CLERK OF THE COUNCIL
Dana Brown-Davis, C.M.C.

COUNTY COURTHOUSE
311 Grand Avenue, Suite #105
Bellingham, WA 98225-4038
(360) 778-5010

COUNCILMEMBERS
Rud Browne
Barry Buchanan
Tyler Byrd
Todd Donovan
Ben Elenbaas
Carol Frazey
Kathy Kershner

WHATCOM COUNTY COUNCIL

COMBINED AGENDA PACKET FOR OCTOBER 27, 2020

INCLUDES INFORMATION FOR THE FOLLOWING MEETINGS:

8:45 A.M. - COMMITTEE OF THE WHOLE – EXECUTIVE SESSION
(ENDS NO LATER THAN 9:15 A.M.)

9:25 A.M. - NATURAL RESOURCES COMMITTEE
(ENDS NO LATER THAN 10:25 A.M.)

10: 35 A.M. - FINANCE AND ADMINISTRATIVE SERVICES COMMITTEE
(MAY BEGIN EARLY; ENDS NO LATER THAN 12:15 P.M.)

1 P.M. - PUBLIC WORKS AND HEALTH COMMITTEE
(ENDS NO LATER THAN 2 P.M.)

2:10 P.M. - PLANNING AND DEVELOPMENT COMMITTEE
(MAY BEGIN EARLY; ENDS NO LATER THAN 3 P.M.)

3:10 P.M. - COMMITTEE OF THE WHOLE
(MAY BEGIN EARLY; ENDS NO LATER THAN 5 P.M.)

COUNCIL (6 P.M.)

PARTICIPATE IN VIRTUAL COUNCIL MEETINGS

THE COUNCIL IS CURRENTLY HOLDING ALL MEETINGS REMOTELY

VIEW MEETING SCHEDULES, AGENDAS, MINUTES, VIDEOS, AND ARCHIVES AT
WWW.WHATCOM.LEGISTAR.COM

FOR INSTRUCTIONS ON HOW TO WATCH OR PARTICIPATE IN COMMITTEE AND COUNCIL MEETINGS, PLEASE VISIT
WWW.WHATCOMCOUNTY.US/3415/PARTICIPATE-IN-VIRTUAL-COUNCIL-MEETINGS
OR CONTACT THE COUNCIL OFFICE AT 360.778.5010

COMMITTEE AGENDAS

COMMITTEE OF THE WHOLE – EXECUTIVE SESSION
8:45 a.m. TUESDAY, October 27, 2020 (ENDS NO LATER THAN 9:15 A.M.)
Virtual Meeting

Call To Order

Roll Call

Committee Discussion

1. AB2020-440 Discussion of pending litigation with Civil Deputy Prosecutor Brandon Waldron: proposed resolution of investigation of WCSO & WC Jail for alleged violations of Title II of the ADA; No. USAO #2019v00360, DJ #204-82-312 [Discussion of this item may take place in executive session (closed to the public) pursuant to RCW 42.30.110(1)(i)(i-ii)]
Page 1

Items Added by Revision

Other Business

Adjournment

NATURAL RESOURCES COMMITTEE
9:25 a.m. TUESDAY, October 27, 2020 (ENDS NO LATER THAN 10:25 A.M.)
Virtual Meeting

Call To Order

Roll Call

Special Presentation

1. AB2020-453 Presentation of the County Executive's Proposed Comprehensive Water Settlement Process
Page 2

Items Added by Revision

Other Business

Adjournment

FINANCE AND ADMINISTRATIVE SERVICES COMMITTEE
10:35 a.m. TUESDAY, October 27, 2020 (MAY BEGIN EARLY / ENDS NO LATER THAN 12:15 P.M.)
Virtual Meeting

Call To Order

Roll Call

Committee Discussion

1. AB2020-468 Discussion of utilizing Cares Act funding to assist Whatcom County Water Districts
Page 3

Committee Discussion and Recommendation to Council

1. AB2020-430 Ordinance amending the project budget for the Birch Bay Drive and Pedestrian Facility Project Fund, Request No. 6, in the amount of $841,786
Pages 4 - 9

2. AB2020-433 Ordinance amending the 2020 Whatcom County Budget, request no. 19, in the amount of $7,904,575
Pages 10 - 26

3. AB2020-442 Request authorization for the County Executive to enter into a contract between Whatcom County and Geneva Consulting Services for coordination of the Whatcom Lead Integrating Organization, in the amount of $79,615.00 (Council acting as the Whatcom County Flood Control District Board of Supervisors)
Pages 27 - 54

4. AB2020-444 Request authorization for the County Executive to enter into an Interlocal Agreement with the US Department of Interior Geological Survey Joint Funding Agreement for Stream Gaging (Council acting as the Whatcom County Flood Control Zone District Board of Supervisors)
Pages 55 - 61

Council "Consent Agenda" Items

1. AB2020-408 Request authorization for the County Executive to enter into a contract amendment between Whatcom County and SeaMar Community Health Centers in the amount of $470,793 for a total amended contract amount of $759,571
Pages 62 - 113

2. AB2020-436 Request authorization for the County Executive to enter into an interlocal agreement between Whatcom County and the Blaine Birch Bay Park & Recreation District No. 2 for use of the gymnasium at Bay Horizon Park
Pages 114 - 125

3. AB2020-441 Request authorization for the County Executive to enter into an interlocal agreement between Whatcom County and City of Bellingham for partial funding of maintenance and operations of the Crisis Stabilization Center, in the amount of $65,000
Pages 126 - 134

4. AB2020-443 Request authorization for the County Executive to enter into a contract between Whatcom County and Bayside Pathology, Inc. for the provision of all medical examiner services consistent with the Whatcom County Code, Charter, and Washington State Law in the amount of $605,000
Pages 135 - 146

5. AB2020-451 Request authorization for the County Executive to enter into a subrecipient agreement between Whatcom County and the Port of Bellingham for costs associated with responding to the COVID-19 emergency in an amount not to exceed $238,172
Pages 147 - 186

6. AB2020-452 Request authorization for the County Executive to enter into a contract between Whatcom County and Northwest Workforce Council to provide reimbursement of wages and benefits for eligible temporary employees working in various COVID-related positions, for a total estimated contract amount of $112,000
Pages 187 - 200

7. AB2020-454 Request authorization for the County Executive to enter into a contract between Whatcom County and Elliott Bay Design Group for the purposes of providing engineering services for the annual dry dock for the Whatcom Chief Ferry
Pages 201 - 232

8. AB2020-456 Request authorization for the County Executive to enter into a contract amendment between Whatcom County and Lynden School District to increase the allocation of CARES Act funding by $100,000 in an amount not to exceed $230,000
Pages 233 - 236

9. AB2020-457 Request authorization for the County Executive to enter into a contract amendment between Whatcom County and Blaine School District to increase the allocation of CARES Act Funding by $100,000 in an amount not to exceed $230,000
Pages 237 - 240

10. AB2020-458 Request authorization for the County Executive to enter into a contract amendment between Whatcom County and Ferndale School District to increase the allocation of CARES Act funding by $100,000 in amount not to exceed $230,000
Pages 241 - 244

11. AB2020-459 Request authorization for the County Executive to enter into a contract amendment between Whatcom County and Meridian School District to increase the allocation of CARES Act funding by $100,000 in an amount not to exceed $230,000
Pages 245 - 248

12. AB2020-460 Request authorization for the County Executive to enter into an interlocal agreement between Whatcom County and North Whatcom Fire and Rescue for the cost of two students to participate in the paramedic training program in an amount not to exceed $232,436.88
Pages 249 - 259

13. AB2020-461 Request authorization for the County Executive to enter into a contract amendment between Whatcom County and Mount Baker School District to increase the allocation of CARES Act funding by $100,000 in an amount not to exceed $230,000
Pages 260 - 263

14. AB2020-462 Request authorization for the County Executive to enter into a contract amendment between Whatcom County and Nooksack Valley School District to increase the CARES Act funding allocation by $100,000 in an amount not to exceed $230,000
Pages 264 - 267

15. AB2020-467 Request authorization for the County Executive to enter into a contract between Whatcom County and Michael Bobbink for hearing examiner services
Pages 268 - 272

16. AB2020-464 Request approval for the County Executive to award Bid #20-61 for the purchase of furnishings for the Lighthouse Mission Ministries Base Camp to Norix Group, Inc., in an amount not to exceed $329,645.45
Pages 273 - 276

17. AB2020-473 Request authorization for the County Executive to enter into an Interlocal Agreement amendment between Whatcom County and City of Bellingham for a cost sharing related to the COVID-19 health crisis
Pages 277 - 290

Items Added by Revision

Other Business

Adjournment

PUBLIC WORKS AND HEALTH COMMITTEE
1:00 p.m. TUESDAY, October 27, 2020 (ENDS NO LATER THAN 2:00 P.M.)
Virtual Meeting

Call To Order

Roll Call

Committee Discussion

1. AB2020-439 Discussion regarding a proposed ordinance amending the Whatcom County Code to create a Whatcom County Child and Family Well-Being Task Force
Pages 291 - 297

Items Added by Revision

Other Business

Adjournment

PLANNING AND DEVELOPMENT COMMITTEE
2:10 p.m. TUESDAY, October 27, 2020 (MAY BEGIN EARLY / ENDS NO LATER THAN 3:00 P.M.)
Virtual Meeting

Call To Order

Roll Call

Committee Discussion

1. AB2020-446 Discussion regarding an ordinance adopting amendments to WCC 20.72, Point Roberts Special District
Pages 298 - 332

Items Added by Revision

Other Business

Adjournment

COUNCIL COMMITTEE OF THE WHOLE
3:10 p.m. TUESDAY, October 27, 2020 (MAY BEGIN EARLY / ENDS NO LATER THAN 5:00 P.M.)
Virtual Meeting

Call To Order

Roll Call

Committee Discussion

1. AB2020-219 Discussion and update on strategies and other items related to COVID-19 (Council and Health Board)
Pages 333 - 334

2. AB2020-470 Introduction to the County Executive's recommended 2021-2022 Biennium Budget presented by Deputy Executive Tyler Schroeder
Pages 335 - 336

3. AB2020-345 Discussion of proposed Cherry Point amendments
Pages 337 - 464

Items Added by Revision

Other Business

Adjournment

COUNCIL AGENDA

REGULAR COUNCIL MEETING
6:00 p.m. TUESDAY, October 27th, 2020
Virtual Meeting

CALL TO ORDER

ROLL CALL

FLAGE SALUTE

ANNOUNCEMENTS

The Council is currently holding all meetings remotely. View meeting schedules, agendas, minutes, videos, and archives at www.whatcom.legistar.com. For instructions on how to watch or participate in this meeting, please visit us at www.whatcomcounty.us/joinvirtualcouncil or contact the Council Office at 360.778.5010.

