amendment should be approved, approved with modifications or denied. The appropriate hearing body shall then cause written findings and a recommendation to the county council to be prepared for each amendment. The written findings and recommendation shall be forwarded to the county council in the form of an agency report which shall include a draft ordinance to implement the appropriate hearing body’s recommendation, if applicable. No draft ordinance is required if the recommendation is to not approve the initiated amendment proposal.

(5) — (a) The county council shall receive the appropriate hearing body’s findings, recommendations and copy of the proposed amendment of the initiated amendment within 14 days of formal hearing body decision.

(b) Upon receipt of the findings, recommendation and a copy of the proposed amendment, the county council shall, at its next regular public meeting, set the date for a public meeting where it shall consider the appropriate hearing body’s findings and recommendations, and may:

(i) By ordinance, adopt; or

(ii) By motion, reject; or

(iii) By resolution, remand the recommendation back, with instructions, to the appropriate hearing body for reconsideration of the official control or amendment; or

(iv) If, after deliberating, the council believes the public interest may be better served by departing from the recommendation of the appropriate hearing body on an initiated amendment, the council shall conduct their own public hearing.

20.90.060 Special provisions.
1061 Deleted by Ord. 2008-060.
1062 Deleted by Ord. 2008-060.
1063 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 rezones
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
dev 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 the persons or agencies
       responsible for the establishment of the proposed use shall be able to
       provide adequately any such services;
(ii) Not create excessive additional requirements at public cost for public facilities and services, and will not be detrimental to the economic welfare of the community; or

(iii) If located within a nonindustrial urban growth area, the site shall:

(A) Be serviced by full urban services or be capable of receiving urban services in time to serve the development;

(B) Shall be done in a manner which will not preclude development at urban levels of density when the area is annexed into the city; and

(C) Must be five acres or more in size.

(3) The proposed project is provisionally approved, and will revert to the original zoning designation if project completion is not in compliance with schedules as included with the discretionary development permit, or if no discretionary development permit is needed, within a reasonable time to be set by the hearing examiner. Bonds may be required as a condition of approval if deemed appropriate by the hearing examiner.

(4) Notwithstanding other language to the contrary, irregular boundaries that would result from a site-specific rezone proposal would not preclude the adoption of an otherwise satisfactory site-specific rezone.

(5) Site-specific rezones may be processed as concomitant rezones and may be processed concurrent with other land-use approvals.

(6) Concomitant rezone shall not be used for a rezone to agriculture, commercial forestry, and rural forestry zoning districts. It may, however, be used for any situation where extraordinary potential adverse impacts from a proposed rezone may be mitigated by the agreement. The concomitant rezone process may be employed for rezones in sensitive geographic areas such as critical transportation corridors. Concomitant rezones shall generally be used when normal review and approval procedures are not adequate to resolve the specific issues involved in the rezone proposal.

(7) The concomitant rezone agreement may include mitigation measures such as access control, landscaping, screening, buffering, improvements to public services including drainage, sewer, water and roads, lot coverage restrictions and phasing of development.

(8) A conceptual site plan shall be required. The conceptual site plan shall be drawn at not less than one inch to 100 feet (unless mutually agreed to be the proponent and administrative official) and shall also include, but not be limited to:

(a) General location of the structures;

(b) Location and number of access points;

(c) Approximate gross floor area of structures.
(d) Name of the proposal:

(e) Identification of areas requiring special treatment due to their sensitive nature:

(f) North directional arrow:

(g) Names and locations of all public streets or roads bordering 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 docket and public review.
Repealed by Ord. 2008-060.

Chapter 20.92
HEARING EXAMINER RESERVED

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

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

20.92.255 Permit revocation hearing.

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

20.92.260 Permit revocation or grace period.

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

20.92.300 Recommended decisions to county council.

20.92.310 Recommended conditions.

The hearing examiner’s recommendations may be to grant or deny any subdivision, major development or site-specific rezone application, or the hearing examiner may recommend that the county council approve the application with such conditions, modifications or restrictions as the hearing examiner finds necessary to make the application compatible with its environment and carry out the objectives and goals of the Comprehensive Plan, the zoning code, the subdivision code, or any other official policies and objectives of Whatcom County.

20.92.320 Recommended decision—Findings and conclusions.
Each recommended decision of the hearing examiner, for major developments, site-specific rezones and subdivisions, shall be in writing and shall include findings and conclusions, based upon the record, to support the decision. Such findings and conclusions shall also set forth the manner in which the decision carries out and conforms to the county’s Comprehensive Plan and complies with the applicable statutes, ordinances or regulations.

20.92.330 Filing recommended decision:
Each recommended decision of the hearing examiner, for major developments, site-specific rezones and subdivisions, shall be filed with the clerk of the county council. For major project permits, a list of the parties of record as determined by the hearing examiner should be filed with the recommended decision.

20.92.400 Final decisions:

20.92.410 Final decision conditions—Applications and appeals:
The hearing examiner’s final decision on all applications or appeals shall either grant or deny the application or appeal. The hearing examiner may grant the application or appeal subject to conditions, modifications or restrictions that the hearing examiner finds necessary to make the application compatible with its environment, and carry out the objectives and goals of the Comprehensive Plan; the zoning code, the subdivision code, the critical areas ordinance, or other official policies and objectives of Whatcom County. Performance bonds or other security, acceptable to the prosecuting attorney, may be required to ensure compliance with the conditions, modifications and restrictions.

20.92.420 Final decision—Findings and conclusions:
Each final decision of the hearing examiner shall be in writing and shall include findings and conclusions, based on the record, to support the decision.

20.92.430 Time limitation on decision:
Except for major project permits, each final decision and recommended decision of the hearing examiner shall be rendered within 10 calendar days following the conclusion of all testimony and hearings. For major project permits, the hearing examiner shall render recommendations within 45 calendar days following the conclusion of the open-record hearing.

20.92.440 Review limited:
No final decision of the hearing examiner shall be subject to administrative or quasi-judicial review, except as provided herein.

20.92.500 Process for subdivision application and major project permits:

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

The county council shall, upon receipt of the recommended decision on a major project permit, process that recommendation in the manner set forth in the major project permit chapter of this title (Chapter 20.88 WCC).

20.92.530 Site-specific rezones.

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

20.92.600 Appeal to county council.

20.92.610 Applicant appeal.

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

20.92.620 Fee.

A fee, as established in the Unified Fee Schedule, shall be paid to the county council office upon filing of any appeal. This fee shall not apply to appeals initiated by a county department.

20.92.630 Transcript.

1. The appellant shall obtain a copy of the electronic recording of the hearing examiner’s hearing from the hearing examiner’s office. The appellant shall make arrangements for the preparation of the verbatim transcript of the hearing examiner’s hearing by a professional transcriptionist who will include a signed transcriber 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 permit applicant (if different from 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.
Chapter 20.94
ENFORCEMENT AND PENALTIES

20.94.070 Permit revocation.
The zoning administrator, and/or designee, is authorized to suspend or revoke a permit issued under the provisions of this code in instances where the hearing examiner does not otherwise have authority pursuant to WCC 22.05.15020.92.250. The county may suspend or revoke a permit whenever the permit is issued in error or on the basis of incorrect, inaccurate or incomplete information, and/or when a substantial or a continued violation of the terms and/or conditions of a permit have not been met.

WCC 20.94.060 Appeals.
The hearing examiner shall have the authority to hear and decide, in conformity with this title, appeals pursuant to WCC 20.84.240, unless as specifically noted differently under this chapter. Any party of record may appeal any order, final permit decision, or final administrative determination in the administration or enforcement of this title. The hearing examiner shall have the authority to hear and decide appeals pursuant to WCC 22.05.160. The appeal fee on a code violation will be refunded if the appellant can prove by clear and convincing evidence that a violation did not occur.

Chapter 20.97
DEFINITIONS

20.97.175 Hearing examiner.
"Hearing examiner" means the hearing examiner of Whatcom County (refer to WCC Chapter 20.922.11-WCC).
20.97.293 Party of record.

“Party of record” means the applicant, the owner of the property and any person who has testified at a required hearing. (Ord. 96-031 § 2, 1996). Any person, agency or entity entitled to receive notice of application or decision under this title, or any person, agency or entity providing written comments on any application received under this title or notified local government of their desire to receive a copy of the final decision on a permit and who have provided an address for delivery of such notice by mail or email.

20.97.321 Project permit – Project permit application.

“Project permit” or “project permit application” means any land use or environmental permit or license required from Whatcom County for a project action, including but not limited to building permits, subdivisions, binding site plans, planned unit developments, 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.
Exhibit E:
Title 21
EXHIBIT E

Whatcom County Code Title 21
Land Division Regulations

AMENDMENT

Title 21
LAND DIVISION REGULATIONS

Chapters:

Chapter 21.01
GENERAL PROVISIONS

Sections:
21.01.010 Title.
21.01.020 Purpose.
21.01.030 Authority.
21.01.040 Applicability and exemptions.
21.01.050 Interpretation, conflict and severability.
21.01.060 Enforcement and penalties.
21.01.070 Fees.
21.01.080 Administrative responsibilities.
21.01.090 Pre-application meeting. Reserved.
21.01.100 Applications required. Reserved.
21.01.105 Consolidated application process. Reserved.
21.01.110 Complete application.
21.01.120 Time frames. Reserved.
21.01.130 Underground utilities.
21.01.140 Regulatory authority for development standards.
21.01.150 Repealed.
21.01.160 City urban growth areas.
21.01.170 Hearing examiner consultation with technical advisory committee. Reserved.

21.01.010 Title.
This title shall be known and may be cited as the Whatcom County land division regulations.

21.01.020 Purpose.
The purpose of this title is:

(1) To promote the public health, safety, and general welfare, and to protect the natural resources and the environment.

(2) To provide for proper application of Chapter 58.17 RCW.

(3) To facilitate efficient and cost-effective land division and to ensure orderly growth and development consistent with the Whatcom County Comprehensive Plan and the Whatcom County Code.

(4) To establish an orderly transition from existing land uses to urban development patterns in designated urban growth areas.

21.01.030 Authority.
This title is authorized pursuant to the authority delegated to Whatcom County under Chapter 58.17 RCW, Plats – Subdivisions – Dedications.

21.01.040 Applicability and exemptions.
(1) This title shall apply to property boundary actions as defined in this title.

(2) The subdivision and short subdivision provisions of this title shall not apply to:

(a) Cemeteries and other burial plots while used for that purpose;

(b) Divisions of land into lots or tracts none of which are smaller than 20 acres or 1/32 of a section of land and not containing a dedication; provided, that a certificate of exempt land division is obtained from Whatcom County in accordance with this title;

(c) Divisions made by testamentary provisions, or the laws of descent;

(d) Divisions of land into lots or tracts classified for industrial or commercial use when Whatcom County has approved a binding site plan for the use of the land in accordance with this title;

(e) A division for the purpose of lease when no residential structure other than mobile homes or travel trailers are permitted to be placed upon the land when Whatcom County has approved a binding site plan for the use of the land;

(f) A division made for the purpose of alteration by adjusting boundary lines, between platted or unplatted lots or both, which does not create any
additional lot, tract, parcel, site, or division nor create any lot, tract, parcel, site, or division which contains insufficient area and dimension to meet minimum requirements for width and area for a building site in accordance with the provisions of this title;

(g) Divisions of land into lots or tracts pursuant to RCW 58.17.040(7); condominiums when Whatcom County has approved a binding site plan in accordance with the provisions of this title;

(h) A division for the purpose of leasing land for facilities providing personal wireless services while used for that purpose. “Personal wireless services” means any federally licensed personal wireless service. “Facilities” means unstaffed facilities that are used for the transmission or reception, or both, of wireless communication services including, but not necessarily limited to, antenna arrays, transmission cables, equipment shelters, and support structures;

(i) A division of land into lots or tracts of less than three acres that is recorded in accordance with Chapter 58.09 RCW and is used or to be used for the purpose of establishing a site for construction and operation of consumer-owned or investor-owned electric utility facilities. For purposes of this subsection, “electric utility facilities” means unstaffed facilities, except for the presence of security personnel, that are used for or in connection with or to facilitate the transmission, distribution, sale, or furnishing of electricity including, but not limited to, electric power substations. This subsection does not exempt a division of land from the zoning and permitting laws and regulations of cities, towns, counties, and municipal corporations. Furthermore, this subsection only applies to electric utility facilities that will be placed into service to meet the electrical needs of a utility’s existing and new customers. “New customers” are defined as electric service locations not already in existence as of the date that electric utility facilities subject to the provisions of this subsection are planned and constructed;

(j) Agricultural Lease. Divisions made for the purpose of lease for agricultural uses; provided, that each such leased parcel is a minimum of five acres or 1/128 of a section of land. The remaining portion of the parcel shall also be a minimum of five acres or 1/128 of a section of land. This exemption authorizes leasing the parcel but shall not authorize the sale of the parcel;

(k) Environmental Mitigation. Divisions of land for environmental mitigation, conservation or restoration; provided, that all of the following conditions are met:

(i) All lots are a minimum of five acres or 1/128 of a section of land.

(ii) Except as provided in subsection (k)(iii) of this section, all lots shall be used exclusively for:

(A) Environmental mitigation required under local, state or federal law; or
(B) Environmental conservation or restoration when a nonprofit nature conservancy corporation or association as defined by RCW 84.34.250 or public agency will own the lots.

(iii) If residential, commercial, or industrial buildings already exist, then one lot containing these buildings shall be created. This one lot shall not be subject to the requirements of subsection (k)(iv) of this section.

(iv) A permanent covenant acceptable to the director of planning and development services shall be recorded against each lot, except as provided in subsection (k)(iii) of this section. This covenant shall state the following:

(A) The lot shall be used exclusively for environmental mitigation, conservation or restoration.

(B) The lot shall not be further divided.

(C) New structures not necessary for environmental mitigation, conservation or restoration including residential, commercial and industrial development shall be prohibited.

(D) After recording, if the original purposes underlying the covenant can no longer be fulfilled and changed conditions warrant, the covenant may be revised with the consent of the county council, consistent with then-applicable policies and regulations.

(v) A legal description of the parcels created for environmental mitigation, conservation or restoration, prepared by a surveyor, shall be submitted to the planning and development services department for final approval and recordation.

(vi) Legal ingress and egress access of record is provided to the lots created by the exemption and verified by Whatcom County engineering. All access points to public roads shall be approved by the Whatcom County engineer or designee;

(I) Divisions of land into parcels of less than 40 acres but greater than 10 acres within the area zoned and designated as Agriculture in the Comprehensive Plan for Whatcom County proceeding in accordance with WCC 20.40.254(5).

(3) The following rules shall govern questions of precise applicability of these regulations to land divisions:

(a) Contiguous Parcels. All contiguous parcels of land in the same ownership shall be included within the boundaries of any proposed long or short subdivision of any of the properties. For the purpose of this section, the lots so situated shall be considered as one parcel; provided, that any of the contiguous parcels that are within a recorded long or short plat that was filed with the county auditor at least five years prior to the new land division shall
not be required to be included if the lot or lots are in conformance with the applicable zoning standards.

(b) Pre-1972 Parcels. Parcels of land legally divided prior to the effective date of the ordinance codified in this title (as originally adopted February 3, 1972) shall be considered in accordance with land division laws and resolutions applicable at the time of plat recording per RCW 58.17.170 or other division.

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

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

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

21.01.060 Enforcement and penalties.
Enforcement and penalties shall be applied pursuant to Chapter 21.11 WCC.

21.01.070 Fees.
All application, appeal, or other fees associated with this title shall be as set forth in the Whatcom County Unified Fee Schedule.

21.01.080 Administrative responsibilities.
(1) The director of the planning and development services department or designee (hereinafter referred to as "director" or "subdivision administrator") is designated as the official responsible for administering the provisions of these land division regulations.

(2) The Whatcom County planning and development services department shall act as a coordinating agent to ensure that the regulatory process is expeditious and shall recognize input provided by other officials, departments and divisions having appropriate expertise, including but not limited to the:

(a) Whatcom County SEPA official for environmental analysis;

(b) Whatcom County engineering for survey, monumentation, engineering design, road, stormwater management, drainage and utility improvements, and the form of plats and binding site plans;

(c) Whatcom County fire marshal for fire-related issues; and

(d) Whatcom County health and human services department for water supply and waste disposal.

21.01.090 Pre-application meeting. Reserved.
(1) Meeting Required When. For the purpose of expediting applications and reducing land division and site plan design and development costs, a pre-application meeting in accordance with the requirements of Chapter 2.33 WCC is required for all applications under this title except for boundary line adjustments and exempt land divisions covered by Chapter 21.03 WCC.

(2) City Participation. Whatcom County planning and development services staff shall invite the appropriate city to the pre-application meeting if the proposed land division is located within that city’s urban growth area. Invitation to the pre-application meeting for a short plat or preliminary plat adjacent to or within one mile of the municipal boundaries of a city, or which contemplates the use of any city utilities, shall also be given.

21.01.100 Applications required. Reserved.
The applicant is encouraged to seek assistance from the subdivision administrator as to which approvals are required for a particular proposal. One or more of the following applications may be required for a particular proposal:

(1) Exempt land division;
(2) Boundary line (lot line) adjustment;
(3) Short subdivision;
(4) Preliminary long subdivision;
(5) Final long subdivision;
(6) Subdivision vacations and alterations;
(7) Preliminary binding site plan;
(8) General binding site plan;
(9) Specific binding site plan;
(10) Agricultural short plat.

21.01.105 Consolidated application process.
The applicant may request consolidated permit review in accordance with the requirements of Chapter 2.33 WCC.

21.01.110 Complete Application processing.
All applications for subdivisions, binding site plans, short subdivisions, boundary line adjustments and other boundary actions covered by this title shall be reviewed and processed for completeness in accordance with Chapter 2.33 WCC 22.05 WCC, except as otherwise stated within this title.

21.01.120 Time frames. Reserved.
Applications shall be processed within the time frames stipulated in Chapter 2.33 WCC.
21.01.130 Underground utilities.
All on-site utilities that serve individual lots within a short subdivision, long subdivision or binding site plan shall be placed underground, unless the supplier of the service provides written documentation that underground installation is determined to be infeasible by development of specific findings, or the county requests above-ground utilities because of environmental constraints.

21.01.140 Regulatory authority for development standards. Construction standards.
Administrative and technical requirements for implementing these regulations shall be contained in the Whatcom County development standards adopted pursuant to Chapter 12.08 WCC.

21.01.150 Boundary discrepancies.
Repealed by Ord. 2009-007.

21.01.160 City urban growth areas.
City development standards shall be addressed, in accordance with adopted ordinances, for land divisions located within a city’s urban growth area.