COUNTY EXECUTIVE'S REPORT

MINUTES CONSENT

1.	MIN2020-097	Health Board for October 6, 2020	**Pages 465 - 473**
2.	MIN2020-098	Special Joint Health Board/PHAB Meeting for October 6, 2020	**Pages 474 - 480**
3.	MIN2020-099	Committee of the Whole Executive Session for October 13, 2020	**Pages 481 - 484**
4.	MIN2020-100	Committee of the Whole a.m. for October 13, 2020	**Pages 485 - 489**
5.	MIN2020-101	Committee of the Whole p.m. for October 13, 2020	**Pages 490 - 493**
6.	MIN2020-102	Regular County Council for October 13, 2020	**Pages 494 - 508**

PUBLIC HEARING

To participate, see instructions at www.whatcomcounty.us/joinvirtualcouncil or contact the Council Office at 360.778.5010.

1. AB2020-308 Resolution vacating a portion of Horton Road
   Pages 509 - 522
2. AB2020-310 Ordinance granting Gordon Montgomery and John Milobar, a non-exclusive franchise for the provision of sewer services
   Pages 523 - 549
3. AB2020-373 Ordinance adopting interim zoning regulations for the siting, establishment, and operation of temporary homeless facilities
   Pages 550 - 567
4. AB2020-428 Resolution authorizing the sale of surplus personal property pursuant to WCC 1.10
   Pages 568 - 571
5. AB2020-435 Resolution adopting the 2021 Annual Road Construction Program (ACP)
   Pages 572 - 623

OPEN SESSION (20 MINUTES)

To participate, see instructions at www.whatcomcounty.us/joinvirtualcouncil or contact the Council Office at 360.778.5010.

CONSENT AGENDA

Items under this section of the agenda may be considered in a single motion. Councilmembers have received and studied background material on all items. Committee review has taken place on these items, as indicated. Any member of the public, administrative staff, or council may ask that an item be considered separately.

(From Council Finance and Administrative Services Committee)

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   Pages 62 - 113

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Pages 273 - 276

17. AB2020-473 Request authorization for the County Executive to enter into an Interlocal Agreement amendment between Whatcom County and City of Bellingham for a cost sharing related to the COVID-19 health crisis
Pages 277 - 290

OTHER ITEMS

(From Council Finance and Administrative Services Committee)

1. AB2020-430 Ordinance amending the project budget for the Birch Bay Drive and Pedestrian Facility Project Fund, Request No. 6, in the amount of $841,786
Pages 4 - 9

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Pages 10 - 26

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Pages 27 - 54

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Pages 55 - 61

(No Committee Assignment)

5. AB2020-471 Resolution approving Whatcom County Council meeting dates for 2021
Pages 624 - 625

COUNCIL APPOINTMENTS TO BOARDS, COMMISSIONS, AND COMMITTEES

1. AB2020-432 Receipt of application for the Drainage Improvement District #6, Supervisor Position 3 - Applicant(s): Thomas Shaffer (Deadline for additional applications for this position is 10:00 a.m. on October 20, 2020)
   Pages 626 - 628

ITEMS ADDED BY REVISION

INTRODUCTION ITEMS

Council action will not be taken. The council may accept these items for introduction (no action) in a single motion. Changes, in terms of committee assignment for example, may be made at this time.

1. AB2020-445 Ordinance adopting amendments to Whatcom County Code 20.72, Point Roberts Special District
   Pages 629 - 663
2. AB2020-447 Ordinance adopting the Six-Year Capital Improvement Program (CIP) for Whatcom County Facilities (2021-2026) and repealing the Six-Year CIP for Whatcom County Facilities (2019-2024)
   Pages 664 - 719
3. AB2020-448 Ordinance designating a Commercial Property Assessed Clean Energy and Resiliency (C-PACER) Program within Whatcom County
   Pages 720 - 729
4. AB2020-449 Ordinance amending the project budget for the Civic Center Improvement Fund, Request No. 1 in the amount of $4,350,000
   Pages 730 - 734
5. AB2020-450 Ordinance amending the 2020 Whatcom County Budget, request no. 20, in the amount of $4,476,128
   Pages 735 - 741

COMMITTEE REPORTS, OTHER ITEMS, AND COUNCILMEMBER UPDATES

ADJOURN

Whatcom County

COUNTY COURTHOUSE
311 Grand Avenue, Ste #105
Bellingham, WA 98225-4038
(360) 778-5010

Agenda Bill Master Report

File Number: AB2020-440

File ID:	AB2020-440	**Version:**	1	**Status:**	Agenda Ready
File Created:	10/07/2020	**Entered by:**	TAdrian@co.whatcom.wa.us		
Department:	Prosecuting Attorney's Office	**File Type:**	Discussion		
Assigned to:	Council Committee of the Whole-Executive Session			**Final Action:**	
Agenda Date:	10/27/2020			**Enactment #:**	

Primary Contact Email: tadrian@co.whatcom.wa.us

TITLE FOR AGENDA ITEM:

Discussion of pending litigation with Civil Deputy Prosecutor Brandon Waldron: proposed resolution of investigation of WCSO & WC Jail for alleged violations of Title II of the ADA; No. USAO #2019v00360, DJ #204-82-312 [Discussion of this item may take place in executive session (closed to the public) pursuant to RCW 42.30.110(1)(i)(i-ii)]

SUMMARY STATEMENT OR LEGAL NOTICE LANGUAGE:

Discussion of pending litigation with civil Deputy Prosecutor Brandon Waldron: proposed resolution of investigation of WCSO & WC Jail for alleged violations of Title II of the ADA; No. USAO #2019v00360, DJ #504-82-312 [Discussion of this item may take place in executive session (closed to the public) pursuant to RCW 42.30.110(1)(i)(i-ii)]

HISTORY OF LEGISLATIVE FILE

Date:	Acting Body:	Action:	Sent To:

Attachments:

Whatcom County

COUNTY COURTHOUSE
311 Grand Avenue, Ste #105
Bellingham, WA 98225-4038
(360) 778-5010

Agenda Bill Master Report

File Number: AB2020-453

File ID:	AB2020-453	**Version:**	1	**Status:**	Agenda Ready
File Created:	10/16/2020	**Entered by:**	BBushaw@co.whatcom.wa.us		
Department:	Public Works Department	**File Type:**	Presentation		
Assigned to:	Council Natural Resources Committee			**Final Action:**	
Agenda Date:	10/27/2020			**Enactment #:**	

Primary Contact Email: GStoyka@co.whatcom.wa.us

TITLE FOR AGENDA ITEM:

Presentation of the County Executive's Proposed Comprehensive Water Settlement Process

SUMMARY STATEMENT OR LEGAL NOTICE LANGUAGE:

The County Executive will introduce to Council his proposed comprehensive water settlement process designed to simultaneously address water supply, water quality, instream flows and salmon habitat issues along with land use and floodplain management

HISTORY OF LEGISLATIVE FILE

Date:	Acting Body:	Action:	Sent To:

Attachments:

Whatcom County

COUNTY COURTHOUSE
311 Grand Avenue, Ste #105
Bellingham, WA 98225-4038
(360) 778-5010

Agenda Bill Master Report

File Number: AB2020-468

File ID:	AB2020-468	**Version:**	1	**Status:**	Agenda Ready
File Created:	10/20/2020	**Entered by:**	DBrown@co.whatcom.wa.us		
Department:	Council Office	**File Type:**	Discussion		
Assigned to:	Council Finance and Administrative Services Committee			**Final Action:**	
Agenda Date:	10/27/2020			**Enactment #:**	

Primary Contact Email: DBrown@co.whatcom.wa.us

TITLE FOR AGENDA ITEM:

Discussion of utilizing Cares Act funding to assist Whatcom County Water Districts

SUMMARY STATEMENT OR LEGAL NOTICE LANGUAGE:

COVID has caused many of our community members to incur significant losses of income. This loss has led to many households being unable to pay for key utilities such as water and sewer, leading to significant revenue shortfalls for many of our Water Districts. State orders have further complicated the situation by restricting a utilities' ability to collect past due revenue and late fees.

An additional increase in unexpected costs has further compounded the financial strain. These increases are related to purchasing the necessary safety equipment needed to protect these essential agencies' employees and customers while they ensure uninterrupted access to critical health services they provide.

HISTORY OF LEGISLATIVE FILE

Date:	Acting Body:	Action:	Sent To:

Attachments:

Whatcom County

COUNTY COURTHOUSE
311 Grand Avenue, Ste #105
Bellingham, WA 98225-4038
(360) 778-5010

Agenda Bill Master Report

File Number: AB2020-430

File ID:	AB2020-430	**Version:**	1	**Status:**	Introduced
File Created:	09/30/2020	**Entered by:**	mcaldwel@co.whatcom.wa.us		
Department:	Finance Division	**File Type:**	Ordinance		
Assigned to:	Council Finance and Administrative Services Committee			**Final Action:**	
Agenda Date:	10/27/2020			**Enactment #:**	

Primary Contact Email: mcaldwel@co.whatcom.wa.us

TITLE FOR AGENDA ITEM:

Ordinance amending the project budget for the Birch Bay Drive and Pedestrian Facility Project Fund, Request No. 6, in the amount of $841,786

SUMMARY STATEMENT OR LEGAL NOTICE LANGUAGE:

This Amendment No. 6 to Ordinance 2012-050 is for the Birch Bay Drive and Pedestrian Facility Project Fund. This request is to increase this project based budget by $841,786 to cover increases due to unforeseen construction, cultural and COVID issues that may arise in the remaining contract or construction engineering work. The total project budget authority will be $15,291,786.

HISTORY OF LEGISLATIVE FILE

Date:	Acting Body:	Action:	Sent To:
10/13/2020	Council	INTRODUCED	Council Finance and Administrative Services Committee

Attachments: Ordinance, Exhibit A, Memo, Supplemental

PROPOSED BY: Public Works
INTRODUCTION DATE: 10/13/2020

ORDINANCE NO._____

ORDINANCE AMENDING THE PROJECT BUDGET FOR THE BIRCH BAY DRIVE AND PEDESTRIAN FACILITY PROJECT FUND, REQUEST NO. 6

WHEREAS, the Birch Bay Drive and Pedestrian Facility project is in season two of the construction phase of a two-season project, with work approximately 35% complete, and;

WHEREAS, the Public Works Department utilizes a project based budget for complex multi-year projects, and establishes said budget by phase - design, right-of-way, and construction; as the phases are clearly scoped and defined, and;

WHEREAS, it is necessary to add to the project budget to ensure expenditure capacity for the construction phase due to unforeseen construction, cultural and COVID issues that may arise in the remaining contract or construction engineering work, and;

WHEREAS, there is $500,000 of existing budget capacity in the approved 2020 Road Fund Capital Budget for a transfer into this project fund, and;

WHEREAS, Public Works has successfully secured an additional $326,786 of STBG federal grant funds and an additional $15,000 in BBWARM funds in 2020, in addition to the $2.36 million of secured outside construction funding commitments ($1.61 million federal STP, $500,000 EDI and $250,000 BBWARM), and;

WHEREAS, a County Road Project identified as CRP No. 907001 titled "Birch Bay Drive and Pedestrian Facility" is listed as project priority No. 1 on both the current STIP and ACP, and

WHEREAS, this is a multi-year capital project requiring budget approval, and the time frame associated with the work, due to mitigation efforts, is anticipated to extend into 2025, and;

NOW, THEREFORE, BE IT ORDAINED, by the Whatcom County Council, that Ordinance No. 2012-050, associated with establishing the project-based budget and initiating the construction phase, is hereby amended by adding an additional amount of $841,786 of expenditure authority to the project budget for a new current project budget expenditure amount of **$15,291,786** as described in Exhibit "A".

ADOPTED this ____ day of _____, 2020.

ATTEST:

WHATCOM COUNTY COUNCIL
WHATCOM COUNTY, WASHINGTON

_____
Dana Brown-Davis, Council Clerk

_____
Barry Buchanan, Chair of the Council

APPROVED AS TO FORM:

( ) Approved ( ) Denied

Approved by email/C Quinn/M Caldwell
Senior Civil Deputy Prosecuting Attorney

_____
Satpal Singh Sidhu, Executive Date

Project Based Budget - Budget Request Tracking Sheet 9/23/2020
JPK

Project Title: **Birch Bay Drive and Pedestrian Facility**
Project Codes: **CRP No. 907001; Cost Center 339100**
Project Based Budget Request: **No. 6**
Duration Requested: **6 yrs (2020 - 2025)**

Budget Account	Project Activity	Current Approved Project Budget		Amended Project Budget Request		New Approved Project Budget
595110	Preliminary Engineering (In-Hse & Consultant)	$2,350,000				$2,350,000
595200	Right of Way	$1,250,000				$1,250,000
595300	Construction	$9,065,000		$791,786		$9,856,786
595120	Construction Engineering (In-Hse & Consultant)	$1,785,000		$50,000		$1,835,000
	TOTAL	**$14,450,000**		**$841,786**		**$15,291,786**

Object Account	Project Funding	Current Approved Project Revenue		Amended Project Revenue Request		New Approved Project Revenue
4338	REET II Transfer	$745,000				$745,000
4333	Federal STP-E	$327,324				$327,324
4333	Federal STP-US	$1,127,676				$1,127,676
4333	Federal STP-US (Reimbursement for construction)	$990,000				$990,000
4333	Federal STBG (Reimbursement for construction)*			$326,786		$326,786
4333	TAP (Reimbursement for construction)	$620,000				$620,000
8301	BBWARM (Reimbursement for construction)	$250,000		$15,000		$265,000
8301	EDI (CN funds)	$500,000				$500,000
8301	Local Funds (transfer from Road Fund)	$9,890,000		$500,000		$10,390,000
	TOTAL	**$14,450,000**		**$841,786**		**$15,291,786**

*** Denotes new revenue received in 2020**

WHATCOM COUNTY
PUBLIC WORKS DEPARTMENT

Jon Hutchings
Director

James P. Karcher, P. E.
County Engineer
322 N. Commercial Street, Ste 301
Bellingham, WA 98225-4042
Phone: (360) 778-6210
Fax: (360) 778-6211

MEMORANDUM

To: The Honorable Satpal Singh Sidhu, Whatcom County Executive, and
The Honorable Members of the Whatcom County Council

Through: Jon Hutchings, Director JH

From: James P. Karcher, P.E., County Engineer JPK
Doug Burghart, Interim Engineering Manager JPK FOR DB

Date: September 30, 2020

Subject: Birch Bay Drive and Pedestrian Facility; CC 339100; CRP No 907001
Project Based Budget Amendment No. 6 to Ordinance 2012-050

Enclosed for your review and signature is Amendment No. 6 to Ordinance 2012-050 associated with the Birch Bay Drive and Pedestrian Facility Project Based Budget Fund.

Requested Action
Public Works respectfully requests that the County Council and the County Executive sign the ordinance amending the Birch Bay Drive and Pedestrian Facility Project Based Budget Fund.

Background and Purpose
The Birch Bay Drive and Pedestrian Facility Project Based Budget Fund was established by Ordinance 2012-050 for an amount of $1,072,324. Ordinance 2014-036 amended the project fund amount to $2,200,000 for consultant design services. Ordinance 2016-069 amended the project fund amount to $2,700,000 for consultant design services and property acquisition. Ordinance 2017-023 amended the project fund amount to $3,600,000 for consultant design services and property acquisition. Ordinance 2017-069 amended the project fund amount to $11,450,000 for consultant construction services and contract construction. Ordinance 2019-067 amended the project fund amount to $14,450,000 to cover budget capacity lost to increased PE and R/W costs, inflation of construction costs, a separate mitigation site, and a large archaeological monitoring component to the construction effort. This request is to increase the Project Based Budget fund amount by $841,786 to cover increases due to unforeseen construction, COVID-19 safety requirements, cultural issues and a contingency to ensure efficiency to react to changes during and an ability to pay project contract obligations. The total project budget authority will be $15,291,786.

Current project status is: Construction phase for Berm work approximately 35% complete; Construction phase for mitigation work 100% complete.

Funding Amount and Source
The Construction and Construction Engineering work will be funded by a variety of sources including Federal STP & TAP funds, EDI Program, BBWARM, and Road Funds as detailed in the attached documents. This request ensures the ability to cover our Birch Bay Drive and Pedestrian Facility contract obligations per prompt payment laws.

Please contact Jim Karcher at extension 6271, if you have any questions or concerns regarding the details of this Project Based Budget Amendment No. 6.

Supplemental Budget Request

Status: Pending

Public Works — **Engineering Design/Const**

Supp'l ID # 3115 **Fund** 339 **Cost Center** 339100 **Originator:** James Karcher

Year 2 **2020** **Add'l FTE** ☐ **Priority** 1

Name of Request: Birch Bay Dr and Ped Facility -Amendment No 6

X

Department Head Signature (Required on Hard Copy Submission) **Date**

Costs:

Object	*Object Description*	*Amount Requested*
4333.2022	STP (Surface Trans Prog	($326,786)
6630.595120	Professional Services	$50,000
7380.595300	Other Improvements	$791,786
8301.108	Operating Transfer In	($500,000)
8301.16925	Operating Transfer In	($15,000)
Request Total		***$0***

1a. Description of request:

This Birch Bay community-driven project is located parallel to Birch Bay Drive and consists of a Public Works project to construct a 1.58 mile separated berm with pathway to encourage pedestrian use along the waterfront from Cedar Avenue to the mouth of Terrell Creek. Several key attributes of the project will be pedestrian safety with an ADA accessible separated trail, and a soft shore berm to protect the Birch Bay Drive roadway from storm damage. In addition, the project will provide mitigation for beach erosion. It is the #1 priority project for the Public Works Department's 2020 Annual Construction Program.
This supplemental budget request is consistent with Public Works' approach to requesting additional budget authority on a project as clarity develops with specific phases. Currently in the 2nd season of a two-season construction phase for the Birch Bay Drive and Pedestrian Facility project, this supplement will add expenditure capacity of $841,786 to the existing project based budget for a new total expenditure authority of $15,291,786.

1b. Primary customers:

The primary customers of this project are the citizens of Whatcom County, residents of the Birch Bay community, the general motoring public, and anyone who benefits from the recreational use of the Birch Bay waterfront beach.

2. Problem to be solved:

The Birch Bay Drive and Pedestrian Facility is a much needed public works improvement and a complex construction project. With constrained work windows due to permitting and tides, strict archaeological monitoring requirements, night work in an urban setting, and winter storm concerns, there will be challenges to address during construction. Having sufficient budget capacity, with contingency in the Project Based Budget, will allow Public Works to address construction concerns in a timely and cost-effective manner. This supplemental budget request will cover increases due to change orders in season one, COVID-19 safety requirements that have developed since the start of the project, dealing with winter storm events, unforeseen cultural issues and a contingency to ensure an ability to pay project contract obligations promptly. The request will fund the construction phase work of season two which includes the construction contract, construction engineering and contract administration.

3a. Options / Advantages:

A federally-funded project of this size and complexity is problematic to scale back during construction due to permit conditions, contractual issues, and public concerns for the improvement. Public Works will use up all available existing project expenditure capacity before utilizing the additional budget authority granted

by this Amendment No. 6.

3b. Cost savings:

The cost savings are found in having sufficient budget capacity to make contract decisions quickly, without incurring construction delays, which can be very costly.

4a. Outcomes:

Complete all planned construction scope, and have capacity for unseen contract or cultural issues.

4b. Measures:

Complete construction in 2021 with an excess of budget capacity.

5a. Other Departments/Agencies:

N/A

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

N/A

6. Funding Source:

Unexpended Capital Budget Authority will be utilized to execute a $500,000 transfer from the Road Fund. The remainder has come from federal grants and the BBWARM program.

Whatcom County

COUNTY COURTHOUSE
311 Grand Avenue, Ste #105
Bellingham, WA 98225-4038
(360) 778-5010

Agenda Bill Master Report

File Number: AB2020-433

File ID:	AB2020-433	**Version:**	1	**Status:**	Introduced
File Created:	10/01/2020	**Entered by:**	MCaldwel@co.whatcom.wa.us		
Department:	Finance Division	**File Type:**	Ordinance		
Assigned to:	Council Finance and Administrative Services Committee			**Final Action:**	
Agenda Date:	10/27/2020			**Enactment #:**	

Primary Contact Email: mcaldwel@co.whatcom.wa.us

TITLE FOR AGENDA ITEM:

Ordinance amending the 2020 Whatcom County Budget, request no. 19, in the amount of $7,904,575

SUMMARY STATEMENT OR LEGAL NOTICE LANGUAGE:

Supplemental #19 requests funding from the General Fund:

1. To appropriate $75,000 in Health to fund CJTA Program increase from grant proceeds.
2. To appropriate $2,990,000 in Health to fund Covid Response from DOH Con Con CARES grant proceeds.
3. To appropriate $47,827 in Health to fund treatment services from NSASO Trueblood grant proceeds.
4. To appropriate $264,234 in Prosecuting Attorney to fund LEAD program from HCA grant proceeds.