21.01.170 Hearing examiner consultation with technical advisory committee. Reserved.
The hearing examiner may choose to consult with the technical advisory committee concerning technical matters relating to land division applications.

Chapter 21.02
VARIANCES, APPEALS AND AMENDMENTS

Sections:
21.02.010 Variances.
21.02.020 Notification of cities.
21.02.030 Appeals.
21.02.040 Amendments – Advance notice.

21.02.010 Variances.
The hearing examiner, or in the case of short subdivisions, the technical review committee, shall have authority to grant a variance from the provisions of this title when they have found the conditions set forth below to exist. In such cases, a variance may be granted which is in harmony with the general purpose and intent of this title so that the intent of this title shall be observed, and public health, safety and welfare secured.
A variance may be granted only when all of the following circumstances listed in either subsection (1) or (2) of this section are found to apply. Applicants shall specify which criteria set they are proposing to qualify for a variance under and shall provide information to the county demonstrating compliance with that criteria set before a variance may be granted.

(1) Variance to Alleviate Unnecessary Hardship.

(a) Any variance granted shall not constitute a grant of special privilege, be based upon reasons of hardship caused by previous actions of the property owner, nor be granted for financial reasons alone.

(b) The strict application of these regulations would cause a hardship because of special circumstances applicable to the subject property, including size, shape, topography, environmental constraints or location. Aesthetic considerations or design preferences without reference to restrictions based upon the physical characteristics of the property do not constitute sufficient hardship under this section.

(c) The granting of the variance will not be detrimental to the public health, safety, or welfare or injurious to other property.

(2) Variance to Achieve Better Design.

(a) Any variance granted shall not constitute a grant of special privilege or be based upon reasons of hardship caused by previous actions of the property owner, nor be granted for financial reasons alone.

(b) The granting of the variance results in better lot design than would be permitted under the standard regulations. “Better lot design” is defined as meaning such items as more practical site design because of topography, wetland or other environmental constraints, or the lot design will result in lots nearer to conformance to required development standards or applicable Comprehensive Plan goals and policies, including those relating to urban growth areas.

(c) The granting of any variance will not be unduly detrimental to the public welfare nor injurious to the property or improvements in the vicinity and subarea in which the subject property is located.

(d) In granting variances and modifications, the hearing examiner or technical review committee, as appropriate, may require such conditions as will in its judgement secure substantially the objectives of the requirements so varied.

(3) A decision on a variance application by the technical review committee or by the hearing examiner shall be accompanied by specific written findings addressing each of the applicable criteria.

21.02.020 Notification of cities.
Notice of a hearing or technical review committee meeting for variances shall be provided to the appropriate city, if the land division is located within that city’s urban growth area.

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

(21) Any party of record may appeal any order, final permit decision, final administrative determination including pre-approval or preliminary approval in the administration or enforcement of this title. The hearing examiner shall have the authority to hear and decide appeals pursuant to WCC 22.05.160. The hearing examiner shall have the authority to create a record, hear and decide, in conformity with this title A party of record may file an appeal from any order, requirement, permit decision or determination made by an administrative official or committee in the administration or enforcement of this title. Such appeal shall be filed in writing within 14 calendar days of the action being appealed at the planning and development services department. The appeal shall follow all rules and procedures for appeals to the hearing examiner as set forth in Chapter 20.92 WCC.

(3) Within 10 calendar days of its issuance, any party of record may appeal a decision of the hearing examiner to the county council. The examiner’s decision may be overturned by a simple majority of the council if it is found that the examiner’s decision is based upon an error of law or is clearly erroneous based on the entire record. The appeal shall follow all rules and procedures for appeals to the county council as set forth in Chapter 20.92 WCC.

(42) Appeals related to the Whatcom County Development Standards shall be made to the technical advisory committee as required by WCC 12.08.035(I).

21.02.040 Amendments – Advance notice.
Notice of the time, place and purpose of any public hearing regarding the amendment, adoption or repeal of an ordinance adopted pursuant to Chapter 58.17 RCW shall be given by at least one publication in a newspaper of general circulation in Whatcom County at least 10 calendar days before the hearing. In accordance with the provisions of WCC Chapter 22. Advance notice shall also be provided by mail to individuals or organizations that have submitted requests for notice at least 10 calendar days prior to the hearing.

Chapter 21.03

EXEMPT LAND DIVISIONS AND BOUNDARY LINE ADJUSTMENTS

Sections:
21.03.010 Purpose.
21.03.020 Repealed.
21.03.030 Pre-approval.
21.03.040 Certificate of exemption.
21.03.010 Purpose.
The purpose of this chapter is to establish or reference the procedure and requirements for the application, review and approval of exempt land divisions, pursuant to WCC 21.01.040, and boundary line adjustments. The procedure is intended to provide orderly and expeditious processing of such applications.

21.03.020 Exemptions.
Repealed by Ord. 2009-007.

21.03.030 Pre-approval.
Applicants may request that their proposed exempt land division be reviewed by the subdivision administrator and pre-approved using forms supplied by the planning and development services department.

21.03.040 Certificate of exemption.
(1) A certificate of exempt land division shall be obtained from the planning and development services department for exempt land divisions under WCC 21.01.040(2)(b) and (k). A certificate of exempt land division shall consist of a suitably inscribed stamp on the instrument conveying land title and shall be certified prior to the recording of the instrument with the county auditor. County review and/or a county certificate of exemption stamp shall not be required for WCC 21.01.040(2)(a) and (c) through (j).

(2) A certificate of exempt land division shall be approved, approved with conditions, or denied as follows:

(a) Applications shall include information required by WCC 21.03.085 the department's administrative manual.

(b) The exempt land division results in a lot(s) that qualifies as a valid land use pursuant to the Whatcom County Code, including but not limited to lot area, lot width, building setbacks, critical areas protection or shorelines protection.

(c) The exempt land division will not detrimentally affect access, access design, sight distance, grade, road geometry or other public safety and welfare concerns.

(3) An exempt land division is not considered approved until said instrument has been duly stamped as exempt and is filed for record concurrently with all applicable
disclosures of WCC 21.03.045 within 12 months of pre-approval. Pre-approval shall be considered a final determination. Failure to record within 12 months of pre-approval means the exempt land division application is expired and must be resubmitted for review and approval. The time periods of this section do not include the time during which the exempt land division was not actually pursued due to the pendency of administrative appeals or legal actions or due to the need to obtain any other government permits and approvals for the development that authorize the development to proceed, including all reasonably related administrative or legal actions on any such permits or approvals.

21.03.045 Required disclosures.
The following disclosures, if applicable, shall be recorded in the county auditor’s office and shall be filed concurrently with all conveyances of property subject to this title:

(1) Right to farm, right to practice forestry, or mineral resource disclosures.

(2) Boundary discrepancies.

(3) Protective covenants, conditions and restrictions.

(4) Latecomers’ agreements.

(5) Significant pipeline in vicinity disclosure when the subject property is within 500 feet of a pipeline shown on Map 5.2, Chapter 5 of the Whatcom County Comprehensive Plan.

21.03.050 Access on state highways.
For parcels that will access onto a state highway, the applicant shall provide evidence of an approved access from the State Department of Transportation prior to approval of the exempt land division.

21.03.060 Boundary line adjustments.
The purpose of this section is to provide procedures and criteria for the review and approval of applications for adjustments or alterations to boundary lines of existing lots of record which do not create any additional lot, tract, parcel, site or division nor create any lot, tract, parcel, site or division which contains insufficient area and dimension to meet minimum requirements for width and area for a building site.

(b) Any adjustment of boundary lines must be approved by the subdivision administrator prior to the transfer of property ownership between adjacent lots.

(1) Procedures. Boundary line adjustments shall be approved, approved with conditions, or denied as follows according to the procedures in Chapter WCC 22.05 and the following:

(a) Applications shall include information required by WCC 21.03.085 the department’s administrative manual.

(b) The subdivision administrator shall make a preliminary decision on boundary line applications within 45 days following submittal of a complete...
application or revision, unless the applicant consents to an extension of such time period.

(db) A title insurance certificate updated not more than 60 days prior to application, which includes all parcels within the adjustment, must be submitted to the subdivision administrator with boundary line adjustment applications.

(ec) All persons having an ownership interest within the boundary line adjustment shall sign the final recording document in the presence of a notary public.

(2) Decision Criteria. In reviewing a proposed boundary line adjustment, the subdivision administrator or hearing examiner shall use the following criteria for approval:

(a) The boundary line adjustment shall not result in the creation of an additional lot.

(b) With the exception of those boundary line adjustments located within the agricultural zone, the boundary line adjustment shall result in lots which contain sufficient area and dimensions to meet minimum requirements for width and area for a building site pursuant to this title.

(c) The boundary line adjustment shall be consistent with any restrictions, depictions or conditions regarding the overall area in a plat or short plat devoted to open space, environmental mitigation or conservation.

(d) The boundary line adjustment shall be consistent with any restrictions or conditions of approval for a recorded plat, short plat, zoning permit, or development permit.

(e) The boundary line adjustment shall not cause boundary lines to cross on-site sewage disposal systems or their reserve areas, prevent suitable area for on-site sewage disposal systems, or prevent adequate access to water supplies unless suitable mitigation including, but not limited to, the granting of utility easements is provided to the satisfaction of Whatcom County; provided, however, in the agricultural zone only those lots with existing on-site sewage disposal systems or potable water supplies are subject to this provision.

(f) The boundary line adjustment will not create a new access which is unsafe or detrimental to the existing road system because of sight distance, grade, road geometry or other safety concerns, as specified in adopted Whatcom County road development standards.

(g) The boundary line adjustment on lots without an existing farmstead home site shall demonstrate adequate septic and potable water suitability. Applicants shall demonstrate adequate potable water availability per Chapter
24.11 WCC. Applicants shall demonstrate septic suitability approval pursuant to Chapter 24.05 WCC.

(3) Final Approval and Recording Required. To finalize an approved boundary line adjustment, the applicant must submit to the subdivision administrator within one year of preliminary approval final review documents meeting the requirements of approval.

(a) All persons having an ownership interest within the boundary line adjustment shall sign the final recording document in the presence of a notary public.

(b) Certified legal descriptions of the lots after the boundary line adjustment, together with conveyance document(s) and language clearly binding the property which is conveyed to the remainder portion of the property, shall be prepared by a title company or licensed surveyor for all lots affected by the boundary line adjustment.

(c) A title insurance certificate updated not more than 60 days prior to recording of the adjustment, which includes all parcels within the adjustment, submitted to the subdivision administrator with boundary line adjustment final review documents.

(d) A final boundary line map, prepared by a licensed surveyor, along with legal descriptions, shall be prepared and submitted for review and approval. Two map copies shall be provided for review demonstrating compliance with the preliminary boundary line adjustment approval.

(e) A boundary line adjustment is not considered approved until the conveyance documents have been duly stamped as exempt and is filed for record concurrently with all applicable disclosures of WCC 21.03.045 within 12 months of preliminary approval of final documents. Preliminary approval is considered a final determination. Failure to record within 12 months of preliminary approval means the boundary line adjustment application is expired and must be resubmitted for review and approval.

21.03.070 Inactive applications.
An applicant may place an exempt land division or boundary line adjustment application, which has not yet received preliminary approval, on hold for a cumulative maximum of 180 days. This 180-day period shall not include time the applicant is performing studies required by the county when the study is provided within the time frame agreed to by the county and the applicant. Applications which fail to meet these time limits will be considered expired and void. The time periods of this chapter do not include the time during which the exempt land division was not actually pursued due to the pendency of administrative appeals or legal actions or due to the need to obtain any other government permits and approvals for the development that authorize the development to proceed, including all reasonably related administrative or legal actions on any such permits or approvals.
21.03.080 Requirements for a fully-completed exempt land division application. Reserved.
The following, and any other information on a form prescribed by the subdivision administrator, is required for a complete application for exempt land divisions under WCC 21.01.040(2)(b) and (k):

(1) Written Data and Fees:
   (a) Name, address and phone number of land owner, applicant, and contact person.
   (b) Intended uses.
   (c) A current title report or update of title report issued no more than 60 calendar days prior to application.
   (d) Assessor's parcel number (of the parent parcel).
   (e) Fees as specified in the Unified Fee Schedule.
   (f) Signature of all owners as shown on title report, and authorization for any agent to act on behalf of owners.

(2) Map Data:
   (a) Name of land owner.
   (b) Name of proposed land division (if an original drawing is prepared).
   (c) General layout of proposed land division.
   (d) Common language description of the general location of the land division.
   (e) Approximate location and names of existing roads identified as either public or private.
   (f) Vicinity map.
   (g) Common engineering map scale/north arrow/sheet numbers (on each sheet containing a map).
   (h) Section, township, range, and municipal and county lines in the vicinity.
   (i) General boundaries of the site with general dimensions shown.
   (j) Legal description of the land.

21.03.085 Requirements for a fully-completed boundary line adjustment application. Reserved.
The following, and any other information on a form prescribed by the subdivision administrator, is required for a complete application:

(1) Written Data and Fees:
   (a) Name, address and phone number of land owner, applicant, and contact person.
   (b) Intended uses.
   (c) A current title report or update of title report issued no more than 60 calendar days prior to application.
   (d) Assessor's parcel numbers of existing parcels.
   (e) Fees as specified in the Unified Fee Schedule.
   (f) Signature of all owners as shown on title report, and authorization for any agent to act on behalf of owners.

(2) Map Data:
   (a) Names of land owners.
   (b) Name of proposed boundary adjustment.
   (c) Common language description of the general location of the land division.
   (d) Map at a common engineering scale of boundaries of existing parcels that are contributing to or receiving land from the proposed adjustment.
(e) Approximate location and labeling of any disputed or undetermined property lines proposing to be resolved by the adjustment.
(f) Clear depiction of property lines proposed for adjustment which identifies existing property lines and proposed property lines.
(g) Legal description and area of original parcels.
(h) Legal description and area of proposed adjusted parcels.
(i) Approximate location and names of existing roads identified as either public or private.
(j) Approximate location of existing buildings and existing on-site septic systems.
(k) Approximate locations of existing utilities and infrastructure.
(l) Vicinity map.
(m) Common engineering map scale/north arrow/sheet numbers (on each sheet containing a map).
(n) Section, township, range, and municipal and county lines in the vicinity.
(o) General boundaries of the site with general dimensions shown.

21.03.090 Original-Reserved.
Repealed by Ord. 2009-007.

Chapter 21.04
SHORT SUBDIVISIONS

Sections:
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21.04.010 Purpose.
The purpose of this chapter is to establish or reference the procedure and requirements for the application, review and approval of short subdivisions.

21.04.031 Pre-application meeting.
(1) Pre-Application Meeting Required pursuant to WCC 22.05. Any person contemplating preparation of a preliminary short subdivision application shall submit information required for a pre-application meeting as provided in WCC 22.05 21.01.090 and Chapter 2.3322.05 WCC and in the department’s administrative manual. A pre-application meeting shall also be required for any alteration of an existing short subdivision unless waived by the subdivision administrator.

(2) Pre-Application Submittal Information. An applicant shall provide the following information in order to assist the applicant and Whatcom County in review of the proposed short subdivision:

(a) Written and Other Data and Fees:
(i) Name, address and phone number of owner(s), applicant, and contact person.
(ii) Intended uses.
(iii) List of variances and waivers requested.
(iv) General written proposal of water supply and sewage disposal method.
(v) Proposed means of stormwater control.
(vi) Assessor’s parcel number (of the parent parcel).
(vii) Fees as specified in the Unified Fee Schedule.
(viii) Net and gross lot size to determine minimum lot size and density requirements as required by the Zoning Ordinance.

(b) Map Data:
(i) Name of owner(s).
(ii) Name of proposed land division.
(iii) General layout of proposed land division.
(iv) Common language description of the general location of the land division.
(v) Approximate locations of existing roads, utilities, and infrastructure.
(vi) Vicinity map.
(vii) Short plat map with a common engineering scale with north arrow and sheet numbers (on each sheet containing a map).
(viii) Section, township, range and municipal and county lines in the vicinity.
(ix) General boundaries of the site with general dimensions shown.
(x) General direction and gradient of slope.
(xi) Legal description of the land.
(xii) Means of proposed water service and sewage disposal.
(xiii) Means of proposed access (including proposed improvements to on-site and off-site roadways).
(xiv) Approximate location of proposed on-site and off-site utilities and facilities.
(xv) Approximate location of existing roads, rights-of-way, buildings, parking, and drainage on-site.
(xvi) Where appropriate, approximate location of natural features, including bodies of water, regulated watershed boundaries, natural drainage areas, critical areas, shorelines and base flood elevation and buffers.
(xvii) Approximate location of existing facilities, sanitation and water facilities, easements (where appropriate).
(3) Applicant Presentation. At the pre-application meeting, the applicant shall, to the greatest extent possible, provide the technical review committee with a conceptual understanding of the potential application, including the location and the anticipated uses as provided in Chapter 2.33 WCC.

(4) Technical Review Committee Responsibilities. The technical review committee shall, to the greatest extent possible during the meeting, provide the applicant with consultation and input on the allowed uses, development standards, and process applicable to the proposal as provided in Chapter 2.33 WCC. Within 10 days of the pre-application meeting, staff shall communicate in writing the general findings and basis upon which an appropriate application may be submitted.

21.04.032 Short subdivision application submittal.
(1) An applicant requesting approval of a proposed short subdivision shall submit to the planning and development services department an application with all items required all the items identified in WCC 21.04.150 pursuant to WCC 22.05.050 and the department’s administrative manual.

(2) An application will only be accepted for review if it contains all components required in WCC 21.04.150 and is accompanied by fees as set forth in the Unified Fee Schedule.

(3) Accepting an application for review does not mean that the application has been determined complete. The determination of completeness is made as provided in WCC 21.04.033.

(4) If an application does not contain all of the required components of a complete application, it will not be accepted for review, fees will not be collected, and the application will be returned to the applicant for completion of the required components of a complete application.

21.04.033 Determination of completeness and vesting. Reserved.
(1) The county shall review an application for determination of completeness and mail or provide in-person a written determination to the applicant within 28 days of the date that the application has been accepted for review.

(2) An application shall be determined complete if the application includes all the requirements for a fully completed application set forth in WCC 21.04.150.

(3) Applications having received a determination of completeness shall be processed as described below and as provided in Chapter 2.33 WCC.

(4) Applications having received a determination of incompleteness shall be handled as provided in Chapter 2.33 WCC.
(5) If the application is granted a determination of completeness as provided in subsection (2) of this section on its first acceptance for review, the vesting date will be the date that the application was submitted for review. If an application is submitted within 30 days of receiving pre-application meeting findings from the technical review committee and granted a determination of completeness, then the date that the project is considered vested will be the date of pre-application submittal.