From the Election Reserve Fund:

5. To appropriate $19,470 to fund Student Hub Engagement Center from grant proceeds.

From Behavioral Health Programs Fund:

6. To appropriate $8,044 to fund additional Drug Court Case Manager position from grant proceeds.

From Covid-19 Emergency Response Fund:

7. To appropriate $4,500,000 to fund Covid Response from additional CARES Act funding.

HISTORY OF LEGISLATIVE FILE

Date:	Acting Body:	Action:	Sent To:
10/13/2020	Council	INTRODUCED	Council Finance and Administrative Services Committee

Attachments: Ordinance, Summary, Supplemental requests

PROPOSED BY: Executive
INTRODUCTION DATE: 10/13/20

ORDINANCE NO.
AMENDMENT NO. 19 OF THE 2020 BUDGET

WHEREAS, the 2019-2020 budget was adopted November 20, 2018; and,

WHEREAS, changing circumstances require modifications to the approved 2019-2020 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 2019-2020 Whatcom County Budget Ordinance #2018-064 is hereby amended by adding the following additional amounts to the 2020 budget included therein:

Fund	Expenditures	Revenues	Net Effect
General Fund			
Health	3,112,827	(4,625,262)	(1,512,435)
Prosecutor	264,234	(264,234)	-
Total General Fund	3,377,061	(4,889,496)	(1,512,435)
Election Reserve Fund	19,470	(19,470)	-
Behavioral Health Program Fund	8,044	(8,044)	-
Covid-19 Emergency Response Fund	4,500,000	(4,500,000)	-
Total Supplemental	7,904,575	(9,417,010)	(1,512,435)

BE IT FURTHER ORDAINED by the Whatcom County Council that Exhibit C – Position Control Changes in the 2019-2020 Budget Ordinance should also be amended to provide for the following FTE change:

- Add 1 FTE Substance Abuse Specialist in Superior Court – Drug Court

ADOPTED this ____ day of _____, 2020.

ATTEST:

WHATCOM COUNTY COUNCIL
WHATCOM COUNTY, WASHINGTON

_____
Dana Brown-Davis, Council Clerk

_____
Barry Buchanan, Chair of Council

APPROVED AS TO FORM:

( ) Approved ( ) Denied

Approved by email/C Quinn/M Caldwell
Civil Deputy Prosecutor

_____
Satpal Sidhu, County Executive

Date: _____

WHATCOM COUNTY				
Summary of the 2020 Supplemental Budget Ordinance No. 19				
Department/Fund	Description	Increased (Decreased) Expenditure	(Increased) Decreased Revenue	Net Effect to Fund Balance (Increase) Decrease
General Fund				
Health	To fund CJTA program increase from grant proceeds.	75,000	(76,000)	(1,000)
Health	To fund Covid Response from DOH Con Con CARES grant proceeds.	2,990,000	(4,500,000)	(1,510,000)
Health	To fund treatment services from NSASO Trueblood grant proceeds.	47,827	(49,262)	(1,435)
Prosecutor	To fund LEAD program from HCA grant proceeds.	264,234	(264,234)	-
Total General Fund		**3,377,061**	**(4,889,496)**	**(1,512,435)**
Election Reserve Fund	To fund Student Hub Engagement Center from grant proceeds.	**19,470**	**(19,470)**	**-**
Behavioral Health Program Fund	To fund additional Drug Court case manager from grant proceeds.	**8,044**	**(8,044)**	**-**
Covid-19 Emergency Response Fund	To fund Covid Response from additional CARES ACT funding.	**4,500,000**	**(4,500,000)**	**-**
Total Supplemental		**7,904,575**	**(9,417,010)**	**(1,512,435)**

Supplemental Budget Request

Status: Pending

Health **Human Services**

Supp'l ID # 3114 **Fund** 1 **Cost Center** 675600 **Originator:** Anne Deacon

Expenditure Type: One-Time **Year** 2 **2020** **Add'l FTE** ☑ **Add'l Space** ☐ **Priority** 1

Name of Request: NSBHASO CJTA Increase

X

Department Head Signature (Required on Hard Copy Submission) **Date**

Costs:

Object	*Object Description*	*Amount Requested*
4334.0466	CJTA Treatment	($76,000)
6610	Contractual Services	$56,956
8351.118	Operating Transfer Out	$10,000
8351.124	Operating Transfer Out	$8,044
Request Total		***($1,000)***

1a. Description of request:

We are requesting additional expenditure authority to use state dedicated funding to support services for individuals who have been charged with non-violent crimes. Services supported will include substance use disorder (SUD) assessments, residential treatment, outpatient treatment, and housing assistance.

1b. Primary customers:

Individuals involved in the criminal justice system who have a pending non-violent criminal charge from a prosecuting attorney in the state of Washington, and who have a substance use disorder which requires treatment. Priority will be given to individuals who are enrolled in a therapeutic court program.

2. Problem to be solved:

Non-violent offenders have limited access to resources to help them initiate and maintain long term recovery. CJTA funding provides a full continuum of therapeutic services for these individuals, especially those enrolled in therapeutic court programs. Individuals with untreated or undertreated substance use disorders may have increased risk for future criminal activities, impact on ability to attain and maintain stable employment and housing, and compromised health and well-being.

3a. Options / Advantages:

CJTA funding supports a full continuum of therapeutic services for people in the criminal justice system with SUDs. Re-entry services and substance use disorder jail assessments assist people with smooth transitions into community services. CJTA funding provides increased re-entry services, an increase in jail assessments for individuals needing substance use disorder inpatient treatment services and an increase in Medication Assisted Treatment (MAT) for offenders currently incarcerated. A local CJTA panel was convened to consider best options for use of these dedicated funds and made recommendations for those areas of service most needed by the population to be served. Gaps in care included: assessments in the jail, outpatient and residential treatment, and especially housing.

3b. Cost savings:

Providing clean and sober housing assistance and substance use disorder treatment for individuals involved in the criminal justice system are proven strategies for cost saving. Treatment for people with addiction provides a savings of $3-$7 for every dollar spent according to the Washington State Institute for Public Policy.

4a. Outcomes:

Outcomes include symptom stability for offenders currently incarcerated connection to treatment upon release from jail, increased retention in treatment. Outcomes also include a reduction in recidivism.

Outcomes will be tracked throughout an individual's participation in therapeutic court programs.

4b. Measures:

Number of offenders assessed in jail for SUD, number admitted to the MAT residential treatment, number of people served by re-entry services.

5a. Other Departments/Agencies:

Superior Court(Drug Court) will receive support from this funding for drug court case manager position.

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

Dave Reynolds

6. Funding Source:

State Health Care Authority, Criminal Justice Treatment Account Funds

Supplemental Budget Request

Status: Pending

Health **Administration**

Supp'l ID # 3117 **Fund** 1 **Cost Center** 660440 **Originator:** Kathleen Roy

Year 2 **2020** **Add'l FTE** ☐ **Priority** 1

Name of Request: DOH Con Con COVID Response

X

Department Head Signature (Required on Hard Copy Submission) **Date**

Costs:

Object	*Object Description*	*Amount Requested*
4333.2110	COVID-19 Local CARES	($4,500,000)
6120	Extra Help	$50,000
6320	Office & Op Supplies	$150,000
6510	Tools & Equip	$50,000
6610	Contractual Services	$1,325,000
7210	Intergov Prof Svcs	$1,415,000
Request Total		***($1,510,000)***

1a. Description of request:

We are requesting expenditure authority for additional new dedicated funding from the State for COVID-19 to augment CARES Act monies which end October 31, 2020.

The WA State Department of Health (DOH) has awarded the Health Department an additional CARES Act grant (coronavirus relief funds) effective March 1 2020 through December 30, 2020 to support the Health Department's COVID-19 response. This funding will decrease the burden upon the general fund and allow the Health Department to save other COVID-19 response grants for 2021 expenditures.

These funds will be utilized for salary expenses for Health Department staff working on the COVID response, rent expenses for the Isolation and Quarantine Center, and a social marketing campaign to prevent the spread of COVID. A significant portion of these funds will also provide support for community partners, including businesses, non-profits and schools, in their efforts to mitigate the spread of COVID-19 and support families impacted.

1b. Primary customers:

Whatcom County Residents who are directly or indirectly impacted by the Covid-19 pandemic crisis.

2. Problem to be solved:

The COVID-19 pandemic has resulted in a health, economic and social crisis. Reopening our local economy and protecting the health of our residents depends upon our ability to mitigate the spread of the highly contagious and potentially life-threatening COVID-19 virus.

3a. Options / Advantages:

The ability to implement aggressive contact tracing, surveillance and testing will be fundamental to protecting vulnerable populations as Whatcom County takes steps to reopen and residents begin returning to their daily lives. The support for businesses, non-profits, and schools will allow the economy to re-open safely, kids to go back to school, and families to receive needed support.

3b. Cost savings:

Utilizing new coronavirus relief funds will lessen the burden upon County general fund to cover costs related to mitigating the spread of COVID-19.

Supplemental Budget Request

Status: Pending

Health **Administration**

Supp'l ID # 3117 ***Fund*** *1* ***Cost Center*** *660440* ***Originator:*** *Kathleen Roy*

4a. Outcomes:

These funds will improve the Health Department's ability to assist the community in reopening as quickly and safely as possible.

4b. Measures:

90% of persons who test positive for Covid-19 will be contacted within 24 hours. 80% of persons in contact with someone who tested positive for Covid-19 will be identified and contacted within 48 hours. 80% of persons in isolation and quarantine will be contacted daily. Outbreaks will be minimized and managed effectively in partnership with employers. Increased social media posts, information on website, media briefings, education materials, and other communication tools as needed.

5a. Other Departments/Agencies:

N/A

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

N/A

6. Funding Source:

WA State Department of Health Consolidated Contract - COVID Local CARES funds

Supplemental Budget Request

Status: Pending

Health | **Human Services**

Suppl ID # 3116 | **Fund** 1 | **Cost Center** 675700 | **Originator:** Anne Deacon

Expenditure Type: One-Time | **Year** 2 | **2020** | **Add'l FTE** ☐ | **Add'l Space** ☐ | **Priority** 1

Name of Request: NSASO Trueblood Grant

X Kathleen R (on behalf of Erika Lautenbach, Director) 9/29/20

Department Head Signature (Required on Hard Copy Submission) **Date**

Costs:	Object	Object Description	Amount Requested
	4333.9395	Comm Mental Health Svcs	($49,262)
	6610	Contractual Services	$47,827
	Request Total		***($1,435)***

1a. Description of request:

We are requesting expenditure authority of new funding from the state to support treatment services in the jail and in the community. This funding will support the provision of behavioral health services in the jail and the GRACE program.

1b. Primary customers:

Individuals with serious mental health disorders, particularly class members of the state's Trueblood lawsuit. Class action members include those people with serious mental illness who need to undergo an evaluation of their competency to stand trial, or who have been deemed incompetent to stand trial as a result of a mental illness and require restoration services from a designated hospital.

2. Problem to be solved:

Individuals with behavioral health disorders, especially class action members, have more difficulties than the general population with accessing behavioral health and support services effectively. Decompensation of one's mental illness can lead to hospitalization and increased time in the justice system.

3a. Options / Advantages:

This new funding supports the county's efforts to provide intensive services to individuals involved in the criminal justice system and who have serious mental health disorders. Trueblood funding is intended to help serve people with behavioral health disorders in their communities in an effort to avoid expensive hospitalizations, arrests and incarceration.

3b. Cost savings:

These monies are not local funds, but rather derive from a state legislative proviso. Therefore, this decreases the burden on local dollars that might be used for these services.

4a. Outcomes:

Outcomes include: Less offender recidivism, increased stability in services, and increased retention in services.

4b. Measures:

Number of offenders with serious mental illness served in the jail and by the GRACE program and connected to ongoing services

5a. Other Departments/Agencies:

N/A

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

N/A

6. Funding Source:

Supplemental Budget Request

Status: Pending

Health **Human Services**

Suppl ID # 3116 **Fund** 1 **Cost Center** 675700 **Originator:** Anne Deacon

North Sound Behavioral Health Administrative Services Organization- State proviso funds

Supplemental Budget Request

Status: Pending

Prosecuting Attorney

Suppl ID # 3112 **Fund** 1 **Cost Center** 2623 **Originator:** Vanessa Martin

Expenditure Type: One-Time **Year** 2 **2020** **Add'l FTE** ☐ **Add'l Space** ☐ **Priority** 1

Name of Request: HCA LEAD Grant

X [signature] 9/24/2020

Department Head Signature (Required on Hard Copy Submission) **Date**

Costs:	Object	Object Description	Amount Requested
	4333.9358	HCA LEAD Grant	($264,234)
	6610	Contractual Services	$264,234
	Request Total		***$0***

1a. Description of request:

In the LEAD program, police officers exercise discretionary authority at point of contact to divert individuals to a community-based, harm-reduction intervention for law violations driven by unmet behavioral health needs. In lieu of the normal criminal justice system cycle -- booking, detention, prosecution, conviction, incarceration -- individuals are instead referred into a trauma-informed intensive case-management program where the individual receives a wide range of support services, often including transitional and permanent housing and/or drug treatment. Prosecutors and police officers work closely with case managers to ensure that all contacts with LEAD participants going forward, including new criminal prosecutions for other offenses, are coordinated with the service plan for the participant to maximize the opportunity to achieve behavioral change.

LEAD holds considerable promise as a way for law enforcement and prosecutors to help communities respond to public order issues stemming from unaddressed public health and human services needs -- addiction, untreated mental illness, homelessness, and extreme poverty -- through a public health framework that reduces reliance on the formal criminal justice system.

1b. Primary customers:

The LEAD program will serve community members who frequently cycle in and out of the criminal justice system for low-level, non-violent offenses such as drug possession.

2. Problem to be solved:

The initiative aims to divert people out of the criminal justice system whose infractions are driven mainly by addiction, mental illness, and poverty and who would be better served by quality social services. The effort would reduce recidivism, lower the number of people in our expensive criminal justice system and improve public safety and our communities' quality of life.

Instead of sending low-level drug offenders to jail, police can refer suspects to LEAD, which provides them with intensive long-term case management and a chance to change their lives. Case managers become their clients' personal advocates, offering legal assistance and helping them access social services like housing, health care and therapy with the goal of getting them to a point where they can live drug-free.

When police come across someone with a nonviolent history who they have reason to arrest, they offer LEAD as an alternative to jail and prosecution. If the person refuses to participate, they are charged with the crime they were caught committing.

LEAD uses a "meet you where you are" approach to provide individuals with the help they actually want,

which makes this program unique to Whatcom County.

3a. Options / Advantages:

The county recently developed the GRACE (Ground-Level Response And Coordinated Engagement) program, which is a community-based effort to find solutions for individuals who are using crisis services and law enforcement in frequent, yet ineffective ways. The aim is to offer intensive, coordinated services to these "familiar faces" whose needs span beyond any single agency.

The LEAD program will function under the GRACE structure and aims to offer intensive, coordinated services to the "familiar faces" of the criminal justice system.

3b. Cost savings:

Instead of sending low-level drug offenders to jail, police can refer suspects to LEAD, which will have a great impact on our overall incarceration rates, reducing costs, and increasing public safety.

4a. Outcomes:

This is a 31-year grant cycle and at the conclusion of the grant, the outcomes delivered will be incarceration rates reduction, reducing criminal justice costs, and increasing public safety.

4b. Measures:

We will know the outcomes have been met by analyzing the data we are required to collect per the Washington State Health Care Authority's contract regulations. Success will be measured by reducing incarceration rates, reducing criminal justice costs, and increasing public safety.

5a. Other Departments/Agencies:

The LEAD program is a collaboration between police, prosecutors, public defenders, political leaders, mental health and drug treatment providers, housing providers and other service agencies, and business and neighborhood leaders -- working together to find new ways to solve problems for individuals who frequently cycle in and out of the criminal justice system under the familiar approach that relies on arrest, prosecution, and incarceration.

All partner agencies are committed to the LEAD program and have dedicated resources to ensure timely implementation and on-going support.

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

6. Funding Source:

Washington State Health Care Authority

Supplemental Budget Request

Status: Pending

Auditor

Supp'l ID # 3120 **Fund** 109 **Cost Center** 10927 **Originator:** Stacy Henthorn

Expenditure Type: One-Time **Year** 2 **2020** **Add'l FTE** ☐ **Add'l Space** ☐ **Priority** 1

Name of Request: Student Hub Engagement Center

X Diana Jaderlund 9/30/20

Department Head Signature (Required on Hard Copy Submission) **Date**

Costs:	Object	Object Description	Amount Requested
	4334.0031	State Elections Grant	($19,470)
	6110	Regular Salaries & Wages	$7,000
	6320	Office & Op Supplies	$470
	7210	Intergov Prof Svcs	$12,000
	Request Total		***$0***

1a. Description of request:

Per legislation passed in 2020 and codified in RCW 29A.40.180 Whatcom County Auditor's office is mandated to coordinate with Western State University to establish a Student Engagement Hub annually during each General election. The Student Engagement Hub will offer in-person voter registration, voter registration materials, and ballots on Western Washington University's campus.

1b. Primary customers:

Students and general public will have access to the Student Engagement Hub..

2. Problem to be solved:

Washington State Legislature finds that to ensure robust lifelong civic engagement it is critical that students attending public colleges and universities have on campus access to allow in-person voter registration, and provide voter registration materials, and ballots. Recent legislation mandated counties with public colleges and universities operate a Student Engagement Hub.

3a. Options / Advantages:

There is no other option. Whatcom County Auditor will enter into an agreement with Western Washington University to operate a Student Engagement Hub annually during the General election.

3b. Cost savings:

N/A

4a. Outcomes:

A Student Engagement Hub located on campus in the Viking Union Multipurpose room will be open to the public and students on election day for each General Election starting November 3, 2020 for in-person voter registration, voter registration materials, and ballots.

4b. Measures:

Whatcom County election staff will be monitoring this location to ensure the success of this Student Engagement Hub. Success will be measured by voter registration and access to ballots.

5a. Other Departments/Agencies:

Finance will be assisting with disbursement of grant funds. A majority of the funds are pass-through to the University for supplies, equipment and staffing of the HUB.

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

Office of Secretary of State has issued the grant monies to operate the Student Engagement Hub.

Auditor

Supp'l ID # 3120 **Fund** 109 **Cost Center** 10927 **Originator:** Stacy Henthorn

6. Funding Source:

A grant award pursuant to Section 23 of Engrossed Senate Bill 6313, Chapter 208, Laws of 2020 (ESB 6313) to provide funding for the implementation and establishment of "Student Engagement Hubs". Funds are available through a grant agreement with the Secretary of State's Office.

Supplemental Budget Request

Status: Pending

Superior Court

Suppl ID # 3108 | **Fund** 124 | **Cost Center** 124200 | **Originator:** David Reynolds

Year 2 2020 | Add'l FTE ☐ | Priority 1

Name of Request: Criminal Justice Treatment Account (CJTA) FTE

X _____ 9/30/20

Department Head Signature (Required on Hard Copy Submission) Date

Costs:

Object	*Object Description*	*Amount Requested*
6110	Regular Salaries & Wages	$5,370
6210	Retirement	$696
6230	Social Security	$411
6245	Medical Insurance	$1,345
6255	Other H&W Benefits	$154
6259	Worker's Comp-Interfund	$61
6269	Unemployment-Interfund	$7
8301	Operating Transfer In	($8,044)
Request Total		***$0***

1a. Description of request:

Superior Court - Drug Court requests to add one additional Drug Court Case Manager FTE - a Substance Abuse Specialist II in accordance with the Criminal Justice Treatment Account Fund presented to Council on 09/29/20.

1b. Primary customers:

Non-violent offenders who are selected to participate in the Drug Court Program

2. Problem to be solved:

Non-violent offenders have little access to resources to help them enter into and maintain long term recovery. CJTA funding provides a continuum of therapeutic services for these offenders, especially those in therapeutic court programs

3a. Options / Advantages:

The additional state grant dollars allow the county to increase drug court staff hours which will add further support to Drug Court clients. A local CJTA panel has recommended the additional grant dollars be utilized for this purpose.

3b. Cost savings:

Drug Court programs demonstrate proven benefit to cost ratio of 2.82 to 1 with a 100% likelihood of success according to the Washington State Institute for Public Policy.

4a. Outcomes:

Outcomes include: Less offender recidivism, increased stability, and increased retention in the Drug Court Program

4b. Measures:

Number of offenders participating in Drug Court assessed for SUD, number admitted to residential treatment, and number admitted to housing/provided vouchers, number not rebooked into jail.

5a. Other Departments/Agencies:

The Whatcom County Health Department holds the contract with the state for these dedicated dollars.

Supplemental Budget Request

Status: Pending

Superior Court

Supp'l ID # 3108 **Fund** 124 **Cost Center** 124200 **Originator:** David Reynolds

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

Dave Reynolds

6. Funding Source:

Healthcare Authority, Criminal Justice Treatment Account (CJTA) Funding.

Supplemental Budget Request

Status: Pending

Non-Departmental

Supp'l ID # 3110 **Fund** 134 **Cost Center** **Originator:** Suzanne Mildner

Year 2 **2020** **Add'l FTE** ☐ **Priority** 1

Name of Request: CARES ACT relief additional funding

X

Department Head Signature (Required on Hard Copy Submission) **Date**

Costs:

Object	*Object Description*	*Amount Requested*
4332.9210	COVID-19 Assistance	($4,506,000)
6610	Contractual Services	$4,506,000
Request Total		***$0***

1a. Description of request:

Whatcom County has been allocated $4,506,000 in additional funding from the Federal Coronavirus Aid, Relief, and Economic Security Act (CARES). These funds are being added to the current contract the county holds with the Washington State Department of Commerce. The additional funding will continue to be allocated to the programs which have been identified as serving the most urgent needs in our community resulting from the COVID19 epidemic.