(6) Applications that have been re-submitted for review for determination of completeness will again be handled as described in WCC 21.04.032. A new date of acceptance for review will be placed on the application.

(1) Notice and Distribution.

(a) The subdivision administrator shall distribute application materials to appropriate county and city staff within 10 working days of the determination of completeness.

(b) Whenever a short subdivision is located adjacent to the right-of-way of a state highway or will depend on access from a state highway, the subdivision administrator shall give written notice of the application, including a legal description of the short subdivision and a location map, to the Washington State Department of Transportation (WSDOT). WSDOT shall, within 14 days after receiving the notice, submit to the subdivision administrator a statement with any information that the department deems to be relevant about the effect of the proposed short subdivision upon the legal access to the state highway, the traffic carrying capacity of the state highway and the safety of the users of the state highway.

(c) The subdivision administrator shall notify and provide copies of project plans to a city when the subdivision is within that city’s urban growth area, agencies potentially having jurisdiction relevant to the application, and public utilities if within 600 feet (one-eighth mile) of the area submitted in the application. Such cities, agencies, and utility organizations shall be given 14 days to respond. If they do not respond within 14 days, the administrator, SEPA official and technical review committee may conclude their review of the application without such comments.

(2) Decision on Application. The subdivision administrator shall, within 90 calendar days of the date of determination of completeness, issue a notice of preliminary approval, issue a notice of additional requirements to obtain preliminary approval, or deny the application. Preliminary short subdivision approval or denial is considered a final administrative determination. An applicant may have up to 180 days in which to submit additional requirements unless a longer time period is authorized by the subdivision administrator for circumstances beyond the control of the applicant. Preliminary approval of a short subdivision determination shall be accompanied by written findings by the county that:
(a1) Appropriate provisions have been made for the public health, safety, and general welfare and for such drainage ways, stormwater management, streets or roads, potable water supplies, sanitary wastes, and sidewalks and other planning features that assure safe walking conditions for students who only walk to and from school, and the public use and interest will be served by the platting of such short subdivision and dedication; and

(b2) The short subdivision is in conformity with applicable land division, zoning, critical areas, shoreline management, and other land use regulations.

21.04.035 Final short subdivision review process.
(1) Submittal. The final short subdivision submittal packet shall include responses to all items called for in the notice of preliminary approval, and shall be in conformance with WCC 21.04.160 the department’s administrative manual.

(2) Time Allowed for Final Short Subdivision Approval.

(a) The applicant shall submit the final review packet pursuant to WCC 21.04.160(1) the department’s administrative manual within two years of receiving the notice of preliminary approval.

(b) The applicant shall record the short subdivision original drawing pursuant to WCC 21.04.160(2) the department’s administrative manual within three years of receiving the notice of preliminary approval.

(c) If the applicant fails to submit the final short subdivision within these time frames, the short subdivision shall be considered expired and a new application meeting the requirements of this title and other Whatcom County codes will be required.

(3) The applicant, or their representative, shall submit such drawings and other information as required by the county engineer or utility provider for the construction of required improvements.

(4) The applicant shall submit paper prints of the proposed final short subdivision for review prior to preparation of final original drawings.

(5) Execution and Acceptance of Final Short Subdivision.

(a) When all requirements of the notice of preliminary approval, applicable laws, applicable regulations, and applicable development standards are satisfied and an original drawing for recording has been submitted, the subdivision administrator shall sign the original drawing of the short plat within 20 working days.

(b) If a right-of-way is dedicated, the county engineer shall also sign the original drawing, accepting the dedication.

(c) The surveyor of record shall file said original drawing with the county auditor, at which point it shall be deemed approved.
21.04.038 Applications subject to time limits. Reserved.

All short subdivision applications submitted prior to December 15, 2000, which have not yet received preliminary or final approval, shall be recorded within two years of the effective date of the ordinance codified in this chapter. Whatcom County shall endeavor to provide notice to applicants affected by this provision using the most recent contact information or property records.

21.04.040 Restriction of further division.

Land in short subdivisions may not be further divided in any manner within a period of five years except through the long subdivision process which requires the filing of a final plat or through the binding site plan process which requires the filing of a general and specific binding site plan. However, if the short subdivision contains fewer than four parcels, nothing in this section shall prevent the owner who filed the short plat from filing an alteration within the five-year period to create up to a total of four lots within the original short subdivision boundaries.

21.04.050 Development requirements.

(1) All short subdivisions shall comply with the applicable standards, requirements and procedures of the Whatcom County Development Standards and local, state, and federal laws and regulations. The county, to the extent practicable, will require new land divisions located within city urban growth areas to conform to city development standards, in accordance with adopted ordinances.

(2) Improvements are required to be installed and completed by the subdivider prior to final short plat approval, unless security is provided under WCC 21.04.140, except on-site septic systems do not have to be installed unless required by the health officer.

21.04.060 Roads.

Roads shall be designed with appropriate consideration for existing and projected roads, anticipated traffic patterns, topographic and drainage conditions, public convenience and safety, and the proposed uses of the land served.

(1) Dedications for the realignment and widening of the rights-of-way, in accordance with county standards, shall take place whenever a short subdivision abuts a county road. Frontage roads or parallel access roads may be required to eliminate direct access to arterial and collector roads.

(2) Frontage improvements to the public roadway(s) adjacent to the subject property shall be completed to the current functional classification prior to recording the short plat, unless security is provided under WCC 21.04.140.

(3) Roads and access easements that serve a short plat shall be constructed in compliance with the Whatcom County Development Standards.

21.04.070 Public dedications.

The dedication of sites for schools, parks, and other public or community purposes may be required to the extent that such dedication is suitable to and reasonable for the needs anticipated by full development of the subdivision. Dedicated school sites must meet the requirements of Chapter 246-366 WAC.
21.04.080 Easements.
(1) Easements shall be provided where applicable for development-related facilities.

(2) All easements shown on short plats shall include:

(a) The beneficiary of the easement;

(b) The purpose of the easement; and

(c) A clear depiction of the easement (including dimensions) on the face of the short plat.

(3) The owner may specify the burdening of the easement. Examples of burdening may include the average daily trips for ingress and egress easements, the equivalent single-family units for water, sewer, and on-site sewage disposal systems and the maximum peak flow rate expressed in accepted units for drainage easements. The owners of the subservient estates are not entitled to rely upon the county to enforce the limitations of the easements so granted, and no cause of action shall lie against the county for errors or omissions occurring in connection with the administration of, or issuance of, permits for development of properties that burden the easements referred to herein.

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

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

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

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

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

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

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

   (ii) The purveyor states in writing that it is unable or unwilling to provide the service; or
(iii) The purveyor and applicant are unable to achieve an agreement on the schedule and terms of provision of service within 120 calendar days.

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

21.04.100 Sewage disposal.
(1) Within urban growth areas, public sewer shall be required in short subdivisions unless the on-site sewage disposal requirements of WCC 24.05.210, Developments, subdivisions, and minimum land area requirements, can be met.

(2) Outside of the urban growth area and small town Comprehensive Plan designations, short subdivisions shall not be approved that require extension or expansion of public sewer except when:

   (a) Public sewer is necessary to protect the public health, safety or environment; and

   (b) Public sewer is financially supportable at rural densities and does not permit urban development.

(3) On-site sewage disposal systems shall meet the requirements of WCC 24.05.210, Developments, subdivisions, and minimum land area requirements.

(4) All portions of a community on-site sewage system that are held in common ownership shall be constructed and approved prior to final short plat approval.

21.04.110 Fire protection.
Short subdivisions shall incorporate adequate capability for fire protection in accordance with sound engineering practices and locally adopted codes and development standards and shall be approved by the county fire marshal.

21.04.120 Short subdivision vacation and alteration.
Applications to vacate or alter short plats that have been filed with the county auditor shall be processed as follows:

(1) Affidavit of Minor Correction of Survey. A professional land surveyor may file an "affidavit of minor correction of survey" pursuant to WAC 332-130-050 to correct minor survey, spelling, mathematical or drafting errors or omitted signatures. The surveyor shall file the affidavit of minor correction of survey with the county auditor and provide one copy to the division of engineering and one copy to planning and development services.

(2) Boundary Line Adjustments. Boundary line adjustments are processed under WCC 21.03.060 and are not subject to the provisions of this section, except for such adjustments that alter the boundaries of a reserve tract in the short plat.

(3) Alterations. The subdivision administrator shall approve, deny or issue a notice of requirements to continue processing an issue a notice of preliminary approval, issue a notice of additional requirements to obtain preliminary approval, or deny

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the application, provided that the alteration does not propose to eliminate or reduce the width or length of a public dedication within 30 calendar days of submittal of a complete application. Preliminary short subdivision alteration approval is considered a final determination.

(a) Alterations are modifications to text, maps or other information shown on the short plat that:

(i) May adversely impact public health, public safety, shorelines or critical areas;

(ii) Change the density, modify the uses, or alter the basic design of the short plat;

(iii) Create an additional lot(s) to a maximum of four within the short plat pursuant to WCC 21.04.040;

(iv) Modify reserve tract boundaries;

(v) Modify reserve tract or cluster notes; or

(vi) Modify or extinguish an easement shown on the face of the short plat.

(b) The application shall include a written description of the alteration, the reasons for the alteration, and a map showing the alteration. The map shall be prepared in accordance with the requirements of WCC 21.04.150 the department’s administrative manual.

(c) The county shall distribute application materials to appropriate county and city staff within 10 working days of the determination of completeness.

(d) The technical review committee shall meet to consider the proposed alteration and make a recommendation to the subdivision administrator. The subdivision administrator may waive the requirement for the technical review committee meeting if all issues can adequately be addressed without such a meeting.

(ec) The subdivision administrator shall approve the alteration if the alteration:

(i) Shall result in a lot(s) that qualifies as a valid land use pursuant to Whatcom County Code, including but not limited to lot area, lot width, building setbacks, critical areas protection or shorelines protection;

(ii) Shall not cause boundary lines to cross zoning or UGA boundaries, cross on-site sewage disposal systems or their reserve areas, prevent suitable area for on-site sewage disposal systems, prevent adequate access to water supplies, or not meet fire protection standards;

(iii) Will not detrimentally affect access, access design, sight distance, grade, road geometry or other public safety and welfare concerns. The
alteration shall be reviewed by the department of health, public works, and any other agency or department with expertise;

(iv) Complies with zoning, land division regulations and development regulations applicable to the alteration that are in effect at the time the application for the alteration was submitted; and

(v) Complies with development standards applicable to the alteration that are in effect at the time the application for the alteration was submitted.

(fd) A new original drawing is submitted. The original drawing shall be prepared in accordance with the requirements of WCC 21.04.160 the department’s administrative manual and filed for record with the county auditor.

(4) Vacations – Not Involving Public Dedications. The subdivision administrator shall approve, deny or issue a notice of requirements to continue processing a vacation of a short plat that does not eliminate or reduce the width or length of a public dedication within 30 calendar days of submittal of a complete application.

(a) The application shall include a written description of the vacation, the reasons for the vacation, and a map showing the vacation.

(b) The subdivision administrator shall approve the vacation if the vacation does not conflict with the public interest.

(c) An order of vacation containing the signatures of all parties having an ownership interest in the short plat or the portion of the short plat being vacated shall be filed for record with the county auditor. The order shall state that the vacation is with the free consent and in accordance with the desires of the owners.

(d) Title to the vacated property shall vest with the rightful owner(s) as shown in the county records.

(5) Vacations – Involving Public Dedications. The vacation and alteration of a short subdivision shall be processed in accordance with RCW 58.17.212 and 58.17.215, respectively, when the alteration or vacation eliminates or reduces the width or length of a public dedication.

21.04.130 Land survey.
The applicant shall submit a short plat prepared and certified by a professional land surveyor in accordance with WCC 21.09.010 the department’s administrative manual. (Ord. 2009-007 § 1).

As an alternate to complete installation of required improvements, the subdivider may elect to post securities, with the approval of the appropriate county authority, as set forth in the Whatcom County Development Standards guaranteeing completion of the work. No occupancy permit, final inspection, or use of the lot(s)
created by a short subdivision shall be issued or allowed until all necessary infrastructure improvements as specified by this title have been met.

21.04.150 Requirements for a fully completed application for short subdivisions. Reserved.

Upon completion of the pre-application review, and in response to the pre-application review letter, the applicant is authorized to prepare the short subdivision application materials. The following requirements for a fully completed application, and any other information on a form prescribed by the subdivision administrator, must be provided in order to initiate a review for a determination of completeness:

(1) Written and Other Data and Fees:

(a) Name, address and phone number of owner(s), applicant, and contact person.
(b) Intended uses.
(c) List of variances and waivers requested.
(d) General written proposal of water supply and sewage-disposal method, including letter from public water or sanitary sewer providers stating their willingness and ability to serve the proposed land division.
(e) Preliminary stormwater proposal.
(f) Preliminary traffic proposal and transportation-concurrency analysis, as required by Chapter 20.78 WCC.
(g) Assessor's parcel number (of the parent parcel).
(h) Fees as specified in the Unified Fee Schedule.
(i) Critical areas assessment report pursuant to WCC 16.16.255 when the written findings of the pre-application review identify the need for this report.
(j) Preliminary title report issued no more than 60 calendar days prior to application.
(k) Net and gross lot size to determine minimum lot size and density requirements as required by the Zoning Ordinance.
(l) Signature of property owners or applicant attesting by written oath to the accuracy of all information submitted for the application.

(2) Map Data:

(a) Name of owner(s).
(b) Name of proposed land division.
(c) General layout of proposed land division.
(d) Common language description of the general location of the land division.
(e) Approximate locations of existing roads, utilities, and infrastructure.
(f) Vicinity map.
(g) Short plat map with a common engineering scale with north arrow and sheet numbers (on each sheet containing a map).
(h) Section, township, range and municipal and county lines in the vicinity.
(i) Boundaries of the site with general dimensions shown that are prepared by a licensed surveyor.
(j) General direction and gradient of slope.
(k) Legal description of the land.
(l) Proposed location and means of proposed water-service and sewage disposal.
(m) Proposed location and means of proposed access (including proposed improvements to on-site and off-site roadways, and site distance).
(n) Other proposed on-site and off-site utilities and facilities.
(o) Location of existing roads, rights-of-way, buildings, parking, and drainage on-site.
(p) Where appropriate, location of natural features, including bodies of water, natural drainage areas, native vegetation, critical areas, and buffers.
(q) Location of existing sanitation and water facilities and easements (where appropriate).
(r) Existing and proposed street names.
s) Names or numbers of any adjacent divisions.
t) Sequential numbers or letters to all lots within the short subdivision.
u) Topographic map of sufficient contour interval, acceptable to the county engineer or director of planning and development services or their designee, to show the topography of the land to be divided.
v) Location of critical areas, shorelines and base flood elevation, where applicable.

(3) Seven sets of the above required information shall be submitted. The subdivision administrator may require the applicant to submit the information in an electronic format, and may reduce the number of required sets if provided in an alternative format.

21.04.160 Final review and submittal. Reserved.

(1) Review-Submittal:

(a) Seven copies of the original drawing of acceptable sizes (18 inches by 24 inches):
(b) Name of short subdivision:
(c) Legal description of the land:
(d) Common engineering scale, north arrow, and sheet numbers:
(e) Date of original and significant revisions:
(f) The length of each lot line, together with bearings and other data necessary for the location of any lot line in the field:
(g) The location, width, centerline, and name of all roads within and adjoining the land division:
(h) Final survey of boundary of the land division with complete bearings and linear dimensions:
(i) The location of all monuments or other evidence used as ties to establish the land division's boundaries:
(j) The location of all permanent control monuments found and established at the controlling corners of the parcel being divided and within the land division:
(k) The length and bearing of all straight lines, the radii, arcs and semi-tangents of all curves:
(f) The location and width of all easements, shown with broken lines, and a description of the purpose of the easement (including beneficiary).

(i) Existing and proposed road names.

(n) The location of all permanent wells and associated protective zones; municipal boundaries, section lines, township lines, and meander lines.

(o) A reference to any covenants or restrictions (two copies for county review).

(p) Signature block for persons with ownership interest (declaration) and dedication block, if appropriate.

(q) Land surveyor’s certificate.

(r) County engineer certificate (if a right-of-way dedication is made).

(s) Director of planning and development services’ certificate.

(t) County auditor’s certificate.

(u) Letter from the health department approving water supply and sewage disposal method.

(v) Lot closures.

(w) A separate map scaled at one inch equals 400 feet for the assignment of addresses.

(x) Preliminary title report issued no more than 60 calendar days prior to submittal of the final short plat for review.

(y) Net and gross lot size to determine minimum lot size and density requirements as required by the Zoning Ordinance.

(2) Final Submittal:

(a) Original drawing (in reproducible format) with executed signature block of persons with ownership interest.

(b) A current title report or update of title report issued no more than 60 calendar days prior to the director signing the original drawing.

(c) Addresses as assigned by the county.

(d) The owner of record and the surveyor of record shall sign the original drawing of the short plat prior to filing it for record with the county auditor. The original drawing shall include a statement that the short subdivision has been made with the free consent of and in accordance with the desire of the land-owner(s).

**21.04.170 Disclosures and notes.**
The following disclosures and notes, if applicable, shall be recorded in the county auditor’s office and a statement identifying the subject and the auditor’s file number, if applicable, for each such instrument shall be on the final short plat map prior to final approval by the county:

(1) Right to farm, right to practice forestry, mineral resource disclosures.

(2) Critical area notes and protective easement as required.

(3) Boundary discrepancies.
(4) Drainage maintenance agreement block.

(5) Road maintenance agreement block (private roads only).

(6) Significant pipeline in vicinity disclosure when the subject property is within 500 feet of a pipeline shown on Map 5-2, Chapter 5 of the Whatcom County Comprehensive Plan.

The provisions of WCC 20.40.253 and 20.40.254 provide for the segregation of a farmstead parcel with an existing residence(s) from a remainder parcel used for farming in the Agriculture Zone. The remainder parcel is restricted to agricultural use only. Because no further residential development can occur on the remainder parcel and an existing residential structure is already on the farmstead parcel, many of the standard short plat requirements are unnecessary. Therefore, a shortened review process has been established.

Agricultural short plats that qualify under WCC 20.40.253 and 20.40.254 shall be subject to the following:

(1) Agricultural short plats that recognize an existing farmstead home site shall be processed pursuant to all the requirements of this chapter except that the short plat will not be reviewed for compliance with:

   (a) WCC 21.04.060 (Roads);
   
   (b) WCC 21.04.090 (Water supply), when the remainder parcel will not require potable water;
   
   (c) WCC 21.04.100 (Sewage disposal);
   
   (d) WCC 21.04.130 (Land survey);
   
   (e) Chapter 16.16 WCC (Critical Areas); and
   
   (f) Shoreline master program.