1b. Primary customers:

Whatcom County government and Whatcom County taxpayers

2. Problem to be solved:

The COVID-19 pandemic continues to have a significant impact on our citizens, businesses and local economy. These additional funds will be directed to where the need is greatest.

3a. Options / Advantages:

Whatcom County will continue to collaborate with the cities in implementing a focused plan to get these grant dollars distributed in our community.

3b. Cost savings:

These grant dollars will help to mitigate the overall impact to the County General Fund due to the COVID-19 response.

4a. Outcomes:

These funds will add to the existing contract and program plan. The contract amendment allows for an extension of spending authority, through the end of 2020.

4b. Measures:

5a. Other Departments/Agencies:

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

6. Funding Source:

Federal CARES ACT funding

Whatcom County

COUNTY COURTHOUSE
311 Grand Avenue, Ste #105
Bellingham, WA 98225-4038
(360) 778-5010

Agenda Bill Master Report

File Number: AB2020-442

File ID:	AB2020-442	**Version:**	1	**Status:**	Agenda Ready
File Created:	10/12/2020	**Entered by:**	BBushaw@co.whatcom.wa.us		
Department:	Public Works Department	**File Type:**	Contract (FCZDBS)		
Assigned to:	Council Finance and Administrative Services Committee			**Final Action:**	
Agenda Date:	10/27/2020			**Enactment #:**	

Primary Contact Email: sdraper@co.whatcom.wa.us

TITLE FOR AGENDA ITEM:

Request authorization for the County Executive to enter into a contract between Whatcom County and Geneva Consulting Services for coordination of the Whatcom Lead Integrating Organization, in the amount of $79,615.00 (Council acting as the Whatcom County Flood Control District Board of Supervisors)

SUMMARY STATEMENT OR LEGAL NOTICE LANGUAGE:

The WRIA 1 Watershed Management Board acts as Local Integrating Organization (LIO) for water resources programs in the Whatcom County region. The WRIA 1 Management Team met on August 12, 2020 and approved the draft FFY 2021 LIO Coordination Scope of Work for the Whatcom County Flood Control Zone District as fiscal agent, acting on behalf of the WRIA 1 Watershed Management Board, for negotiating a contract with the Puget Sound Partnership

The purpose of this contract is to implement the scope of work in the LIO grant agreement to coordinate Whatcom County LIO including the following tasks: 1) organize, support, administer, facilitate and coordinate a Local Integrating Organization, 2) advance implementation of the 2018-2022 action agenda and development of the 2022-2026 action agenda 3) performance management 4) support adaptive management of LIO Ecosystem Recovery Plans and 5) tailor LIO Coordination to support unique vision and goals of LIO. Geneva Consulting Services was chosen for this contract through a competitive selection process (RFP 20-59)

HISTORY OF LEGISLATIVE FILE

Date:	Acting Body:	Action:	Sent To:

Attachments: Memo-Geneva Consulting, Contract-Geneva Consulting

WHATCOM COUNTY
PUBLIC WORKS DEPARTMENT

Jon Hutchings
Director

NATURAL RESOURCES
322 N. Commercial, Suite 110
Bellingham, WA 98225
Telephone: (360) 778-6230
FAX: (360) 778-6231
www.whatcomcounty.us

MEMORANDUM

TO: The Honorable Satpal Singh Sidhu, County Executive for the Whatcom County Flood Control Zone District Board of Supervisors

THROUGH: Jon Hutchings, Public Works Director

FROM: Gary Stoyka, Natural Resources Manager
Austin Rose, Planner I

RE: Contract between Whatcom County Flood Control Zone District and Geneva Consulting Services for Coordination of the Whatcom County LIO

DATE: October 5, 2020

Enclosed are two (2) originals of a contract between Whatcom County Flood Control Zone District (FCZD) and Geneva Consulting Services for coordination of the Whatcom Local Integrating Organization (LIO) for your review and signature.

- **Background and Purpose**

The WRIA 1 Watershed Management Board acts as the Local Integrating Organization (LIO) for protection and recovery of the WRIA in coordination with the Puget Sound Partnership. The WRIA 1 Management Team met on August 12, 2020 and approved the draft FFY 2021 LIO Coordination Scope of Work for the Whatcom County Flood Control Zone District as fiscal agent, acting on behalf of the WRIA 1 Watershed Management Board, for negotiating a contract with the Puget Sound Partnership. The FCZD received a grant agreement from the Puget Sound Partnership (Agreement Number: 2021-11) to provide funding for LIO Coordination.

The purpose of this contract is to implement the scope of work in the LIO grant agreement to coordinate the Whatcom County LIO including the following tasks: 1) organize, support, administer, facilitate, and coordinate a Local Integrating Organization, 2) advance implementation of the 2018-2022 action agenda and development of the 2022-2026 action agenda 3) performance management, 4) support adaptive management of LIO Ecosystem Recovery Plans, and 5) tailor LIO Coordination to support unique vision and goals of LIO. Geneva Consulting Services was chosen for this contract through a competitive selection process using Whatcom County Request for Proposals (RFP 20-59).

- **Funding Amount and Source**

This contract, for the amount of $79,615.00, is fully funded through a grant from the Puget Sound Partnership. The FCZD has adequate budget authority in the 2020 budget and in the proposed 2021 budget for this contract.

Please contact Gary Stoyka at extension 6218 or Austin Rose at extension 6286, if you have any questions or concerns regarding the terms of this agreement,

Enclosures

WHATCOM COUNTY CONTRACT INFORMATION SHEET

Whatcom County Contract No. _____

Originating Department:	Public Works
Division/Program: *(i.e. Dept. Division and Program)*	Natural Resources/Whatcom LIO 907010
Contract or Grant Administrator:	Austin Rose
Contractor's / Agency Name:	Geneva Consulting Services

Is this a New Contract? If not, is this an Amendment or Renewal to an Existing Contract? Yes ☐ No ☐
Yes ☒ No ☐ If Amendment or Renewal, (per WCC 3.08.100 (a)) Original Contract #: _____

Does contract require Council Approval? Yes ☒ No ☐ If No, include WCC: _____
Already approved? Council Approved Date: (Exclusions 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): Puget Sound Partnership Agreement Number 2021-11

Is this contract the result of a RFP or Bid process?
Yes ☒ No ☐ If yes, RFP and Bid number(s): RFP 20-59 Contract Cost Center: 169121

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):
$ 79,615.00
This Amendment Amount:
$ _____
Total Amended Amount:
$ _____

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

1. Exercising an option contained in a contract previously approved by the council.
2. Contract is for design, construction, r-o-w acquisition, 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: The purpose of this contract is to implement the scope of work in the LIO grant agreement to coordinate the Whatcom County LIO including the following tasks: 1) organize, support, administer, facilitate, and coordinate a Local Integrating Organization, 2) advance implementation of the 2018-2022 action agenda and development of the 2022-2026 action agenda 3) performance management, 4) support adaptive management of LIO Ecosystem Recovery Plans, and 5) tailor LIO Coordination to support unique vision and goals of LIO.

Term of Contract: October 1, 2020	Expiration Date: September 30, 2021

Contract Routing:

1. Prepared by: Austin Rose Date: 10/5/2020
2. Attorney signoff: Christopher Quinn Date: 10/05/2020
3. AS Finance reviewed: M Caldwell Date: 10/5/2020
4. IT reviewed (if IT related): _____ Date: _____
5. Contractor signed: _____ Date: _____
6. Submitted to Exec.: _____ Date: _____
7. Council approved (if necessary): _____ Date: _____
8. Executive signed: _____ Date: _____
9. Original to Council: _____ Date: _____

V2.0

Whatcom County Contract No.

_____

CONTRACT FOR SERVICES AGREEMENT
[Between Whatcom County Flood Control Zone District and Geneva Consulting Services]

Geneva Consulting Services, hereinafter called **Contractor**, and Whatcom County, hereinafter referred to as **County,** agree and contract as set forth in this Agreement, including:

General Conditions, pp. 3 to 9,
Exhibit A (Scope of Work), pp. 10 to 12,
Exhibit B (Compensation), pp. 13
Exhibit C (Certificate of Insurance), pp. 14
Exhibit D (Grant Terms and Conditions), pp. 15 to 22

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 as the 1st day of October, 2020, and shall, unless terminated or renewed as elsewhere provided in the Agreement, terminate on the 30th day of September, 2021.

The general purpose or objective of this Agreement is to: support coordination of the Whatcom Local Integrating Organization (LIO), 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 $ 79,615.00. The Contract Number, set forth above, shall be included on all billings or correspondence in connection therewith.

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

IN WITNESS WHEREOF, the parties have executed this Agreement this ____ day of _____, 20 ____.

CONTRACTOR:

GENEVA CONSULTING SERVICES

_____

Becky Peterson, Sole Propreitor
Becky Peterson

STATE OF WASHINGTON)
) ss.
COUNTY OF Whatcom)

On this 12 day of October, 2020 before me personally appeared Becky Peterson to me known to be the sole proprietor (title) of Geneva Consulting (Company) and who executed the above instrument and who acknowledged to me the act of signing and sealing thereof.

LONNI J CUMMINGS NOTARY PUBLIC STATE OF WASHINGTON COMMISSION EXPIRES 06-21-2021

_____

NOTARY PUBLIC in and for the State of Washington, residing at Bellingham. My commission expires 6-21-2021.

WHATCOM COUNTY FLOOD CONTROL ZONE DISTRICT:
Recommended for Approval:

10/13/20
John Hutchings, Public Works Director Date

Approved as to form:

CQ/Emailed /BB 10/13/2020
Christopher Quinn Date
Senior Deputy Prosecuting Attorney – Civil Division

Approved:
Accepted for Whatcom County on behalf of the Whatcom County Flood Control Zone District:

By: _____
Satpal Singh Sidhu Date
Whatcom County Executive

STATE OF WASHINGTON)
) ss
COUNTY OF WHATCOM)

On this _____ day of _____, 20 __, before me personally appeared Satpal Singh Sidhu, to me known to be the Executive of Whatcom County, who executed the above instrument and who acknowledged to me the act of signing and sealing thereof.

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

CONTRACTOR INFORMATION:

Geneva Consulting Services

Becky Peterson
Sole Proprietor

Address:
1020 Austin St.
Bellingham, WA 98229

Mailing Address:
1020 Austin St.
Bellingham, WA 98229

Contact Name: Becky Peterson

Contact Phone: 360-392-1301

Contact Email: genevaconsulting@comcast.net

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: Not Applicable

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. 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.

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.

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

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

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

33.1 Right to Review:
This contract is subject to review by any Federal, State or County auditor. The County or its designee shall have the right to review and monitor the financial and service components of this program by whatever means are deemed expedient by the Administrative Officer or by the County Auditor's Office. Such review may 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: Not applicable.

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:

Contractor irrevocably waives any existing rights which it may have, by contract or otherwise, to require another person or corporation to refrain from submitting a proposal to or performing work or providing supplies to the County, and contractor further promises that it will not in the future, directly or indirectly, induce or solicit any person or corporation to refrain from submitting a bid or proposal to or from performing work or providing supplies to the County.

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:

Austin Rose, Planner I, 322 N. Commercial St., Bellingham, WA 98225

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

Contractor certifies that it has fully met the responsibility criteria required of public works contractors under RCW 39.04.350 (1), which include: (a) having a certificate of registration in compliance with RCW 18.27; (b) having a current state unified business identifier number; (c) if applicable, having industrial insurance coverage for its employees working in Washington as required in Title 51 RCW, an employment security department number as required in Title 50 RCW, and a state excise tax registration number as required in Title 82 RCW; and (d) not being disqualified from bidding on any public works contract under RCW 39.06.010 or 39.12.065 (3).

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:

Any written commitment received from the Contractor concerning this Agreement shall be binding upon the Contractor, unless otherwise specifically provided herein with reference to this paragraph. Failure of the Contractor to fulfill such a commitment shall render the Contractor liable for damages to the County. A commitment includes, but is not limited to, any representation made prior to execution of this Agreement, whether or not incorporated elsewhere herein by reference, as to performance of services or equipment, prices or options for future acquisition to remain in effect for a fixed period, or warranties.

41.1 Severability:

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

41.2 Waiver:

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

42.1 Disputes:

a. General:

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

b. Notice of Potential Claims:

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

c. Detailed Claim:

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

d. Arbitration:

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

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

43.1 Venue and Choice of Law:

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

44.1 Survival:

The provisions of paragraphs 11.1, 11.2, 11.3 , 21.1, 22.1, 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)

Task 1: Organize, Support, Administer, Facilitate, and Coordinate a Local Integrating Organization

Project Approach:

- Maintain a public e-mail list for notification of WRIA1 Management Team and WRIA 1 Watershed Management Board meetings and other activities or events the community may have an interest in. Direct general inquiries to appropriate entity or individual as needed.
- Coordinate meeting logistics and facilitation for up to 3 work group or LIO staff teams meetings, 4 Steering Committee, 8 WRIA1 Management Team, and 4 WRIA 1 Watershed Management Board meetings. This includes agenda preparation, meeting summaries, and preparation of other supporting materials.
- Maintain the Whatcom LIO webpage to provide information on process and status of LIO work. This will include meeting agenda, summaries, and progress on near-term actions.
- Ensure cross-posting and distribution of Whatcom LIO relevant information with the WRIA1 Watershed Project, WRIA1 Salmon Recovery Program, and as appropriate, WWIN/ Whatcom ECONet.
- Maintain communication links to Puget Sound Partnership including with the Ecosystem Recovery Coordinator assigned to Whatcom LIO and report and distribute regional information from the Puget Sound Partnership to the Whatcom LIO participants as applicable.
- Attend up to 4 regional LIO Coordinator meetings, 2 PSP trainings or workshops , 3 Ecosystem Coordination Board meetings, and other coordination meetings, regional meetings, or conference calls required by PSP for purposes of information gathering and reporting back to the appropriate WRIA1 Team.
- Participate in PSP facilitated workshops, discussions, and/or trainings related to LIO and salmon lead entity integration and mobilizing funding.
- Provide support, as requested, to Whatcom LIO Ecosystem Coordination Board representative and alternate in the form of coordinating local positions and/or briefing papers with or for the WRIA 1 Watershed Management Board, Watershed Management Team, and/or other groups as directed.

Assumptions:

- Operational communication is considered correspondence and information that is received from PSP, other LIOs, and other entities, will be distributed to the appropriate LIO Team or the Policy Boards.
- The consultant works with the LIO Staff Team and fiscal agent staff- depending on the information received- to frame up topics for discussion by the Management Team and/or Policy Boards, as needed.
- External communication that is considered outside of typical process-coordination communication will be referred to the fiscal agent staff and/or Management Team as applicable.
- Participation in regional meetings will be prioritized given budget considerations.

Work Products:

- Progress reports describing general communication and distribution of LIO-related materials to WRIA 1 Boards, Management Team, Steering Committee, Watershed Work Group, LIO Staff Team, and interested community members. January 15, 2021; April 15, 2021; July 15, 2021; and September 30, 2021.
- Agendas, supporting materials, and meeting summaries for Whatcom County LIO Staff Team, Watershed Work Group, Steering Committee, WRIA 1 Management Team, and WRIA 1 Boards. January 15, 2021; April 15, 2021; July 15, 2021; and September 30, 2021.
- Agendas from regional meetings and trainings attended. January 15, 2021; April 15, 2021; July 15, 2021; and September 30, 2021.
- Briefing papers or other material prepared in support of Whatcom LIO Ecosystem Coordination Board representative and alternate. January 15, 2021; April 15, 2021; July 15, 2021; and September 30, 2021.

Budget Estimate: $24,112.00
Labor: $23,652.00
Mileage: $460.00

Task 2: Advance Implementation of the 2018-2022 Action Agenda and Development of the 2022-2026 Action Agenda

Project Approach:

- Coordinate and facilitate implementation of near-term actions identified in the 2018-2022 Action Agenda. This will include:
  - Share progress on NTAs relevant to the Whatcom LIO using Puget Sound Info and coordinate presentations/status updates from NTA owners to LIO
  - Assistance with identifying existing funding sources and leveraging existing partnerships that can contribute to NTA implementation
  - Provide assistance for identifying funding opportunities for NTAs. In addition to direct notification of funding opportunities to owners of near-term actions and ongoing programs, information will be provided to the WWIN/ Whatcom ECONet for broader public distribution.

- Provide support to implementation of regional or local NTAs as requested in accordance in accordance with LIO grant requirements.
- Coordinate a local process for priority NTA selection within the existing Whatcom LIO meeting structure and schedule.
- Coordinate input on the 2022-2026 Action Agenda development and provide feedback to PSP. Coordination includes working with groups within the LIO to receive feedback at key points, and drafting or assisting in the drafting of local content when applicable.
- Coordinate local input to the Strategic Initiative Leads and Implementation Strategy Work Group
- Engage with ECB representative

Assumptions:
- The LIO Staff Team, Steering Committee, and Management Team have a critical role in the tasks and approaches listed for Task 2.

Work Products:
- Progress reports describing coordination of near-term action implementation. January 15, 2021; April 15, 2021; July 15, 2021; and September 30, 2021.
- Copy of process to identify LIO priority NTAs for direct funding including a list of selected priority NTAs. November 2020, or date determined through PSP and Strategic Initiative Lead process.
- Copy of comments on the 2022-2026 Action Agenda Comprehensive Plan update, if any, submitted to Puget Sound Partnership September 30, 2021
- Copy of comments submitted to Puget Sound Partnership, Strategic Initiative Leads, and/or Implementation Strategy Work Groups, if any. September 30, 2021

Budget Estimate: $28,946.00
Labor: $28,762.00
Travel: $184.00

Task 3: Performance Management
Project Approach:
- Support Whatcom County Public Works- Natural Resources staff with invoicing and reporting to Puget Sound Partnership. Provide support for other grant agreement tasks as needed.
- Coordinate twice yearly reporting on progress of near-term actions to WRIA 1 Management Team using Puget Sound Reporting format.

Assumptions:
- The near-term action owners have a critical role in providing information twice yearly to the Management Team and Puget Sound Partnership.

Work Products:
- Twice yearly reports on status of near-term actions to WRIA 1 Management Team. April 15 and September 30, 2021.

Budget Estimate: $2,263
Labor: $2,263

Task 4: Support Adaptive Management of LIO Ecosystem Recovery Plans

Project Approach:

- Provide feedback to PSP on PSP communications development, products, and progress report formats and templates.
- Coordinate adaptive management of the LIO plan and strategies and supporting advancement of priority tasks.
- Coordinate with LIO teams on strategies and actions from Task 2 coordination of input to the PSP on development of the 2022-2026 Action Agenda to identify changes, inclusions, and other updates to the Whatcom LIO plan, and coordinate the recommended changes through the Management Team process.
- Communicate and provide changes and updates to the Whatcom LIO plan to PSP and prepare or coordinate updates to the Miradi files to reflect adaptive management of the plan.
- Maintain and Update LIO Plan Miradi files with WRIA 1 Watershed Management Board strategies that are a subset of the LIO plan.
- Adaptively manage the WRIA 1 Watershed Management Board five year plan to reflect changes, if applicable, to the strategies and actions in the LIO plan.

Assumptions:

- The WRIA 1 Management Team and Steering Committee will have critical roles in providing information on Task 4 coordination.
- The WRIA 1 Management Team, Steering Committee, and LIO Staff Team have critical roles in adaptive management of the LIO plan.

Work Products:

- Presentations.
- Summary of Changes to the Ecosystem Recovery Plan via Adaptive Management.
- Updated Miradi files.

Budget Estimate: $18,980.00
Labor: $18,980.00

Task 5: Tailor LIO coordination to Support Unique Vision and Goals of LIO

Project Approach:

- Work with NTA owners, LIO, and ER Team liaison to identify NTAs that are ready to use seed money to catalyze implementation of an NTA. For all NTAs that are being considered for seed money, determine required amount of seed money.
- Work with selected NTA owners to allocate funds according to the selections made by the LIO.

Assumptions:

- The WRIA 1 Management Team, Steering Committee and Staff Team have a critical role in identifying criteria and/or process for selecting an NTA for seed money and identifying the barrier in the LIO to address.
- Subcontract for the NTA seed money will be developed and administered by the Fiscal Agent.

Work Products:

- Copy of required subcontract with NTA owners receiving seed money

Budget Estimate: $5,314.00
Labor: $5,314.00

EXHIBIT "B"
(COMPENSATION)

As consideration for the services provided pursuant to Exhibit A, "Scope of Work", the County agrees to compensate the Contractor according to the hourly rates provided (below). Other reasonable expenses incurred in the course of performing the duties herein shall be reimbursed including: mileage at IRS rate, lodging and per diem at a rate not to exceed the GSA rate for location services are provided. Reimbursement for air travel will be at coach rates. Other expenditures such as printing, postage, telephone charges, and outreach supplies shall be reimbursed at actual cost plus 10%.

Contractor will invoice monthly. Invoices will include hours worked by employee by day together with tasks accomplished. Requests for reimbursement of expenses must be accompanied by copies of paid invoices itemizing costs incurred. Costs of alcoholic beverages are not eligible for reimbursement. **Compensation shall not exceed $68,616.11.** 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.