(2) Any subsequent development must comply with all applicable codes.

(3) Survey Requirements – Partial. A survey, prepared by a professional land surveyor in accordance with WCC 21.09.010 and 21.09.020 the department’s administrative manual, which provides the location of at least two corners of the farmstead parcel shall be submitted. A survey is not required for the remainder parcel that cannot have further residential development.
PRELIMINARY LONG SUBDIVISIONS

Sections:
21.05.010 Purpose.
21.05.020 Requirement to obtain long subdivision approval.
21.05.030 Summary of preliminary long subdivision procedure.
21.05.031 Pre-application meeting.
21.05.032 Preliminary long subdivision application submittal.
21.05.033 Determination of completeness and vesting.
21.05.035 Preliminary application procedures. Reserved.
21.05.036 Report to hearing examiner. Preliminary Approval Decision Criteria.
21.05.037 Hearing examiner notice, hearing and decision.
21.05.038 Approved preliminary long subdivision process. Reserved.
21.05.039 Phasing, expiration and time extension for preliminary long subdivision approval.
21.05.040 Development requirements.
21.05.050 Roads.
21.05.060 Public and community sites.
21.05.070 Easements.
21.05.080 Water supply.
21.05.090 Sewage disposal.
21.05.100 Fire protection.
21.05.110 Modifications to approved preliminary long plats.
21.05.120 Requirements for a fully completed application for preliminary long subdivisions. Reserved.

21.05.010 Purpose.
The purpose of this chapter is to establish or reference the procedure and requirements for the application, review and approval of subdivisions, also referred to as long subdivisions. The procedure is intended to provide orderly and expeditious processing of such applications.

21.05.020 Requirement to obtain long subdivision approval.
All divisions of land into five or more parcels shall require long subdivision approval from Whatcom County unless:

(1) The division is specifically classified as an exemption under Chapter 21.01 WCC; or

(2) The division has received binding site plan approval.

21.05.030 Summary of preliminary long subdivision procedure.
Review of a preliminary long subdivision involves:

(1) Pre-application meeting.

(2) Submittal of a preliminary application.
Determination of completeness.

Notice of application.

Hearing examiner review and decision. Long subdivision applications shall be processed in accordance with WCC 22.05, except as otherwise stated in this chapter.

21.05.031 Pre-application meeting.

Pre-Application Meeting Required pursuant to WCC 22.05. Any person contemplating preparation of a preliminary long subdivision application shall submit information required for a pre-application meeting as provided in WCC 21.01.090 and Chapter 2.33 WCC in the department's administrative manual. A pre-application meeting shall also be required for any alteration of an existing subdivision unless waived by the subdivision administrator.

Pre-Application Submittal Information. An applicant shall provide the following information in order to assist the applicant and Whatcom County in review of the proposed subdivision:

(a) Written and Other Data and Fees:
   (i) Name, address and phone number of owner(s), applicant, and contact person;
   (ii) Intended uses;
   (iii) List of variances and waivers requested;
   (iv) General written proposal of water supply and sewage disposal method;
   (v) Proposed means of stormwater control;
   (vi) Assessor's parcel number (of the parent parcel);
   (vii) Fees as specified in the Unified Fee Schedule;
   (viii) Net and gross lot size to determine minimum lot size and density requirements as required by the Zoning Ordinance;

(b) Map Data:
   (i) Name of owner(s);
   (ii) Name of proposed land division;
   (iii) General layout of proposed land division;
   (iv) Common language description of the general location of the land division;
   (v) Approximate locations of existing roads, utilities, and infrastructure;
   (vi) Vicinity map;
   (vii) Plat map with a common engineering scale with north arrow and sheet numbers (on each sheet containing a map);
   (viii) Section, township, range and municipal and county lines in the vicinity;
   (ix) General boundaries of the site with general dimensions shown;
   (x) General direction and gradient of slope;
   (xi) Legal description of the land;
   (xii) Proposed means and location of water service and sewage disposal;
   (xiii) Proposed means and location of access (including proposed improvements to on-site and off-site roadways);
   (xiv) Other proposed on-site and off-site utilities and facilities;
   (xv) Location of existing roads, rights-of-way, buildings, parking, and drainage on-site.
(xvi) Where appropriate, location of natural features, including bodies of water, regulated watershed boundaries, natural drainage areas, critical areas, shorelines and base flood elevation and buffers.
(xvii) Location of existing facilities, sanitation and water facilities, easements (where appropriate).

(32) Applicant Presentation. At the pre-application meeting, the applicant shall, to the greatest extent possible, provide the technical review committee with a conceptual understanding of the potential application, including the location and the anticipated uses as provided in Chapter 2.33 WCC.

(43) Technical Review Committee Responsibilities. The technical review committee shall, to the greatest extent possible during the meeting, provide the applicant with consultation and input on the allowed uses, development standards, and process applicable to the proposal as provided in Chapter 2.3322.05 WCC. Within 10 days of the pre-application meeting, staff shall communicate in writing the general findings and basis upon which an appropriate application may be submitted.

21.05.032 Preliminary long subdivision application submittal.
(1) An applicant requesting approval based on the pre-application meeting response of a proposed preliminary subdivision shall submit to the planning and development services department all of the items required in WCC 22.05, the notice of site-specific submittal requirements and the department’s administrative manual WCC 21.05.120.

(2) An application will only be accepted for review if it contains all components required in the department’s administrative manual WCC 21.05.120 and is accompanied by fees as set forth in the Unified Fee Schedule.

(3) Accepting an application for review does not mean that the application has been determined complete. The determination of completeness is made as provided in WCC 21.05.03322.05.050.

(4) If an application does not contain all of the required components of a complete application, it will not be accepted for review, fees will not be collected, and the application will be returned to the applicant for completion of the required components of a complete application.

21.05.033 Determination of completeness and vesting Reser
(1) The county shall review an application for determination of completeness and mail or provide in person a written determination to the applicant within 28 days of the date that the application has been accepted for review.

(2) An application shall be determined complete if the application includes all the requirements for a fully completed application set forth in WCC 21.05.120.

(3) Applications having received a determination of completeness shall be processed as described below and as provided in Chapter 2.33 WCC.
(4) Applications having received a determination of incompleteness shall be handled as provided in Chapter 2.33-WCC.

(5) If the application is granted a determination of completeness as provided in subsection (2) of this section on its first acceptance for review, the vesting date will be the date that the application was submitted for review. If an application is submitted within 30 days of receiving pre-application meeting findings from the technical review committee and granted a determination of completeness, then the date that the project is considered vested will be the date of pre-application submittal.

(6) Applications that have been re-submitted for review for determination of completeness will again be handled as described in WCC 21.05.032. A new date of acceptance for review will be placed on the application.

21.05.035 Preliminary application procedures. Reserved.

(1) Notice and Distribution. Upon receipt of a complete application and the payment of fees, the department of planning and development services shall:

   (a) Provide notification in accordance with Chapter 2.33-WCC;

   (b) Notify those agencies required by RCW 58.17.080;

   (c) Notify and provide copies of project plans to a city when the subdivision is within that city's urban growth area, agencies potentially having jurisdiction relevant to the application, and public utilities if within 660 feet (one-eighth mile) of the area submitted in the application. Such cities, agencies, and utility organizations shall be given 15 calendar days to respond. If they do not respond within 15 days, the administrator, SEPA official and technical review committee may conclude their review of the application without such comments.

(2) Within 60 calendar days after the application has been determined to be complete, the subdivision administrator shall receive comments and notify the applicant regarding whether modifications or corrections to the preliminary plat application would be required in order to receive a recommendation of approval from the subdivision administrator prior to consideration of the application by the hearing examiner.

(3) Preliminary plats of any proposed subdivision and dedication shall be approved, disapproved, or returned to the applicant for modification or correction within 90 days from date of filing thereof unless the applicant consents to an extension of such time; provided, that if an environmental impact statement is required as provided in RCW 43.21C.030, the 90-day period shall not include the time spent preparing and circulating the environmental impact statement by the local government agency.

21.05.036 Report to hearing examiner. Preliminary Approval Decision Criteria.
The subdivision administrator shall prepare a final staff report (including all recommendations and all proposed conditions of approval) and submit it in written form to both the applicant and the Whatcom County hearing examiner. The report shall evaluate the application in terms of the following standards and criteria:

21.05.037 Hearing examiner notice, hearing and decision:
The hearing examiner shall schedule and hold an open record hearing, review the application and make a decision or recommendation, as appropriate, in accordance with the provisions of Chapter 20.92 WCC. Notice of the open record hearing shall be as set forth in Chapter 2.33 WCC.

(1) Review of a preliminary long subdivision shall be accompanied by written findings of fact and conclusions regarding the proposed development’s provisions for the following standards and criteria:

1. (a) Open spaces;
2. (b) Drainage ways and stormwater management;
3. (e) Streets or roads, pedestrian and bicycle paths, alleys, other public ways, transit stops, and other transportation facilities as required by concurrency standards;
4. (d) Potable water supplies;
5. (e) Sanitary wastes;
6. (f) Parks and recreation facilities and playgrounds;
7. (g) Schools and schoolgrounds, including sidewalks and other planning features that assure safe walking conditions for students who walk to and from school;
8. (h) Conformity with the Whatcom County Comprehensive Plan;
9. (i) Conformity with applicable land division, zoning and development standards;
10. (j) Conformity with critical areas, shoreline management, other land use regulations;
11. (k) Conformity with Chapter 58.17 RCW; and
12. (l) A summary finding that the public health, safety, general welfare, use and public interest will be served by the platting of such subdivision and dedication.

21.05.037 Hearing examiner notice, hearing and decision of preliminary approval.
The hearing examiner shall schedule and hold an open record hearing, review the application and make a decision or recommendation, as appropriate, in accordance with the provisions of Chapter WCC 22.05-WCC.

(2) If the hearing examiner finds that all of the above standards and criteria in WCC 21.05.036 have been met, the hearing examiner may issue an approval of the proposed preliminary long plat application.
(3) If the hearing examiner finds that the above criteria are not met, the hearing examiner may take one of the following actions:
(a) Specify the issues that require additional information and give the applicant a period of time up to three months to address those issues and return to the hearing examiner for further consideration.

(b) Issue a conditional approval specifying the actions needing to be taken to resolve minor nonconformance with the standards and criteria, and granting a specific limited time, typically 30 days, within which the applicant is to return to the hearing examiner for review.

(c) Deny the application.

21.05.038 Approved preliminary long subdivision process. Reserved.  

(1) Submittal of Approved Preliminary Long Subdivision. Upon issuance of preliminary long subdivision approval by the hearing examiner, the applicant shall, within 30 calendar days of preliminary long subdivision approval, submit four copies of a revised preliminary plat depicting modifications to the layout of lots, roads, open space, or any other geometrical changes to the plat that were required by conditions of approval of the preliminary plat by the hearing examiner.

(2) Review and Execution of Preliminary Long Subdivision. The hearing examiner shall review the preliminary plat and, if it complies with the terms of preliminary approval, the hearing examiner, property owner and surveyor shall sign the four copies of the preliminary long subdivision.

(3) Distribution of Executed Preliminary Long Subdivision. Once signed, one copy of the revised preliminary plat shall be given to the applicant, one copy shall be retained in the file of the hearing examiner, one copy shall be retained in the file of planning and development services, and one copy shall be retained in the file of the division of engineering.

21.05.039 Phasing, expiration and time extension for preliminary long subdivision approval.

(1) Except as provided by subsection (1)(a) of this section, a final plat shall be submitted to the subdivision administrator in proper form for final plat approval within seven years of the date of preliminary plat approval if the date of preliminary plat approval is on or before December 31, 2014, and within five years of the date of preliminary plat approval if the date of preliminary plat approval is on or after January 1, 2015.

(a) A final plat shall be submitted in proper form for final plat approval within 10 years of the date of preliminary plat approval if this project is not subject to requirements adopted under Chapter 90.58 RCW and the date of preliminary plat approval is on or before December 31, 2007.

(2) Extension of Time for Submittal of Final Long Subdivision. The expiration of a preliminary long subdivision approval may be extended under the following provisions:

(a) An applicant files a written request with the subdivision administrator prior to expiration of the five-year expiration period. The request shall state the specific work items, standards, and criteria which have not been completed and the reasons therefor. The request shall also indicate when the work will be completed within the requested period. The subdivision
administrator shall review the request and provide a recommendation to the hearing examiner.

(b) The hearing examiner shall have authority to grant one one-year extension subsequent to the original preliminary plat approval.

(c) The one-year extension may be granted if, after taking into consideration technical, economic and other matters beyond the control of the applicant, the hearing examiner finds that there is reasonable justification for the granting of an extension.

(d) In granting the one-year extension the hearing examiner shall take into consideration such changes in rules, regulations, ordinances, or development standards, or portions thereof, that have occurred since the time the original approval was granted.

(e) The hearing examiner may condition the extension so as to require compliance with any such subsequently adopted rules, regulations, ordinances, or development standards, or portion thereof, that are deemed necessary to protect the public health, safety and welfare.

(3) Phased Subdivision. An applicant may seek approval of a phasing plan at the time of preliminary subdivision approval. If phasing is approved as part of a preliminary subdivision, the phasing plan shall expire 10 years from the date of preliminary approval. Each phase submitted after five years from the date of preliminary approval shall comply with the rules, regulations and ordinances Whatcom County Development Standards in effect as of the date construction plans are submitted for each phase.

21.05.040 Development requirements.
(1) All subdivisions shall comply with the applicable standards, requirements and procedures of the Whatcom County Development Standards and local, state, and federal laws and regulations. The county, to the extent practicable, will require new land divisions located within city urban growth areas to conform to city development standards, in accordance with adopted ordinances.

(2) Improvements are required to be installed and completed by the subdivider prior to final subdivision approval, unless security is provided under WCC 21.06.040.

(3) Improvements and other requirements shall be provided to the extent that each phased subdivision will be adequately served by all roads, utilities, drainage facilities, easements and other amenities necessary to its existence in the event that subsequent phases are not completed, except on-site septic systems do not have to be installed unless required by the health officer.

21.05.050 Roads.
Roads shall be designed with appropriate consideration for existing and projected roads, anticipated traffic patterns, topographic and drainage conditions, public convenience and safety, and the proposed uses of the land served.
(1) Dedications for the realignment and widening of the adjacent rights-of-way, in accordance with county standards, shall take place whenever a subdivision abuts a county road. Frontage roads or parallel access roads may be required to eliminate direct access to arterial and collector roads.

(2) Frontage improvements to the public roadway(s) adjacent to the subject property shall be completed to the current functional classification prior to recording the final plat, unless security is provided under WCC 21.06.040.

(3) Minor and local access roads should discourage through traffic.

(4) All subdivisions and phased subdivisions shall abut and be accessed by a constructed and maintained public road or a private road as allowed under the Whatcom County Development Standards. The number of access points shall create efficient on- and off-site circulation patterns and facilitate emergency response. A traffic analysis may be required by the county engineer in order to analyze present and future traffic circulation patterns to determine the appropriate location and number of access points to the site and to ascertain the appropriate classification and character of the proposed roads.

(5) Where reasonably necessary to join with existing roads or needed for future circulation, road rights-of-way and/or easements shall be extended to the outside boundaries of the subdivision.

(6) Public road rights-of-way and/or easements shall be extended to the boundaries of subdivisions that abut public lands and public bodies of water, if requested by the administrator of said public lands. Such access roads need not be provided at an interval more frequent than one-half mile.

(7) Private roads may be permitted in a subdivision when in compliance with the Whatcom County Development Standards.

21.05.060 Public and community sites.
The dedication of sites for schools, parks, and other public or community purposes may be required to the extent that such dedication is suitable to and reasonable for the needs anticipated by full development of the subdivision. Dedicated school sites must meet the requirements of Chapter 246-366 WAC.

21.05.070 Easements.
(1) Easements shall be provided where applicable for development-related facilities.

(2) All easements shown on long plats shall include:
   
   (a) The beneficiary of the easement;

   (b) The purpose of the easement; and

   (c) A clear depiction of the easement (including dimensions) on the face of the long plat.
(3) The owner may specify the burdening of the easement. Examples of burdening may include the average daily trips for ingress and egress easements, the equivalent single-family units for water, sewer, and on-site sewage disposal systems and the maximum peak flow rate expressed in accepted units for drainage easements. The owners of the subservient estates are not entitled to rely upon the county to enforce the limitations of the easements so granted, and no cause of action shall lie against the county for errors or omissions occurring in connection with the administration of or issuance of permits for development of properties that burden the easements referred to herein.

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

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

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

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

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

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

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

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

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

(3) The applicant shall demonstrate that adequate water right(s) exist to serve the subdivision, except when water withdrawal is exempt from obtaining a water right permit under RCW 90.44.050.

(4) If a Group B public water system is created to serve the subdivision, the number of wells shall be limited to the minimum needed to serve the water needs of the subdivision as determined by the health department.
(5) If a public water supply is required, all the requirements of Chapter 246-290 WAC, Group A Public Water Systems, or Chapter 246-291 WAC, Group B Public Water Systems, must be met prior to final plat approval.

21.05.090 **Sewage disposal.**
(1) Within urban growth areas, public sewer shall be required in subdivisions unless the on-site sewage disposal requirements of WCC 24.05.210, Developments, subdivisions, and minimum land area requirements, can be met.

(2) Outside of the urban growth area and small town Comprehensive Plan designations, subdivisions shall not be approved that require extension or expansion of public sewer except when:

(a) Public sewer is necessary to protect the public health, safety or environment; and

(b) Public sewer is financially supportable at rural densities and does not permit urban development.

(3) On-site sewage disposal systems shall meet the requirements of WCC 24.05.210, Developments, subdivisions, and minimum land area requirements.

(4) All portions of a community on-site sewage system that are held in common ownership shall be constructed and approved prior to final plat approval.

21.05.100 **Fire protection.**
Long subdivisions shall incorporate adequate capability for fire protection in accordance with sound engineering practices and locally adopted codes and development standards and shall be approved by the county fire marshal.

21.05.110 **Modifications to approved preliminary long plats.**
(1) The technical review committee may approve minor changes to a preliminary long plat. In order to qualify as a minor change, the proposal must not adversely impact neighbors or the environment, and the density, uses and basic design of the approved preliminary long plat must be maintained.

(2) The hearing examiner or county council, whichever approved the original preliminary long plat, may approve major changes to the plat. Major changes are those that, in the opinion of the technical review committee, would adversely impact neighbors or the environment, alter the density, alter the uses, or alter the basic design of the preliminary long plat. The SEPA official shall review major changes and determine whether the original SEPA determination is still valid or a new determination required. The hearing examiner or county council shall hold a public hearing prior to issuing the decision. The appropriate city shall be notified of the request and given the opportunity to comment on major changes, if the land division is located within that city’s urban growth area.

21.05.120 **Requirements for a fully completed application for preliminary long subdivisions.** Reserved.
Upon completion of the pre-application review, and in response to the pre-application review letter, the applicant is authorized to prepare the subdivision application materials. The following requirements for a fully completed application, and any other information on a form prescribed by the subdivision administrator, must be provided in order to initiate a review for a determination of completeness:

(1) Written and Other Data and Fees:

(a) Completed application form.
(b) Name, address and phone number of owner(s), applicant, and contact person.
(c) Names, addresses and telephone numbers of the involved engineers, surveyors, and consultants.
(d) Intended uses.
(e) List of variances and waivers requested.
(f) Names and addresses of all persons, firms, and corporations holding legal interests in the land, such as easements, of which the applicant has knowledge.
(g) Assessor’s parcel number (of the parent parcel).
(h) List of names and addresses of owners of property within 300 feet of site’s boundaries (based on the latest assessor’s equalized tax roll) when within an urban growth area, or within 1,000 feet of site’s boundaries when outside an urban growth area, together with corresponding parcel numbers and assessor’s parcel map.
(i) Proposed covenants, conditions, and restrictions (CC&Rs).
(j) SEPA checklist.
(k) Preliminary stormwater proposal.
(l) Preliminary traffic analysis.
(m) Proposed utilities.
(n) Critical area and soils reports, as specified in the applicable development standards. All reports shall be certified by qualified professionals experienced in the applicable field of science.
(o) Net and gross lot size to determine minimum lot size and density requirements as required by the Zoning Ordinance.
(p) Fees as specified in the Unified Fee Schedule.

(2) Map Data:

(a) Acceptable map size is 24 inches by 24 inches to 24 inches by 36 inches.
(b) Date of revisions, if any.
(c) Name of owner.
(d) Name, address, and telephone number of the surveyor or consultant preparing the map proposal.
(e) Name of proposed land division.
(f) Names or numbers of any adjacent divisions.
(g) General layout of proposed land division.
(h) Approximate locations of existing utilities, infrastructure, roads, drainage and rights-of-way within 300 feet of the boundary of the proposed land division.
(i) Vicinity map at a scale not less than one inch equals 2,000 feet.
(j) Common engineering scale (one inch equals 100 feet or larger), sheet numbers, and north arrow.
(k) Section, township, range, municipal and county lines in the vicinity.
(t) Location of monuments and fences located by any boundary survey and the date of the survey.
(m) General boundaries of the site with general dimensions shown, perimeter boundary marked with a bold line.
(n) Legal description of the land being subdivided.
(o) Proposed access (including proposed improvements to on-site and off-site roadways).
(p) Other proposed on-site or off-site utilities and facilities.
(q) The location and widths of all proposed roads, rights-of-way, and easements.
(r) When appropriate, location of natural features, including bodies of water, natural drainage areas, regulated watershed boundaries, critical areas, and buffers.
(s) Location of buildings, and parking on site or contiguous to the site.
(t) General location of existing and proposed facilities, sanitation and water facilities, easements (where appropriate), landscaping, common areas, and phasing boundaries.
(u) General plans of proposed water distribution systems, sewage disposal systems, and drainage systems. The plans shall include system location and sizes, sources of water supply, location and size of storage reservoirs, location of drainage outlet, and other major features and shall be certified by a professional engineer.
(v) Layout of proposed alleys, walkways, bicycle paths, and parcels to be dedicated or reserved for school, park, playground, well site or other use.
(w) Sequential numbers to all lots within subdivision and identify proposed phases.
(x) Location of critical areas, shorelines and base flood elevation, where applicable.

(3) Additional Information:
(a) Title report:
(b) Written narrative of how the proposed preliminary plat will meet development and/or level of service standards for:
(i) Water supply.
(ii) Sewage disposal.
(iii) Fire protection service.
(iv) Public school system.
(c) Project area.
(d) Area in lots, square feet, and percentage of total.
(e) Zoning designation and zone density.
(f) Number of lots.
(g) Average lot size, area, and maximum lot size.
(h) Area of streets, area in rights-of-way, and percentage of total.
(i) Area of parks, open space, and percentage of total.
(j) Area of impervious surface proposed.
(k) Soil types and classifications.
(l) Utility service types and name of provider.
(m) School and fire district.
(n) Boundary survey, prepared and certified by a professional land surveyor.
(o) Additional reports as required at the pre-application meeting, prepared by qualified professionals, including but not limited to:
(i) Traffic impact analysis and concurrency study.
(ii) Stormwater design report.
(iii) Soils and/or geological report.
(iv) Wetlands delineation and/or critical areas assessment report.
(v) Soil testing results for pesticides for subdivisions on land historically used for raising row crops.
(p) Topographic map of sufficient contour interval, acceptable to the county engineer or subdivision administrator, to show the topography of the land to be subdivided.

(4) Eleven sets of the above required information shall be submitted. The subdivision administrator may require the applicant to submit the information in an electronic format, and may reduce the number of required sets if provided in an alternative format.

Chapter 21.06
FINAL LONG SUBDIVISIONS

Sections:
21.06.010 Purpose.
21.06.015 Council chair—Director authorized.
21.06.020 Final approval of subdivisions.
21.06.030 Subdivision vacation and alteration.
21.06.040 Security.
21.06.050 Requirements for a fully completed application for final long subdivisions. Reserved.
21.06.060 Final original drawing submittal. Reserved.
21.06.070 Disclosures and notes.

21.06.010 Purpose.
The purpose of this chapter is to establish or reference the procedure and requirements for the application, review and approval of final long subdivisions. The procedure is intended to provide orderly and expeditious processing of such applications.

21.06.015 Director Council chair—authorized.
The planning and development services director (director) chair of the Whatcom County council is authorized to act on behalf of the legislative authority or county council in the signing of final subdivision plats pursuant to the requirements set forth in this chapter.

21.06.020 Final approval of subdivisions.
(1) An applicant requesting final approval of a subdivision shall submit to the subdivision administrator copies of the materials specified in WCC 21.06.050 the department’s administrative manual.

(2) The applicant shall submit a current title report issued no more than 60 days prior to the county council chairdirector signing the final plat original drawing. The owner of record and the surveyor of record shall sign the final plat original drawing prior to filing it for record with the county auditor. In addition, the applicant shall submit one paper copy to the county assessor.

(3) Each final plat submitted to the county council chairdirector for approval shall be accompanied by a recommendation for approval or disapproval from the subdivision administrator as to compliance with the terms of preliminary plat approval. Prior to making his or her recommendation, the subdivision administrator should consult with the appropriate city, if the proposed land division is located within that city’s urban growth area.

(4) Final plats shall contain a statement of approval from the following:

(a) The county engineer as to the layout of streets, alleys, and other rights-of-way, and the design of bridges, sanitary sewer and water systems, drainage and surface water management facilities, and other physical improvements required by the conditions of preliminary plat approval;

(b) The county treasurer stating that all taxes and delinquent assessments for which the property may be liable as of the date of certification have been duly paid, satisfied, or discharged;

(c) The county health and human services department as to the adequacy of potable water supply and sewage disposal; and

(d) The county council chairdirector stating that the final plat conforms to all terms of the preliminary subdivision approval, meets the requirements of Chapter 58.17 RCW and other applicable state laws, and meets the requirements of this title that were in effect at the time of vesting of the preliminary plat application.

(5) Final plats shall be approved, disapproved, or returned to the applicant for modification or correction within 30 calendar days of submittal to the planning and development services department.

(6) The Whatcom County auditor shall not accept a final plat for filing until it has been accepted by the approving authorities as indicated on the instrument by the appropriate signature. The signature of the approving authorities shall not be affixed until the developer has posted the guarantees as stipulated in the appropriate standards.

(7) After approval by the council chairdirector, the original drawings of the subdivision shall immediately be filed by the professional land surveyor of record.
with the county auditor. After filing, the county auditor shall retain one original drawing and the county engineer shall retain one original drawing.

**21.06.030 Subdivision vacation and alteration.**
(1) The vacation and alteration of subdivisions shall be in accordance with RCW 58.17.212 and 58.17.215, respectively.

(2) Alteration of subdivisions shall meet the following requirements:

(a) The alteration shall result in a lot(s) that qualifies as a valid land use pursuant to Whatcom County Code, including but not limited to lot area, lot width, building setbacks, critical areas protection or shorelines protection;

(b) The alteration shall not cause boundary lines to cross zoning or UGA boundaries, cross on-site sewage disposal systems or their reserve areas, prevent suitable area for on-site sewage disposal systems, prevent adequate access to water supplies, or not meet fire protection standards;

(c) The alteration will not detrimentally affect access, access design, sight distance, grade, road geometry or other public safety and welfare concerns. The alteration shall be reviewed by the department of health, public works, and any other agency or department with expertise;

(d) Complies with zoning, land division regulations and development regulations applicable to the alteration that are in effect at the time the application for the alteration was submitted; and

(e) Complies with development standards applicable to the alteration that are in effect at the time the application for the alteration was submitted.

(3) Vacation of subdivisions shall meet the following requirements:

(a) The application shall include a written description of the vacation, the reasons for the vacation, and a map showing the vacation.

(b) The vacation shall be approved if the vacation does not conflict with the public interest.

(c) An order of vacation containing the signatures of all parties having an ownership interest in the plat or the portion of the plat being vacated shall be filed for record with the county auditor. The order shall state that the vacation is with the free consent and in accordance with the desires of the owners.

(d) Title to the vacated property shall vest with the rightful owner(s) as shown in the county records.

(e) Vacations – Involving Public Dedications. The vacation and alteration of a subdivision shall be processed in accordance with RCW 58.17.212 and 58.17.215, respectively, when the alteration or vacation eliminates or reduces the width or length of a public dedication.
(4) A new original drawing shall be submitted for approved alterations or vacations. The original drawing shall be prepared in accordance with the requirements of WCC 21.06.060 the department’s administrative manual and filed for record with the county auditor.

21.06.040 Security.
As an alternate to complete installation of required improvements, the subdivider applicant may elect to post securities, with the approval of the appropriate county authority, as set forth in the Whatcom County development standards and WCC Title 20, guaranteeing completion of the work. No occupancy permit, final inspection, or use of the lot(s) created by a subdivision shall be issued or allowed until all necessary infrastructure improvements as specified by this title have been met.

21.06.050 Requirements for a fully completed application for final long subdivisions: Reserved.

(1) Written and Other Data and Fees:

(a) Name, address, and phone number of owner, applicant, and contact person;
(b) A separate map scaled at one inch equals 400 feet for assignment of addresses;
(c) Lot closures for the parcel being subdivided, each lot, and any dedicated right-of-way;
(d) Title report issued no more than 60 days prior to final signature by the county council chair;
(e) Copies of covenants, conditions and restrictions;
(f) As-built drawings for road and drainage improvements;
(g) Fees as specified in the Unified Fee Schedule;

(2) Map Data:

(a) Final plat size is 24 inches by 24 inches;
(b) Name of owner(s);
(c) Name of proposed long subdivision;
(d) Section, township, range, and municipal and county lines within the vicinity;
(e) Common engineering map bar scale (one inch equals 100 feet or larger), north arrow, legend, and sheet numbers;
(f) Perimeter of the subdivision shall be depicted with heavier lines;
(g) File number of the preliminary plat;
(h) Existing and proposed street names;
(i) Legal description of the land being subdivided;
(j) All lot and tract areas;
(k) Vicinity map;
(l) Names and numbers of any adjacent subdivisions, short subdivisions, and binding-site plans.
(m) Complete bearings, lineal dimensions, radii, ares, and central angle of all lines and curves of any lot or boundary lines within the subdivision.
(n) Location of permanent control monuments used as ties to establish boundary of subdivision, basis of bearing, and line held.
o) Type and location of monuments and the date set.
p) Sequential numbers of all lots in the subdivision, including all of its phases.
(q) Location and width of all easements shown as dashed lines, and a description of the purpose of the easement (including beneficiary).
r) Location and description of all fence and building encroachments and other matters which, in the judgment of a professional land surveyor, give rise to alternate boundary locations resulting from occupational evidence or prescriptive rights.
s) Location, width, geometry, centerline, and names of all roads within and adjoining the subdivision.
t) Roads not dedicated to the public must be clearly marked.
u) A reference to any covenants, conditions and restrictions.
v) Dedication and declaration signature block.
w) Acknowledgement blocks.
x) Land surveyor's certificate, signature block and seal.
y) County engineer's certificate.
z) County health and human services department certificate.
(aa) County treasurer's certificate.
(bb) County council's certificate.
(cc) County auditor's certificate.
(dd) Land surveyor notes.
(ee) Addresses as assigned by the county.

(3) Eleven sets of the above required information shall be submitted. The subdivision administrator may require the applicant to submit the information in an electronic format, and may reduce the number of required sets if provided in an alternative format.

21.06.060 Final original drawing submittal. Reserved.

(1) One original drawing.

(2) Two sets of covenants, conditions and restrictions.

(3) Maintenance bond for road and drainage improvements.

21.06.070 Disclosures and notes.
The following disclosures and notes, if applicable, shall be recorded in the county auditor's office and a statement identifying the subject and the auditor's file number for each such instrument shall be on the final plat map under surveyor's notes prior to final approval by the county:

(1) Right to farm, right to practice forestry, or mineral resource disclosures.

(2) Critical area notes and protective easements as required.
(3) Boundary discrepancies.

(4) Drainage maintenance agreement block.

(5) Road maintenance agreement block (private roads only).

(6) Significant pipeline in vicinity disclosure when the subject property is within 500 feet of a pipeline shown on Map 5-2, Chapter 5 of the Whatcom County Comprehensive Plan.

Chapter 21.07
PRELIMINARY BINDING SITE PLANS

Sections:
21.07.010 Purpose.
21.07.020 Binding site plan alternative.
21.07.030 Binding site plan procedure.
21.07.031 Pre-application meeting.
21.07.032 Preliminary approval decision criteria.
21.07.033 Phasing, expiration and time extensions for preliminary binding site plan approval.
21.07.040 Development requirements.
21.07.050 Roads.
21.07.060 Public and community sites.
21.07.070 Easements.
21.07.080 Water supply – Health requirement.
21.07.090 Sewage disposal.
21.07.100 Fire protection.
21.07.110 Modifications to approved preliminary binding site plans.
21.07.120 Requirements for a fully completed application for preliminary binding site plans: Reserved.
21.07.130 Additional information for preliminary binding site plans: Reserved.

21.07.010 Purpose.
The purpose of this chapter is to establish or reference the procedure and requirements for the application, review and approval of preliminary binding site plans. The procedure is intended to provide orderly and expeditious processing of such applications.

21.07.020 Binding site plan alternative.
As an alternative to applying for short subdivision or long subdivision approval, an application for binding site plan approval may be submitted for the following:

(1) Land divisions into lots zoned for industrial or commercial use;
(2) Land divisions for the purpose of creating lease spaces in a mobile home park or RV park when no other residential structures are permitted; and

(3) Land divisions that result from subjecting a portion of a lot to condominium ownership as provided in Chapter 64.32 or 64.34 RCW.

21.07.030 Binding site plan procedure.
Binding Site Plan applications shall be processed in accordance with WCC 22.05, except as otherwise stated in this chapter.

21.07.031 Pre-application meeting.
Pre-application meeting required pursuant to WCC 22.05. Any person contemplating preparation of a preliminary binding site plan application shall submit information required in the department’s administrative manual.

(1) Preliminary Approval of Binding Site Plans:

(a) The applicant seeking preliminary binding site plan approval shall submit to the administrative official copies of the materials stipulated in WCC 21.07.120: the department’s administrative manual.

(b) Upon receipt of a complete application and the payment of fees, the department of planning and development services shall:

(i) Provide notification in accordance with WCC 2.33.06022.05.060.

(ii) Notify and provide copies of project plans to a city when the binding site plan is within that city’s urban growth area, agencies potentially having jurisdiction relevant to the application, and public or private utility organizations if within one-eighth mile (660 feet) from the area submitted in the application. Such cities, agencies, and utility organizations shall be given 15 calendar days to respond. If they do not respond within 15 days, the administrator, SEPA official and technical review committee may conclude their review of the application without such comments.

(c) Upon review of the application the county shall schedule and immediately notify the applicant and the appropriate city, if the proposed land division is located within that city’s urban growth area, of the time and place of the technical review committee meeting at which the application will be considered.

(d) Before the technical review committee meeting, the county shall review the application and prepare preliminary recommendations for:

(i) Staff recommendation and proposed county conditions of approval for the project if applicable;

(ii) Any additional data required to complete the review of the application; and
(iii) Appropriate time extensions required allowing the applicant to provide additional information.

(e) At the technical review committee meeting, members of the technical review committee shall present and discuss the county’s preliminary findings with the applicant. These findings shall include county recommendations and proposed county conditions of approval.

The technical review committee shall also provide the applicant with a written request detailing (i) any additional data or information required, (ii) why such data is required, and (iii) proposed time extensions to allow the applicant to revise the application or collect additional data.

Should the applicant object to either the substance or timing of requirements for additional information, the applicant may appeal these requests to the Whatcom County hearing examiner. This appeal must be made within 14 calendar days of the technical review committee meeting or all information requests shall be binding.

(f) Within 14 calendar days after the technical review committee meeting (or within 14 calendar days of receiving requested information from the applicant), the technical review committee shall prepare a final staff report (including all recommendations and all proposed conditions of approval) and submit it in written form to both the applicant and the Whatcom County hearing examiner.

(g) The hearing examiner shall schedule and hold an open record hearing, review the application and make a decision or recommendation, as appropriate, in accordance with the provisions of Chapter 20.9222.05 WCC.

(h) 21.07.032 Preliminary Approval Decision Criteria.
Approval of a preliminary binding site plan shall be accompanied by written findings that:

(i) Appropriate provisions have been made for the public health, safety, and general welfare and for such open spaces, drainage ways, stormwater management, streets or roads, pedestrian and bicycle paths, alleys, other public ways, transit stops, potable water supplies, sanitary wastes, parks and recreation, playgrounds, schools and schoolgrounds and all other relevant facts, including sidewalks and other planning features that assure safe walking conditions for students who only walk to and from school, and the public use and interest will be served by the platting of such binding site plan and dedication; and

(ii) The proposal is in conformity with applicable land division, zoning, critical areas, shoreline management, and other land use regulations.

(2) Within 30 calendar days of preliminary binding site plan approval, the applicant shall submit four copies of a revised preliminary binding site plan. These revised drawings shall depict modifications to the layout of lots, roads, open space, or any other geometrical changes to the plat that were required by conditions of approval.
of the preliminary binding site plan. The hearing examiner shall review the revised preliminary binding site plan and, if it complies with the terms of preliminary binding site plan approval, the hearing examiner, property owner and surveyor shall sign the four copies of the revised preliminary binding site plan. Once signed, one copy of the revised preliminary binding site plan shall be given to the applicant; one copy shall be retained in the file of the hearing examiner; one copy shall be retained in the file of planning and development services; and one copy shall be retained in the file of the division of engineering.

(3) Unless an applicant for preliminary binding site plan approval requests otherwise, a preliminary binding site plan shall be processed simultaneously with applications for rezones, variances, planned unit developments, and similar quasi-judicial or administrative actions to the extent that procedural requirements applicable to these actions permit simultaneous processing. All preliminary binding site plan proposals accompanied by a major project permit or planned unit development application will be processed in a procedure consistent with and subordinate to the major project permit or planned unit development requirements.

(4) An applicant may place a preliminary binding site plan application, which has not yet been approved, on hold for a cumulative maximum of two years. After the two years, the county shall continue processing the application and either approve or deny the application. This two-year period shall not include time the applicant is performing studies required by the county when the study is provided within the time frame agreed to by the county and the applicant.

(5) **21.07.033 Phasing, Expiration and Time Extensions for preliminary binding site plan approval.**

(a1) Approval of a preliminary binding site plan shall become invalid unless a general binding site plan and all specific binding site plans are submitted in proper form for approval, within five years of the date of preliminary binding site plan approval. This expiration date may be extended as follows:

(a) An applicant files a written request with the subdivision administrator prior to expiration of the five-year expiration period. The request shall state the specific work items, standards, and criteria which have not been completed and the reasons therefor. The request shall also indicate when the work will be completed within the requested period. The subdivision administrator shall review the request and provide a recommendation to the hearing examiner.

(b) The hearing examiner shall have authority to grant one one-year extension subsequent to the original preliminary plat approval.

(c) The one-year extension may be granted if, after taking into consideration technical, economic and other matters beyond the control of the applicant, the hearing examiner finds that there is reasonable justification for the granting of an extension.

(d) In granting the one-year extension the hearing examiner shall take into consideration such changes in rules, regulations, ordinances, or development
standards, or portions thereof, that have occurred since the time the original approval was granted.

(e) The hearing examiner may condition the extension so as to require compliance with any such subsequently adopted rules, regulations, ordinances, or development standards, or portion thereof, that are deemed necessary to protect the public health, safety and welfare.

(i) An applicant files a written request with the Whatcom County Council prior to expiration of the five-year expiration period.

(ii) The Whatcom County council shall have authority to grant three one year extensions subsequent to the original preliminary plat approval. Each one-year extension may be granted if after taking into consideration technical, economic and other matters beyond the control of the applicant the council finds that there is reasonable justification for the granting of an extension. In granting each one-year extension, the council may take into consideration such changes in rules, regulations, ordinances, or development standards, or portions thereof, that have occurred since the time the original approval was granted. The council may condition the extension so as to require compliance with any such subsequently adopted rules, regulations, ordinances, development standards, or portion thereof, that the council deems necessary to protect the public health, safety and welfare. Requests for extension shall be made in writing to the Whatcom County council prior to expiration of preliminary binding site plan approval.

(b2) As an alternative to being subject to the expiration and time extension rules in subsection (5)(a1) of this section, an applicant may seek approval of a phasing plan at the time of preliminary binding site plan approval. A preliminary binding site plan that has been approved with a phasing plan shall expire 10 years from the date of preliminary approval unless Whatcom County establishes a different expiration period at the time of preliminary approval. Each phase submitted after five years from the date of preliminary approval shall comply with the Whatcom County Development Standards, rules, regulations and ordinances in effect as of the date construction plans are submitted for each phase.

21.07.040 Development requirements.
(1) All binding site plans shall comply with the applicable standards, requirements and procedures of the Whatcom County Development Standards and local, state, and federal laws and regulations. The county, to the extent practicable, will require new land divisions located within city urban growth areas to conform to city development standards, in accordance with adopted interlocal agreements.

(2) Improvements are required to be installed and completed by the subdivider prior to general or specific binding site plan approval, unless security is provided under WCC 21.08.030.

(3) Improvements and other requirements shall be provided to the extent that each specific binding site plan will be adequately served by all roads, utilities, drainage
facilities, easements and other amenities necessary to its existence in the event that subsequent phases are not completed.

21.07.050 Roads.
Roads shall be designed with appropriate consideration for existing and projected roads, anticipated traffic patterns, topographic and drainage conditions, public convenience and safety, and the proposed uses of the land served.

(1) Dedications for the realignment and widening of the adjacent rights-of-way, in accordance with county standards, shall take place whenever a binding site plan abuts a county road. Frontage roads or parallel access roads may be required to eliminate direct access to arterial and collector roads.

(2) Frontage improvements to the public roadway(s) adjacent to the subject property shall be completed to the current functional classification prior to recording the general or specific binding site plan, unless security is provided under WCC 21.08.030.

(3) Minor and local access roads should discourage through traffic.

(4) All binding site plans shall abut and be accessed by a constructed and maintained public road or a private road as allowed under the Whatcom County Development Standards. The number of access points shall create efficient on- and off-site circulation patterns and facilitate emergency response. A traffic analysis may be required by the county engineer in order to analyze present and future traffic circulation patterns to determine the appropriate location and number of access points to the site, and to ascertain the appropriate classification and character of the proposed roads.

(5) Where reasonably necessary to join with existing roads or needed for future circulation, road rights-of-way and/or easements shall be extended to the outside boundaries of the binding site plan.

(6) Public road rights-of-way and/or easements shall be extended to the boundaries of binding site plans that abut public lands and public bodies of water, if requested by the administrator of said public lands. Such access roads need not be provided at an interval more frequent than one-half mile.

(7) Private roads may be permitted in a binding site plan when in compliance with the Whatcom County Development Standards.

21.07.060 Public and community sites.
The dedication of sites for schools, parks, and other public or community purposes may be required to the extent that such dedication is suitable to and reasonable for the needs anticipated by full development of the binding site plan. Dedicated school sites must meet the requirements of Chapter 246-366 WAC.

21.07.070 Easements.
(1) Easements shall be provided where applicable for development related facilities.
(2) All easements shown on binding site plans shall include:

(a) The beneficiary of the easement;

(b) The purpose of the easement; and

(c) A clear depiction of the easement (including dimensions) on the face of the binding site plan.

(3) The owner may specify the burdening of the easement. Examples of burdening may include the average daily trips for ingress and egress easements, the equivalent single-family units for water, sewer, and on-site sewage disposal systems, and the maximum peak flow rate expressed in accepted units for drainage easements. The owners of the subservient estates are not entitled to rely upon the county to enforce the limitations of the easements so granted, and no cause of action shall lie against the county for errors or omissions occurring in connection with the administration of, or issuance of, permits for development of properties that burden the easements referred to herein.

21.07.080 Water supply – Health requirement.
(1) Water from a public water system(s) shall be provided to serve each lot or lease space in a binding site plan.

(2) The applicant shall demonstrate that adequate water right(s) exist to serve the binding site plan, except when water withdrawal is exempt from obtaining a water right permit under RCW 90.44.050.

(3) If a group B public water system is created to serve the binding site plan, the number of wells shall be limited to the minimum needed to serve the water needs of the binding site plan as determined by the health department.

(4) All requirements of Chapter 246-290 WAC, Group A Public Water Systems, or Chapter 246-291 WAC, Group B Public Water Systems, must be met prior to specific binding site plan approval.

21.07.090 Sewage disposal.
(1) Within urban growth areas, public sewer shall be required in binding site plans unless the on-site sewage disposal requirements of WCC 24.05.220, Developments, subdivisions, and minimum land area requirements, can be met.

(2) Outside of urban growth area and small town Comprehensive Plan designations, binding site plans shall not be approved that require extension or expansion of public sewer except when:

(a) Public sewer is necessary to protect the public health, safety or environment; and

(b) Public sewer is financially supportable at rural densities and does not permit urban development.
(3) On-site sewage disposal systems shall meet the requirements of WCC 24.05.220, Developments, subdivisions, and minimum land area requirements.

(4) All portions of a community on-site sewage system that are held in common ownership shall be constructed and approved prior to specific binding site plan approval.

21.07.100 Fire protection.
Binding site plans shall incorporate adequate capability for fire protection in accordance with sound engineering practices and locally adopted codes and development standards and shall be approved by the county fire marshal.

21.07.110 Modifications to approved preliminary binding site plans.
(1) The technical review committee may approve minor changes to a preliminary binding site plan. In order to qualify as a minor change, the proposal must not adversely impact neighbors or the environment, and the density, uses and basic design of the approved preliminary binding site plan must be maintained.

(2) The hearing examiner or county council, whichever approved the original preliminary binding site plan, may approve major changes to the binding site plan. Major changes are those that, in the opinion of the technical review committee, would adversely impact neighbors or the environment, alter the density, alter the uses or alter the basic design of the preliminary binding site plan. The SEPA official shall review major changes and determine whether the original SEPA determination is still valid or a new determination required. The hearing examiner or county council shall hold a public hearing prior to issuing the decision. The appropriate city shall be notified of the request and given the opportunity to comment on major changes, if the land division is located within that city’s urban growth area.

21.07.120 Requirements for a fully-completed application for preliminary binding site plans; Reserved.
☐ List of names and addresses of owners of property within 300' of site’s boundaries (based on the latest assessor’s equalized tax roll), together with corresponding parcel numbers and assessor’s parcel map.
☐ Proposed covenants, conditions, and restrictions (CC&Rs).
☐ SEPA checklist.
☐ Preliminary stormwater proposal, preliminary traffic analysis, utility, critical area study, and soils reports, as specified in the applicable development standards. All reports shall be certified by qualified professionals experienced in the applicable field of science.
☐ Brief statement covering the number of lots, proposed uses of lots, method of water supply and sewage disposal, approximate road length, total acreage, percentage of total acreage used for roads, lots, open space and other uses, and average lot size and number of lots per gross acre.
☐ Fees as specified in the Unified Fee Schedule.
(2) Map Data:
☐ Acceptable map size is 18" x 24" to 24" x 36".
☐ Seven map copies of map proposal.
☐ Date of revisions, if any.
☐ Name of owner.
☐ Name, address, and telephone number of the surveyor or consultant preparing the map proposal.
☐ Name of proposed binding site plan.
☐ Names or numbers of any adjacent divisions.
☐ General layout of proposed land division.
☐ Approximate locations of existing utilities, infrastructure, roads, drainage and rights of way within 300' of the boundary of the proposed land division.
☐ Vicinity map at a scale not less than 1" = 2000'.
☐ Common engineering scale (1" = 100' or larger), sheet numbers, and north arrow.
☐ Section, township, range, municipal and county lines in the vicinity.
☐ Location of monuments and fences located by any boundary survey and the date of the survey.
☐ General boundaries of the site with general dimensions shown, perimeter boundary marked with a bold line.
☐ Legal description of the land being subdivided.
☐ Proposed access (including proposed improvements to on-site and off-site roadways).
☐ Other proposed on-site or off-site utilities and facilities.
☐ The location and widths of all proposed roads, rights of way, and easements.
☐ When appropriate, location of natural features, including bodies of water, natural drainage areas, native vegetation, critical areas, and buffers.
☐ Location of buildings, and parking on-site or contiguous to the site.
General location of existing and proposed facilities including: sanitation, water service, easements, landscaping, common areas, phasing boundaries, and (for mobile home and RV parks) typical details of individual lease spaces.

Existing and proposed street names.

General plans of proposed water distribution systems, sewage disposal systems, and drainage systems. The plans shall include system location and sizes, sources of water supply, location and size of storage reservoirs, location of drainage outlet, and other major features and shall be certified by a professional engineer.

Layout of proposed alleys, walkways, bicycle paths, and parcels to be dedicated or reserved for school, park, playground, well site or other use.

Sequential numbers to all lots within binding site plan and identify proposed phases.

21.07.130 Additional information for preliminary binding site plans: Reserved.

Additional information is not required for vesting, but is required prior to county processing of the application.

Title report.

Written verification, as applicable, from agencies attesting to the availability of:

- Water supply.
- Sewage disposal.
- Fire protection service.
- Public school system.

Code compliance checklist for WCC Title 20 and this title, on a form provided by the county, including:

- Project area.
- Area in lots, square feet, and percentage of total.
- Zoning designation and zone density.
- Number of lots.
- Average lot size, area, and maximum lot size.
- Area of streets, area in right-of-way, and percentage of total.
- Area of parks, open space, and percentage of total.
- Area of impervious surface proposed.
- Soil types and classifications.
- Utility service types and name of provider.
- School and fire district.

Boundary survey, prepared and certified by a professional land surveyor.

Additional reports, as required, prepared by qualified professionals may include the following:

- Traffic study.
- Stormwater design report.
- Soils and/or geological report.
- Wetlands delineation and/or report.
Chapter 21.08

GENERAL AND SPECIFIC BINDING SITE PLANS

Sections:

21.08.010 Purpose.
21.08.020 Final approval of general and specific binding site plans.
21.08.030 Security.
21.08.040 Binding site plan vacation and alteration.
21.08.050 Requirements for a fully completed application for general binding site plans and specific binding site plans. Reserved.
21.08.060 Final original drawing submittal. Reserved.
21.08.070 Disclosures and notes.

21.08.010 Purpose.
The purpose of this chapter is to establish or reference the procedure and requirements for the application, review and approval of general and specific binding site plans. The procedure is intended to provide orderly and expeditious processing of such applications.

21.08.020 Final approval of general and specific binding site plans.
(1) An applicant requesting final approval of a general and/or specific binding site plan shall submit to the administrative official copies of the materials specified in WCC 21.08.050 the department's administrative manual. The request shall be accompanied by a statement from the county engineer that Whatcom County has accepted as complete all on-site and off-site improvements required by the conditions of preliminary binding site plan approval, or has received cost estimates and performance guarantees to assure completion thereof.

(2) The applicant shall submit a current title report issued no more than 60 days prior to the director signing the general or specific binding site plan original drawing. The owner of record and the surveyor of record shall sign the general or specific binding site plan original drawing prior to filing it for record with the county auditor.

(3) The general binding site plan that will be filed with the county auditor shall contain a statement of approval from the following:
(a) The county engineer as to the layout of streets, alleys, and other rights-of-way, and the design of bridges, drainage and surface water management facilities, and other physical improvements required by the conditions of preliminary binding site plan approval;

(b) The county treasurer stating that all taxes and delinquent assessments for which the property may be liable as of the date of certification have been duly paid, satisfied, or discharged;

(c) The county health and human services department as to the adequacy of potable water supply and sewage disposal; and

(d) The director stating that the general binding site plan conforms to all terms of the preliminary binding site plan approval, the requirements of Chapter 58.17 RCW and other applicable state laws, and meets the requirements of this title that were in effect at the time of vesting of the preliminary binding site plan application.

(4) Each specific binding site plan shall contain a statement of approval from the following:

(a) The county engineer as to the layout of streets, alleys, and other rights-of-way, and the design of bridges;

(b) The county treasurer stating that all taxes and delinquent assessments for which the property may be liable as of the date of certification have been duly paid, satisfied, or discharged;

(c) The county health and human services department as to the adequacy of potable water supply and sewage disposal; and

(d) The director stating that the specific binding site plan conforms to all terms of approval of the preliminary and general binding site plan, the requirements of Chapter 58.17 RCW and other applicable state laws, and meets the requirements of this title that were in effect at the time of vesting of the preliminary binding site plan application.

(5) General and specific binding site plans shall be approved, disapproved, or returned to the applicant with corrections within 30 days of submittal to the county, unless the applicant consents to an extension of such time period.

(6) The Whatcom County auditor shall not accept a binding site plan for filing until the approving authorities have approved it, as indicated on the instrument by the appropriate signature. The signature of the approving authorities shall not be affixed until the developer has posted the guarantees as stipulated in the appropriate standards.

(7) After approval, two original drawings of the general or specific binding site plan shall immediately be filed by the professional land surveyor of record with the
county auditor. After filing, the county auditor shall retain one original drawing and the county engineer shall retain one original drawing.

**21.08.030 Security.**
As an alternate to complete installation of required improvements, the **subdivider applicant** may elect to post securities, with the approval of the appropriate county authority, as set forth in the Whatcom County Development Standards guaranteeing completion of the work. No occupancy permit, final inspection, or use of the lot(s) created by a binding site plan shall be issued or allowed until all necessary infrastructure improvements as specified by this title have been met.

**21.08.040 Binding site plan vacation and alteration.**
The vacation and alteration of a binding site plan shall be processed in accordance with RCW 58.17.212 and 58.17.215, respectively, when the vacation or alteration involves a public dedication. Other vacations and alterations shall be approved by the hearing examiner, except for alterations to lot lines, which may be accomplished through the boundary line adjustment process.

**21.08.050 Requirements for a fully completed application for general binding site plans and specific binding site plans.**

**Reserved.**

(1) **Written and Other Data and Fees:**

- Name, address, and phone number of owner, applicant, and contact person.
- A separate map scaled at 1" = 400' for assignment of addresses. Addresses assigned by the county shall be shown on the original drawing prior to filing with the county auditor.
- Lot closures for the parcel being subdivided, each lot, and any dedicated right of way.
- Title report issued no more than 60 days old.
- Copies of covenants, conditions and restrictions.
- As-built drawings for road and drainage improvements.
- Any fees as specified in the Unified Fee Schedule.

(2) **Map Data:**

- General or specific binding site plan size is 18" x 24".
- Seven map copies from original drawings.
- Name of owner(s).
- Name of the binding site plan.
- Section, township, range, and municipal and county lines within the vicinity.
- Common engineering map bar scale (1" = 100' or larger), north arrow, legend, and sheet numbers.
- Perimeter of the binding site plan shall be depicted with heavier lines.
- File number of the preliminary binding site plan.
- Existing and proposed street names.
- Legal description of the land being divided.
- All lot and tract areas.
Vicinity map.
- Names and numbers of any adjacent subdivisions, short subdivisions, and binding site plans.
- Complete bearings, lineal dimensions, radii, ares, and central angle, of all lines and curves of any lot or boundary lines within the binding site plan.
- Location of all permanent control monuments found and established at the controlling corners of the parcel being divided and within the land division.
- Location of all monuments or other evidence used as ties to establish the land division boundaries and the basis of bearing.
- Type and location of monuments and the date set.
- Sequential numbers assigned to all lots (specific binding site plans only).
- Location and width of all easements shown as dashed lines, and a description of the purpose of the easement (including beneficiary).
- Location and description of all fence and building encroachments and other matters which, in the judgment of a professional land surveyor, give rise to alternate boundary locations resulting from occupational evidence or prescriptive rights.
- Location, width, geometry, centerline, and names of all roads within and adjoining the binding site plan.
- Identify and locate all stormwater facilities, areas set aside for stormwater management, utilities, permanent wells, and associated protective zones.
- Roads not dedicated to the public must be clearly marked.
- A reference to any covenants, conditions and restrictions.
- The statement required under RCW 58.17.040 (7)(e).
- Dedication and declaration signature block.
- Acknowledgement blocks.
- Surveyor’s certificate, signature block and seal.
- County engineer’s certificate.
- Director of planning and development services certificate.
- County health and human services department certificate.
- County treasurer’s certificate.
- County auditor’s certificate.
- Land surveyor notes.

21.08.060 Final original drawing submittal. Reserved.

Two original drawings.
- Two sets of covenants, conditions and restrictions.
- Maintenance bond for road and drainage improvements.

21.08.070 Disclosures and notes.
The following disclosures and notes, if applicable, shall be recorded in the county auditor’s office and a statement identifying the subject and the auditor’s file number for each such instrument shall be on the general binding site plan and each
specific binding site plan original drawing under surveyor’s notes prior to final approval by the county:

☐ Right to farm, right to practice forestry, mineral resource disclosures.
☐ Critical area notes.
☐ Boundary discrepancies.
☐ Protective covenants, conditions and restrictions.
☐ Drainage maintenance agreement block.
☐ Road maintenance agreement block (private roads only).
☐ Latecomers’ agreements.
☐ Significant pipeline in vicinity disclosure when the subject property is within 500 feet of a pipeline shown on Map 5-2, Chapter 5 of the Whatcom County Comprehensive Plan.

---

Chapter 21.09

SURVEYS AND DEDICATIONS Reserved

Sections:
21.09.010—Plats, short plats and binding site plans.
21.09.020—Survey data.
21.09.030—Area data.
21.09.040—Control monuments.
21.09.050—Road monuments.
21.09.060—Lot corners.
21.09.070—Waterfront.
21.09.090—Dedications.

21.09.010-Plats, short plats and binding site plans.
The survey and preparation of every final plat, short plat and general and specific binding site plan shall be made by or under the direct supervision of a Washington State professional land surveyor. All surveys shall conform to Chapters 18.43 and 58.09 RCW and Chapter 332-130 WAC.

21.09.020-Survey data.
The county engineer shall be furnished with a complete survey of the section or sections in which the land division is located, or as much thereof as may be necessary to properly orient the land division within the section or sections. The land division survey shall be submitted with complete field and computation notes showing the original or re-established corners with descriptions of same and the actual traverse showing error or closure and method of balancing. Accuracy standards shall conform to Chapters 18.43 and 58.09 RCW and Chapter 332-130.
WAC. A copy of the final short plat or plat shall be provided in an electronic format as required by the subdivision administrator.

21.09.030 Area data:
The surveyor shall provide data as to the area of each lot smaller than one acre to the nearest square foot, the area of each lot one acre or larger to the nearest one-hundredth of an acre, and the area of the entire subdivision, short subdivision, or general binding site plan to the nearest one-hundredth of an acre.

21.09.040 Control monuments:
(1) Permanent control monuments shall be established in accordance with Whatcom County Development Standards, and shall conform to RCW 58.17.240, and shall be placed at:

(a) All exterior corners on the boundaries of the original parcel being divided. For phased developments, monuments shall be placed at all intersections of the phase lines and the exterior boundary;

(b) The intersections of centerlines of rights-of-way within the land division;

(c) At the beginning and ends of curves on centerlines of rights-of-way.

(2) An alternative plan of intervisible monuments may be proposed by the surveyor subject to the approval of the county engineer.

21.09.050 Road monuments:
Permanent control monuments within the streets shall be set after the roads are constructed to final grade.

21.09.060 Lot corners:
Every lot corner shall be marked by a permanent marker as approved by the county engineer, except where extreme terrain necessitates establishment of a staking line.

21.09.070 Waterfront:
If any land in a subdivision, short subdivision, or binding site plan is contiguous to a body of water, a staking line shall be established along the shore at an appropriate distance back from the ordinary highwater mark. Property lying beyond the staking line shall be defined by distances along the side property lines extended from the staking line. If the thread of a stream lies within a subdivision or forms the boundary of a subdivision, such thread shall be defined by bearings and distances as it exists at the time of the survey.

21.09.080 Security:
The county engineer may permit the placing of permanent control monuments and lot corners after filing of the final plat, short plat or binding site plan, provided the applicant ensures that:
Chapter 21.10
Definitions

21.10.020 Definitions.
(24) "Party of record" means any person, agency or entity entitled to receive notice of application or decision under this title, or any person, agency or entity providing written comments on any application received under this title, or any person, agency or entity providing written comments on any application received under this title or notified local government of their desire to receive a copy of the final decision on a permit and who have provided an address for delivery of such notice by mail or email.
# WHATCOM COUNTY COUNCIL AGENDA BILL

<table>
<thead>
<tr>
<th>CLEARANCES</th>
<th>Initial</th>
<th>Date</th>
<th>Date Received in Council Office</th>
<th>Agenda Date</th>
<th>Assigned to:</th>
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<tbody>
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<td>SM</td>
<td>5/23/18</td>
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<td>Division Head:</td>
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<td>Dept. Head:</td>
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<td>Prosecutor:</td>
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</tbody>
</table>

### TITLE OF DOCUMENT:
Reappointments to the Northwest Senior Services Board

### ATTACHMENTS:
**NWRC Executive Director correspondence recommending the re-appointment of 3 current members**

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

County Executive Jack Louws requests confirmation of his reappointment of Georgiann Dustin, Shirley Forslof, and Joan Fortune to the Northwest Senior Services Board.

### COMMITTEE ACTION:

### COUNCIL ACTION:

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

Please Note: Once adopted and signed, ordinances and resolutions are available for viewing and printing on the County's website at: www.co.whatcom.wa.us/council.
To: Whatcom County Council
From: Dan Murphy, Executive Director
Re: Northwest Senior Services Board
Date: May 22, 2018

Background
Currently, Whatcom County has two vacant slots on the Northwest Senior Services Board (NWSSB) and we are eager to fill these openings.

Recommendations
On June 30, 2018 the terms for Georgiann Dustin, Shirley Forslof, and Joan Fortune are set to expire. However, each of these three individuals have not only provided exemplary service to the NWSSB, but they have each expressed an interest in remaining active on our advisory council. NWSSB members would welcome their continued participation and appointment to the NWSSB.

If approved by the Whatcom County Council, these three appointments will run through June 30, 2021.

If I can provide you any additional information, please do not hesitate to contact me.
**WHATCOM COUNTY COUNCIL AGENDA BILL**

**CLEARANCES**

<table>
<thead>
<tr>
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<tr>
<td>SM</td>
<td>5/23/18</td>
<td></td>
<td>June 5, 2018</td>
<td>Council</td>
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</table>

**EXECUTIVE:**

5/29/18

**TITLE OF DOCUMENT:** Appointment to the Whatcom County Development Standards Technical Advisory Committee.

**ATTACHMENTS:** Application for appointment.

**SEPA review required?**

( ) Yes  ( X ) NO

**SEPA review completed?**

( ) Yes  ( X ) NO

Should Clerk schedule a hearing?  

( ) Yes  ( X ) NO

Requested Date:

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

County Executive Jack Louws requests confirmation of his appointment of Collin Van Slyke to the Development Standards Technical Advisory Committee (TAC).

**COMMITTEE ACTION:**

**COUNCIL ACTION:**

**Related County Contract #:**  

**Related File Numbers:**

**Ordinance or Resolution Number:**

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

Public Statement

THIS IS A PUBLIC DOCUMENT: As a candidate for a public board or commission, the information provided will be available to the County Council, County Executive, and the public. All board and commission members are expected to be fair, impartial, and respectful of the public, County staff, and each other. Failure to abide by these expectations may result in revocation of appointment and removal from the appointive position.

<table>
<thead>
<tr>
<th>First Name</th>
<th>Collin</th>
</tr>
</thead>
<tbody>
<tr>
<td>Last Name</td>
<td>Van Slyke</td>
</tr>
<tr>
<td>Date</td>
<td>5/15/2018</td>
</tr>
<tr>
<td>Street Address</td>
<td>3020 Elm St</td>
</tr>
<tr>
<td>City</td>
<td>Bellingham</td>
</tr>
<tr>
<td>Zip</td>
<td>98225</td>
</tr>
<tr>
<td>Do you live in &amp; are you registered to vote in Whatcom County?</td>
<td>Yes</td>
</tr>
<tr>
<td>Do you have a different mailing address?</td>
<td>Field not completed.</td>
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<tr>
<td>Primary Telephone</td>
<td>4254661299</td>
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<tr>
<td>Secondary Telephone</td>
<td>Field not completed.</td>
</tr>
<tr>
<td>Email Address</td>
<td><a href="mailto:collin@nweclological.com">collin@nweclological.com</a></td>
</tr>
</tbody>
</table>

Development Standards Technical Advisory Committee

Lay Member (At Large)

1. Name of Board or Committee

Development Standards Technical 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 2

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, professional and/or community activities, and education Since 2014, I have worked for Northwest Ecological Services, LLC as an ecologist specializing in wetlands, streams, and other critical areas. I regularly work with engineers, surveyors, and land use consultants in the planning, permitting, and implementation of development projects throughout Whatcom County. I am well versed in the regulations of the Whatcom County Critical Areas Ordinance and how they apply to development projects. I obtained a BS in Environmental Science from WWU in 2014. I am a member of the Society of Wetland Scientists and the Society of Ecological Restoration.

10. Please describe why you’re interested in serving on this board or commission As a working professional in Whatcom County, I am regularly involved in the planning and environmental permitting of development throughout the area. I am passionate about long-term, responsible development planning throughout the County and I desire to share my knowledge of how regulated critical areas may relate to proposed projects.

References (please include daytime telephone number):

Elizabeth Binney 360.671.2317 Vikki Jackson 360.319.6988 Michele Bodtke 360.720.4155

Signature of applicant: Collin Van Slyke

Place Signed / Submitted: Bellingham, WA
professional experience

Wetland Delineations
Experience with field reconnaissance, delineations, WDOE ratings, functional assessments

Stream / Shoreline Delineations
Knowledgeable with reconnaissance, delineations, OHWM determinations, habitat assessments

Mitigation
Successfully completed wetland and buffer mitigation designs

Environmental Permitting
Experience preparing applications for local, state, and federal environmental permits including CWA 404/401 Nationwide and Individual permits Local Critical Areas Ordinance permits

Mitigation Monitoring
Diverse experience monitoring project success, performance standards, developing contingency plans, and providing contractor coordination

education

Bachelors of Science in Environmental Science
Huxley College of the Environment Western Washington University, June 2014

certifications & continuing education

Wetland Professional in Training
Society of Wetland Scientists

Basic Wetland Delineation
Western Washington University, 2014

WA Coastal Training Program, 2014

Determining the OHWM
WA Coastal Training Program, 2016

Administering Shoreline Development Permits
WA Coastal Training Program, 2018

associations

Society of Wetland Scientists
Society of Ecological Restoration

relevant employment

Northwest Ecological Services
consulting ecologist, 2014 to present
Bellingham, WA

Public Works- Snohomish County
surface water intern, 2013
Everett, WA

Washington State Parks
park aide, 2012
Bellingham, WA
### WHATCOM COUNTY COUNCIL AGENDA BILL

**NO.** 2018-178

<table>
<thead>
<tr>
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<td>5/29/18</td>
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</table>

**TITLE OF DOCUMENT:** 2018 Supplemental Budget Request #8

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

<table>
<thead>
<tr>
<th>SEPA review required?</th>
<th>( ) Yes</th>
<th>( X ) NO</th>
<th>Should Clerk schedule a hearing?</th>
<th>( ) Yes</th>
<th>( X ) NO</th>
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<tbody>
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<td>SEPA review completed?</td>
<td>( ) Yes</td>
<td>( X ) NO</td>
<td>Requested Date:</td>
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<td></td>
</tr>
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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 #8 requests funding from the General Fund:**

1. To appropriate $5,000 in Sheriff to fund recreational boating safety program from grant proceeds.
2. To appropriate $33,642 in Auditor to fund splitting a Clerk III position in Elections with the Recording Division in the General Fund.

**From the Whatcom County Jail Fund:**

3. To appropriate $6,000 to fund kitchen ice machine replacement.

### COMMITTEE ACTION:

### COUNCIL ACTION:

<table>
<thead>
<tr>
<th>Related County Contract #:</th>
<th>Related File Numbers:</th>
<th>Ordinance or Resolution Number:</th>
</tr>
</thead>
<tbody>
<tr>
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</tbody>
</table>
PROPOSED BY: Executive
INTRODUCTION DATE: 06/05/18

ORDINANCE NO.
AMENDMENT NO. 8 OF THE 2018 BUDGET

WHEREAS, the 2017-2018 budget was adopted December 6, 2016; and,
WHEREAS, changing circumstances require modifications to the approved 2017-2018 budget; and,
WHEREAS, the modifications to the budget have been assembled here for deliberation by the Whatcom County Council,

NOW, THEREFORE, BE IT ORDAINED by the Whatcom County Council that the 2017-2018 Whatcom County Budget Ordinance #2016-068 is hereby amended by adding the following additional amounts to the 2018 budget included therein:

<table>
<thead>
<tr>
<th>Fund</th>
<th>Expenditures</th>
<th>Revenues</th>
<th>Net Effect</th>
</tr>
</thead>
<tbody>
<tr>
<td>General Fund</td>
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<td></td>
<td></td>
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<tr>
<td>Sheriff</td>
<td>5,000</td>
<td>(5,000)</td>
<td>-</td>
</tr>
<tr>
<td>Auditor</td>
<td>33,642</td>
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<td>33,642</td>
</tr>
<tr>
<td>Total General Fund</td>
<td>38,642</td>
<td>(5,000)</td>
<td>33,642</td>
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<tr>
<td>Whatcom County Jail Fund</td>
<td>6,000</td>
<td></td>
<td>6,000</td>
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<tr>
<td>Total Supplemental</td>
<td>44,642</td>
<td>(5,000)</td>
<td>39,642</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 changes:

- Transfer .5 FTE Clerk III position from Election Reserve Fund to General Fund in Auditor

ADOPTED this ___ day of ____________________, 2018.

WHATCOM COUNTY COUNCIL
WHATCOM COUNTY, WASHINGTON

ATTEST:

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

APPROVED AS TO FORM:

( ) Approved    ( ) Denied

Jack Louws, County Executive
Date: ________________
<table>
<thead>
<tr>
<th>Department/Fund</th>
<th>Description</th>
<th>Increased (Decreased) Expenditure</th>
<th>(Increased) Decreased Revenue</th>
<th>Net Effect to Fund Balance (Increase) Decrease</th>
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<tbody>
<tr>
<td>Sheriff</td>
<td>To fund recreational boating safety program from grant proceeds.</td>
<td>5,000</td>
<td>(5,000)</td>
<td>-</td>
</tr>
<tr>
<td>Auditor</td>
<td>To fund position split between Elections and Recording divisions.</td>
<td>33,642</td>
<td>-</td>
<td>33,642</td>
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<tr>
<td>Total General Fund</td>
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<td>38,642</td>
<td>(5,000)</td>
<td>33,642</td>
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<tr>
<td>Whatcom County Jail Fund</td>
<td>To fund kitchen ice machine replacement.</td>
<td>6,000</td>
<td>-</td>
<td>6,000</td>
</tr>
<tr>
<td>Total Supplemental</td>
<td></td>
<td>44,642</td>
<td>(5,000)</td>
<td>39,642</td>
</tr>
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</table>
MEMORANDUM

TO:       Jack Louws, County Executive
FROM:     Sheriff Bill Elfo
DATE:     May 22, 2018
SUBJECT:  Supplemental Budget ID# 2605
Recreational Boating Safety Grant Increase 2018

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

Background and Purpose
The Sheriff’s Office received a Recreational Boating Safety Grant Award of $16,810.69 from Washington State Parks and Recreation Commission to conduct on the water patrols during the peak boating period from March 1 through September 30, 2018 (Whatcom County Contract #201803008).

In a letter dated May 15, 2018, the Washington State Parks and Recreation Commission awarded an additional $5,000 to the Sheriff’s Office in recognition of our long term support of the Recreational Boating Safety (RBS) Program and for providing State Parks RBS program instructors to conduct basic and advanced marine law enforcement training.

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

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

Thank you.
Supplemental Budget Request

Sheriff Operations

<table>
<thead>
<tr>
<th>Fund 1</th>
<th>Cost Center 1003512006</th>
<th>Originator: Dawn Pierce</th>
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</thead>
<tbody>
<tr>
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Expenditure Type: One-Time Year 2 2018 Add’l FTE ☐ Add’l Space ☐ Priority 1

Name of Request: Recreational Boating Safety Grant Increase 2018

[Signature]

Department Head Signature (Required on Hard Copy Submission)

Date: 5/23/18

<table>
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<tr>
<th>Costs:</th>
<th>Object</th>
<th>Object Description</th>
<th>Amount Requested</th>
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<td>4333.8701</td>
<td>Boating Safety</td>
<td>($5,000)</td>
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<tr>
<td>6140</td>
<td>Overtime</td>
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<td>Social Security</td>
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<td>6259</td>
<td>Worker’s Comp-Interfund</td>
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<tr>
<td>6269</td>
<td>Unemployment-Interfund</td>
<td>$6</td>
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</table>

Request Total: $0

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

1b. Primary customers:
Whatcom County citizens and visitors

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

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

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

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

4b. Measures:
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:
To: Whatcom County Sheriff William Elfo

From: Washington State Parks Boating Program, Boating Law Administrator

Subject: Grant Increase for Instructor Support

Date: May 15th, 2018

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

Your agency for providing instructor(s) to the State Parks RBS program will be immediately awarded an additional $5000.00 to your Federal Financial Assistance Grant. Your current grant amount of $16,810.69 is increased to $21,810.69 upon receipt of this notification. As State Parks has grown the number and types of boating courses offered it has required much more support and participation from your personnel and your agency.

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

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

To: Jack Louws, County Executive

From: Diana Bradrick, Chief Deputy Auditor

Date: May 16, 2018

Re: Supplemental Budget Request

We are requesting a supplemental appropriation in order to split an existing FTE currently funded 100% in the Elections budget 50% in Elections and 50% in Recording. With efficiencies gained through new technology and improved workflow within Elections, we have a reduced need for staff during periods we don’t have an active election. At the same time, we have an increase in the workload within Recording due to a number of historical records projects and daily work that is slowly increasing – work that requires fully trained staff. This split will allow us to utilize staff within the Auditor’s office in a more efficient and cost-effective manner, and to correctly reflect and budget where staffing is being utilized.

We are, therefore, requesting $33,642 from the general fund for a .5 FTE in Recording. This will be offset by a reduction in general fund monies required to fund Elections.

If you have any questions, please feel free to contact me.

Encl.
1a. Description of request:

This is a request to take a position currently funded 100% out of the Elections budget and split it 50% Elections 50% Recording.

1b. Primary customers:

Customers served by the recording division for recording documents, researching the recorded document repository, or applying for a marriage license, and citizens who are voters, or potential voters in Whatcom County.

2. Problem to be solved:

Increased efficiencies through technology and improved workflow within the elections division has reduced the need for staffing during periods between active elections. At the same time, with reduced staffing within the recording division, a gradual increase in recorded documents, and major projects to get all of our records available and indexed on-line to reduce reliance on outdated microfilm the recording division needs additional help from fully trained staff. This requested FTE split allows more efficient use of staffing within the Auditors office to allow us to utilize staff resources where they are needed.

3a. Options / Advantages:

We have been using elections staff to help with the historical records indexing during down times requiring monitoring of hours used and budget adjustments to correctly account for the salaries. They also often assist at the front counter when Recording is short staffed.

The proposed option allows us to correctly reflect and budget where the staffing is being utilized.

3b. Cost savings:

There are no cost savings. This adds a .5 FTE to the general fund for Recording, but will reduce the general fund monies required to fund Elections.

4a. Outcomes:

Staff appropriately funded and accounted for in the correct division.

4b. Measures:

Completion of funding, and vacant position hired to work 50% Elections, 50% Recording.

Wednesday, May 16, 2018
Supplemental Budget Request

Auditor

Suppl ID # 2604  Fund 1  Cost Center 540  Originator: Diana Bradrick

5a. Other Departments/Agencies:
No.

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

6. Funding Source:
This will be funded by the General Fund but will allow for a corresponding decrease in the General Fund subsidy transfer to the Election Reserve Fund in the future.
Supplemental Budget Request

Jail

Supp'l ID # 2600 Fund 118 Cost Center 118150 Originator: Wendy Jones

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

Name of Request: Kitchen Ice Machine

X

Department Head Signature (Required on Hard Copy Submission) Date: 5/21/18

---

Costs:

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

1a. Description of request:

This Supplemental Budget request is for the funding to replace the Downtown Jail kitchen's ice machine. The kitchen uses the ice in meal preparation and cooling on a daily basis.

1b. Primary customers:

2. Problem to be solved:

We have been informed by County Maintenance that the ice machine in the Downtown Jail kitchen has a major part that has failed and they are unable to find anyone who can repair it. The current machine is about 20 years old and has an older technology that uses water to cool the mechanical part of the machine. The part that has failed governs the amount of water needed to circulate through the mechanical cooling system. As a result, the machine is drawing almost 1400 gallons of fresh water a day to cool the machine and almost immediately dumping it into the sewer system. The machine that will be replacing the current one will be cooled by air, not water, thus eliminating this issue. If we do not replace it, we will continue drawing and wasting a significant amount of water. Facilities has obtained cost estimates for the replacement.

3a. Options / Advantages:

3b. Cost savings:

4a. Outcomes:

4b. Measures:

5a. Other Departments/Agencies:

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

6. Funding Source:

Jail Sales Tax fund.

Thursday, May 17, 2018
WHATCOM COUNTY COUNCIL AGENDA BILL

CLEARANCES
Originator:  
Division Head:  
Dept. Head:  
Prosecutor:  
Purchasing/Budget:  
Executive:  

Date Received in Council Office: 5/24/18

Agenda Date: 06/05/18
Assigned to: Introduction
06/19/18
Finance, Council

TITLE OF DOCUMENT:
Amendment No. 1 to Ordinance No. 2017-046 Establishing the Triage Center Expansion Fund and Establishing a Project Based Budget for the Triage Center Expansion Project

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

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

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

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

Requesting Council approval for additional budget authority of $1,000,000 to be added to the project budget for Fund 374 – Triage Center Expansion Fund. Budget will be used to fund A&E services.

COMMITTEE ACTION:

COUNCIL ACTION:

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

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

AMENDMENT NO. 1 TO ORDINANCE NO. 2017-046 ESTABLISHING THE TRIAGE CENTER EXPANSION FUND AND ESTABLISHING A PROJECT BASED BUDGET FOR THE TRIAGE CENTER EXPANSION PROJECT

WHEREAS, Ordinance No. 2017-046 established the project budget for the Triage Center Expansion Fund; and

WHEREAS, initial funding was used for preliminary plan design and public outreach efforts to present options for either an expansion of the existing facility or a new stand-alone facility, and

WHEREAS, the Council voted in favor of a new stand-alone facility; and

WHEREAS, the next step in the process is to contract for A&E services for construction documents, contract administration, sub-consultant contracts, and other preliminary work necessary for the construction of the facility, and

WHEREAS, continued funding for this project is available from the existing North Sound Behavioral Health Organization grant,

NOW, THEREFORE, BE IT ORDEIGNED by the Whatcom County Council that Ordinance 2017-046 is hereby amended by adding $1,000,000 of expenditure authority, as described in Exhibit A, to the original project budget of $300,000, for a total amended project budget of $1,300,000.

ADOPTED this ___ day of __________________, 2018.

ATTEST: WHATCOM COUNTY COUNCIL
Dana Brown-Davis, Council Clerk WHATCOM COUNTY, WASHINGTON
Rud Browne, Chair of the Council

APPROVED AS TO FORM:
Jack Louws, County Executive
Date: ________________________

( ) Approved ( ) Denied
## EXHIBIT A

**TRIAGE CENTER EXPANSION PROJECT - 374**

<table>
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<tr>
<th>Account</th>
<th>Description</th>
<th>Original Project Budget</th>
<th>Amendment #1 to Ord. 2014-078</th>
<th>Total Amended Project Budget</th>
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<td>Expenditures</td>
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<td>$2,500,000</td>
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MEMO TO: Jack Louws, County Executive

FROM: Rob Ney, Project and Operations Manager

DATE: May 24, 2018

RE: Supplemental Budget Request – Triage Facility Project Based Budget Funds for Architectural and Engineering Services

Requested Action

Please allow this memo to serve as a request for approval of the accompanying Budget Supplemental for spending authority for Architectural and Engineering design services for the proposed Crisis Triage Center expansion. This supplemental request will provide adequate spending authority to execute a contract with Ron Wright and Associates for these services, and allow next steps of architectural/engineering services to occur related to construction on the site.

Background and Purpose

The project based budget for this project was established in September of 2017 and established the funding provided by the North Sound Behavioral Health Organization of $2.5 million. At that time, there was adequate spending authority to begin Phase I of the Triage Center project, which included preliminary plan design and public outreach efforts. This allowed the County to hire Ron Wright and Associates to do conceptual design for preliminary feasibility of the triage facility expansion and conduct a successful public meeting on March 6, 2018.

On March 27, 2018, Deputy Executive Schroeder presented the findings from our consultant group for the expansion of the Crisis Triage Center proposed in the Iron Gate area. The two options were, 1) Expand the existing building to accommodate the program expansion, or 2) build a new stand-alone facility on the same site to accommodate the
expansion. The Council voted 6-0 in favor of Option 2 to build a new stand-alone facility on the existing Division Street site and requested the Administration to develop the next phase of Architectural/Engineering services needed to accomplish the project.

The next step in this process is to contract with Ron Wright and Associates, our design team, for construction documents, contract administration, sub-consultant contracts, and other preliminary work necessary for the construction of this facility. Staff is requesting the Council provide budget and spending authority up to the $2,500,000 from North Sound Behavioral Health Organization. It is anticipated that the next contract with Ron Wright and Associates, for the services discussed above, will be approximately $920,000.

**Funding Amount and Source**

North Sound Behavioral Health Organization has provided the County a $2,500,000 grant for this facility, and the County has executed an Interlocal Agreement to accept and utilize these funds for the Crisis Triage Facility expansion.

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

Status: Pending

Administrative Services
Suppl ID #: 2566
Fund 374
Cost Center 374100

Facilities Management

Originator: Rob Ney

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

Name of Request: Triage Facility A&E Services

X

Department Head Signature (Required on Hard Copy Submission) Date

<table>
<thead>
<tr>
<th>Costs:</th>
<th>Object</th>
<th>Object Description</th>
<th>Amount Requested</th>
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<tbody>
<tr>
<td>6630</td>
<td>Professional Services</td>
<td>$1,000,000</td>
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Request Total $1,000,000

1a. Description of request:
Architectural and Engineering Design Services, and utility fees associated with the Crisis Triage Center Expansion.

1b. Primary customers:
Health Department and customers and patrons of the Crisis Triage Center

2. Problem to be solved:
The need for mental health and substance abuse services is significantly increasing and the County desires to have facilities with sufficient capacity to handle this increased need.

3a. Options / Advantages:
The County explored several options, expanding the existing facility and building a new stand-alone facility. Both options were present to the Council, the Council directed staff to proceed with the stand-alone option.

3b. Cost savings:
The two options had essentially the same price for construction, however, there was a substantial time savings with new construction.

4a. Outcomes:
It is anticipated that the new facility will be under construction in the first quarter of 2019, and substantial completion is approximately 7-9 months later.

4b. Measures:
It is believed that the Health Department has statistics for this type of service upon request.

5a. Other Departments/Agencies:
none

5b. Name the person in charge of implementation and what they are responsible for:
Health Department and Facilities will implement this effort.

6. Funding Source:
North Sound Behavioral Health Grant.
May 22, 2018

Robert Ney  
Whatcom County Facilities Management  
316 Lottie Street  
Bellingham, WA 98225

Re:   Fee Proposal and Agreement  
Architectural Consulting Services – Whatcom Triage Center

Dear Rob,

This letter constitutes our Proposal for providing Architectural Design Services for the proposed Whatcom Triage Center adjacent to the Whatcom County Jail Work Center, located at 2030 Division St., Bellingham WA 98226.

Background

Our office completed feasibility work regarding the renovation and expansion of the facility in 2010. An updated feasibility study has recently been completed, establishing the program requirements and scope of work.

The conceptual design includes both a mental health and a detox unit, each to be licensed as Residential Treatment Facilities. Both facilities are intended to be designed as involuntary facilities. The design also includes a commercial kitchen, and office spaces. The Estimate of Probable Construction costs, based upon the selected conceptual design, is $7,576,876.

Scope of Services

The scope of services shall be for the complete design of the project, schematic design through occupancy of the facility.

The services to be provided, and fees for the services, are based upon the Washington State Guidelines for Determining Architect/Engineer Fees for Public Works Building Projects. The scope of services shall be per the referenced Guidelines, except for the project phasing. The Design Development and Construction Documents phases shall be combined.
Project Timeline

The scope of work for the services identified is to be completed per the attached Project Schedule.

Proposed Fee and Agreement

The Agreement shall be the standard Whatcom County agreement, with applicable amendments.

The proposed fee is based upon the Washington State Guidelines for Determining Architect/Engineer Fees for Public Works Building Projects. Using Exhibit A of the Guidelines, the fee percentage is 9.69% of the MACC. The MACC is $7,576,876. With additional consultant services, and a cost reduction for combining the Design Development and Construction Administration Phases, the proposed fee is $917,006, per the attached fee calculation summary.

Sincerely,

Ron Wright, AIA LEED™
Principal

Attachments: Fee Calculation Summary
Project Budget Worksheet
Estimate of Probable Construction Costs
Project Schedule
Conceptual Design Drawings
Washington State Guidelines for Determining Architect/Engineer Fees for Public Works Building Projects
Whatcom Triage Center
Base Fee Calculation Summary

CONSTRUCTION
Construction Budget MACC $7,576,876

State Fee Schedule Calculation
Schedule A 9.69% $734,006

Phase Breakdown for Fee
Schematic Design 13% $95,420.84
Combined DD/Construction Documents 45% $330,302.91
Bidding and Contract Phase 10% $73,400.65
Construction Phase 30% $220,201.94
Construction Close Out Phase 2% $14,680.13
100% Total $734,006

Fee Adjustments
Consolidation of DD/CD Phases ($50,000)
Civil/Landscaping/Survey $65,000
Commissioning Consultant $25,000
LEED Consultant $85,000
Kitchen Consultant $30,000
Security/Communications $15,000
DOH/ CRS Licensing Approval $8,500
Consultant Reimbursables $4,500
Total Fee $917,006

Notes:
1. The base fee is determined using the Guidelines for Determining Architect/Engineer Fees for Public Works Projects. The scope of work is modified to combine the Design Development and Construction Document Phases into a single combined phase.
2. The base fee is determined based upon the percentage of the estimated cost for construction, which has been established as $7,576,876. Using Fee Schedule A, the fee percentage is 9.69%.
3. Civil Engineering and Landscape Design are not basic services under the Guidelines. These services are identified as separate fee adjustments.
4. Kitchen consultant services, security and communications, and DOH/CRS licensing coordination are separate from the base fee.
5. Services required for the LEED Certification process, including commissioning, are separate from the base fee.
6. The Basic Fee includes the following:
   A. The cost of copies and printing of documents used by the architect to perform normal services, the cost for a reasonable amount of documents used for Owner review and approval, and the cost for all documents required to obtain the building permit for the project. (The cost of printing and distribution of documents for bidding and construction use is not included in the Basic Fee.)
   B. All mileage costs associated with travel between the architect’s office and the project site (85 miles).
   C. The cost of postage and handling of submittals, correspondence, etc.
   D. The cost of consultants hired at the architect’s option to perform the Basic Services required by the contract, including structural, mechanical, and electrical engineering services.

7. The fee calculation, in accordance with the fee schedule, is as follows:

\[
90/(625+(MACC/(5357/2418)))^0.38)\]
MACC $7,576,876
9.69% Schedule A

453
**Whatcom County Crisis Triage Center**  
**PROJECT BUDGET WORKSHEET**  
*Ron Wright and Associates / Architects, P.S.*  
*5/22/18*

### SITE AND BUILDING CONSTRUCTION COSTS

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<th>$308/ft.</th>
<th>$7,576,876</th>
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<tbody>
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### PERMITS, FEES, TAXES, INSURANCE, BONDS

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<td>Building/Use Permits</td>
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<td>Misc utility installation charges</td>
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<td>Newcomer Development Charges</td>
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<tr>
<td>Geotechnical &amp; Misc. Reports</td>
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<td>Inspection /Testing</td>
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<td>Commissioning Consultant</td>
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### EQUIPMENT/FURNISHINGS

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<td>Communications System</td>
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<td>Security System</td>
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<td>Misc Equip (appliances, etc.)</td>
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<td>Furniture</td>
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<td><strong>Subtotal</strong></td>
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### INFLATION/CONTINGENCY

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<tr>
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<th>Percentage</th>
<th>Cost</th>
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<tr>
<td>Owners Project Contingency</td>
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### TOTAL ESTIMATED PROJECT COSTS

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<tbody>
<tr>
<td><strong>Total Estimated Project Costs</strong></td>
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## Whatcom County Triage Center

Estimate of Probable Construction Costs

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**WHATCOM COUNTY COUNCIL AGENDA BILL**

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<th>CLEARANCES</th>
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**TITLE OF DOCUMENT:**
AN ORDINANCE AUTHORIZING AN INTERFUND LOAN TO CONTINUE FINANCING OF CENTRAL PLAZA BUILDING

**ATTACHMENTS:**
Proposed Ordinance
Memo

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

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

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

This ordinance authorizes a $546,714 loan at 2% from the Whatcom County Equipment Rental and Revolving Fund (ER&R) to the General Fund. The loan continues financing of the Central Plaza Building from ER&R for an additional three years.

---

**COMMITTEE ACTION:**

**COUNCIL ACTION:**

**Related County Contract #:**

**Related File Numbers:**

**Ordinance or Resolution Number:**

**Please Note:** Once adopted and signed, ordinances and resolutions are available for viewing and printing on the County's website at: www.co.whatcom.wa.us/council.
ORDINANCE NO.
AN ORDINANCE AUTHORIZING AN INTERFUND LOAN
TO CONTINUE FINANCING OF CENTRAL PLAZA BUILDING

WHEREAS, Whatcom County purchased the Central Plaza Building, 215 North Commercial Street, Bellingham, Washington in 2009; and

WHEREAS, the Whatcom County Council authorized an interfund loan from the Whatcom County Equipment Rental and Replacement Fund (ER&R Fund) to finance the purchase with ordinance 2009-049; and

WHEREAS, the renewed interfund loan becomes due July 1, 2018; and

WHEREAS, the ER&R Fund has sufficient cash reserves to extend the loan through July 1, 2021; and

WHEREAS, Whatcom County’s average rate of return on investments in the first quarter of 2018 was 1.29%; and

WHEREAS, the balance of the interfund loan on July 1, 2018 will be $546,714, and

WHEREAS, on an interim basis, it is in the best interest of Whatcom County to continue to finance the Central Plaza debt utilizing an interfund loan from the ER&R Fund.

NOW, THEREFORE, BE IT ORDAINED by the Whatcom County Council that a loan shall be made from the ER&R Fund (fund #501) to the General Fund (fund #001) in the amount of $546,714 at a rate of 2% annual interest. Payments of $124,000 including interest and principal shall be made annually on July 1st. Repayment in full shall be on or before July 1, 2021.

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

Karen Frakes, Civil Deputy

Jack Louws, Executive
MEMORANDUM

TO: Jack Louws, County Executive
FROM: Brad Bennett, Finance Manager
DATE: May 24, 2018

SUBJECT: Interfund Loan Ordinance to Continue Financing of Central Plaza Building

Attached is a proposed interfund loan ordinance that will continue Equipment Rental and Revolving Fund financing of the Central Plaza Building for an additional three years. The original three year interfund loan was authorized with ordinance 2009-49. The proposed ordinance provides for a $546,714 loan at 2% interest. The maturing loan has been earning interest at 1%; our county investments are earning 1.29% interest. Annual payments of $124,000 including interest and principal will be made from the REET I Fund.

Thank you.