Budget Summary

Task	Hours	Labor ($ 73/hr)	Expenses	Totals
Task 1.0	324	$23,652	*460.00	$24,112.00
Task 2.0	394	$28,762	*184.00	$28,946.00
Task 3.0	31	$2,263		$2,263.00
Task 4.0	260	$18,980		$18,980.00
Task 5.0	72.8	$5,314		$5,314.00
Totals			**Not to Exceed**	**$79,615**

* Mileage
** Supplies/Graphics

EXHIBIT "C"
(CERTIFICATE OF INSURANCE)

ACORD

CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY): 05/03/2020

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

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

PRODUCER: Rice Insurance LLC 1400 Broadway P.O. Box 539 Bellingham WA 98227	CONTACT NAME: Lacey Larsen PHONE (A/C, No, Ext): (360) 734-1161 FAX (A/C, No): (360) 734-1173 E-MAIL ADDRESS: laceyl@riceinsurance.com	
	INSURER(S) AFFORDING COVERAGE	NAIC #
	INSURER A: Ohio Security Insurance Co.	24082
	INSURER B:	
	INSURER C:	
	INSURER D:	
	INSURER E:	
INSURED: Rebecca Peterson 1920 Austin St Bellingham WA 98229	INSURER F:	

COVERAGES CERTIFICATE NUMBER: CL205373658 REVISION NUMBER:

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

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS	
A	X COMMERCIAL GENERAL LIABILITY CLAIMS-MADE X OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: X POLICY PRO-JECT LOC OTHER:	Y	Y	BLS56214770	07/05/2020	07/05/2021	EACH OCCURRENCE DAMAGE TO RENTED PREMISES (Ea occurrence) MED EXP (Any one person) PERSONAL & ADV INJURY GENERAL AGGREGATE PRODUCTS - COMP/OP AGG	$ 1,000,000 $ 1,000,000 $ 15,000 $ 1,000,000 $ 2,000,000 $ 2,000,000
	AUTOMOBILE LIABILITY ANY AUTO OWNED AUTOS ONLY HIRED AUTOS ONLY SCHEDULED AUTOS NON-OWNED AUTOS ONLY						COMBINED SINGLE LIMIT (Ea accident) BODILY INJURY (Per person) BODILY INJURY (Per accident) PROPERTY DAMAGE (Per accident)	
	UMBRELLA LIAB EXCESS LIAB DED RETENTION $						EACH OCCURRENCE AGGREGATE	
	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	N/A					PER STATUTE OTH-ER E.L. EACH ACCIDENT E.L. DISEASE - EA EMPLOYEE E.L. DISEASE - POLICY LIMIT	

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

Whatcom County is included as an additional insured for the above-noted insurance per form CG8610 0413. This Commercial General Liability insurance shall be considered as primary and non-contributory, and shall waive all rights of subrogation. The County insurance shall not serve as a source of contribution.

CERTIFICATE HOLDER	CANCELLATION
Whatcom County Public Works 322 N. Commercial St Suite 210 Bellingham WA 98225	SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS. AUTHORIZED REPRESENTATIVE

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ACORD 25 (2016/03)

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Exhibit "D"
(GRANT TERMS AND CONDITIONS)

Title: Whatcom County LIO – FFY2021 Funding

1. DEFINITIONS

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

A. "AGENCY" means the Puget Sound Partnership (PSP) of the State of Washington, any division, section, office, unit or other entity of the AGENCY, or any of the officers or other officials lawfully representing that AGENCY.

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

C. "CONTRACTOR" means that firm, provider, organization, individual or other entity performing service(s) under this contract, and shall include all employees of the CONTRACTOR.

D. "DEBARMENT" means an action taken by a Federal agency or official to exclude a personor business entity from participating in transactions involving certain federal funds.

E. "EPA" means U.S. Environmental Protection Agency.

F. "SUBCONTRACTOR" means one not in the employment of the CONTRACTOR, who is performing all or part of those services under this contract under a separate contract with the CONTRACTOR. The terms "SUBCONTRACTOR" and "SUBCONTRACTORS" means SUBCONTRACTOR(s) in any tier.

G. "SUB-RECIPIENT" means a non-Federal entity that receives a subaward from a pass-through entity to carry out part of a Federal program; but does not include an individual that is a beneficiary of such program. A subrecipient may also be a recipient of other Federal awards directly from a Federal awarding agency. Guidance on distinguishing between a subrecipient and a contractor is provided in 2 CFR §200.330. Subrecipient and contractor determinations.

2. AMERICANS WITH DISABILITIES ACT (ADA)

If the contract includes federal funding, the CONTRACTOR must comply with Section 504 of the Rehabilitation Act of 1973, which prohibits discrimination against persons with disabilities by entities receiving Federal financial assistance. The CONTRACTOR may also be required to comply with the ADA, which provides comprehensive civil rights protection to individuals with disabilities in the areas of employment, public accommodations, state and local government services, and telecommunications.

3. ADVANCE PAYMENTS PROHIBITED

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

4. AMENDMENT

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

5. ASSIGNMENT

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

6. ASSURANCES

The parties agree that all activity pursuant to this Agreement shall be in accordance with all applicable federal, state and local laws, rules, and regulations as they currently exist or as amended.

7. CONFIDENTIALITY

Confidential information: The CONTRACTOR shall not use or disclose any information concerning the AGENCY, or information that may be classified as confidential, for any purpose not directly connected with the administration of this contract, except with prior written consent of the AGENCY, or as may be required by law. Each party will utilize reasonable security procedures and protections to assure that records and documents provided by the other party are not erroneously disclosed to third parties.

However, the parties acknowledge that state and local agencies are subject to chapter 42.56 RCW, the Public Records Act.

Personal Information (one form of confidential information): Personal information including, but not limited to, "Protected Health Information," collected, used, or acquired in connection with this contract shall be protected against unauthorized use, disclosure, modification or loss. CONTRACTOR shall ensure its directors, officers, employees, subcontractors or agents use personal information solely for the purposes of accomplishing the services set forth herein. CONTRACTOR and its subcontractors agree not to release, divulge, publish, transfer, sell or otherwise make known to unauthorized persons personal information without the express written consent of the agency or as otherwise required by law. Any breach of this provision may result in termination of the contract and the demand for return of all personal information. The CONTRACTOR agrees to indemnify and hold harmless the AGENCY for any damages related to the CONTRACTOR'S unauthorized use of personal information.

8. CREDIT AND ACKNOWLEDGEMENT

Reports, documents, signage, videos, or other media, developed as part of projects funded by EPA funded Agreements shall display both the EPA and Puget Sound Partnership logos and the following credit line: "This project has been funded wholly or in part by the United States Environmental Protection Agency under Assistance Agreement CE-01J65401. 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."

9. DEBARMENT AND SUSPENSION

CONTRACTOR, by signature to this Contract, certifies that CONTRACTOR is not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded by any Federal department or agency from participating in transactions (Debarred). CONTRACTOR shall comply with applicable federal agency debarment and suspension rules adopted pursuant to Office of Management and Budget guidance at 2 CFR Part 180, such as 2 CFR Part 1532 for the Environmental Protection Agency, which implement Executive Order 12549. CONTRACTOR acknowledges that failing to disclose the information required at 2 CFR 180.335 may result in the delay or negation of this contract, or pursuance of legal remedies, including suspension and debarment.

CONTRACTOR shall not award subcontracts or subawards to persons (individuals or organizations) listed on the Excluded Parties List located at www.sam.gov/. CONTRACTOR agrees to include theabove requirements in all subcontracts into which it enters. The CONTRACTOR shall immediately notify AGENCY if, during the term of this Contract, CONTRACTOR becomes debarred. AGENCY may immediately terminate this Contract by providing CONTRACTOR written notice if CONTRACTOR becomes Debarred during the term hereof.

10. DISALLOWED COSTS

CONTRACTOR is responsible for any audit exceptions or disallowed costs incurred by its own organization or that of its Subcontractors.

11. DISPUTES

In the event that CONTRACTOR is a state agency and a dispute arises under this Agreement, either of the parties may request intervention by the Governor, *as* provided by chapter 43.17.330 RCW, in which event the Governor's process will control.

In the event that a dispute arises under this Agreement, and the CONTRACTOR is not a state agency, it shall be determined by a Dispute Board in the following manner: Each party to this Agreement shall appoint one member to the Dispute Board. The members so appointed shall jointly appoint an additional member to the Dispute Board. The Dispute Board shall evaluate the facts, Agreement terms, applicable statutes and rules, and make a determination of the dispute. The determination of the Dispute Board shall be final and binding on both parties.

The cost of resolution will be borne as allocated by the Dispute Board or the Governor.

12. DUPLICATION OF BILLED COSTS

The CONTRACTOR shall not bill the Agency for services performed under this contract, and the Agency shall not pay the CONTRACTOR if the CONTRACTOR is entitled to payment or has been or will be paid by any other source, including grants, for that service.

13. GOVERNING LAW AND VENUE

This Agreement shall be construed and interpreted in accordance with the laws of the State of Washington and the venue of any action brought under this Agreement shall be in Superior Court for Thurston County.

14. HOTEL MOTEL FIRE SAFETY ACT

The Hotel and Motel Fire Safety Act of 1990 (Public Law 101-391) establishes a number of fire safety standards which must be met for hotels and motels. Pursuant to 40 CFR 30.18, if applicable, and 15 USC 2225a if any portion of this contract will be paid with federal funds, CONTRACTOR agrees to ensure that all space for conferences, meetings, conventions, or training seminars funded in whole or in part with federal funds complies with the protection and control guidelines of the Hotel and Motel Fire Safety Act (PL 101-391, as amended. CONTRACTOR may search the Hotel-Motel National Master List at: http://www.usfa.dhs.gov/applications/hotel to see if a property is in compliance (FEMA ID is currently not required), or to find other information about the Act.

If necessary, the head of the Federal agency may waive this prohibition in the public interest.

15. INDEPENDENT CAPACITY

The employees or agents of each party who are engaged in the performance of this Agreement shall continue to be employees or agents of that party and shall not be considered for any purpose to be employees or agents of the other party.

16. INTELLECTUAL PROPERTY RIGHTS

Unless otherwise provided, all materials produced under this contract shall be considered "works for hire" as defined by the U.S. Copyright Act 17 U.S.C. § 101, et seq., and shall be owned by the AGENCY. Where federal funding is involved, the awarding federal agency may have a proprietary interest in patent rights to any inventions that are developed by the CONTRACTOR as provided in 35 U.S.C. §§ 200-212 and 37 CFR part 401 and retains a royalty-free, nonexclusive, and irrevocable right to reproduce, publish, or otherwise use the work for Federal purposes, and to authorize others to do so.

CONTRACTOR acknowledges that in accordance with 40 CFR 30.36 and 31.34, EPA has the rights to reproduce, publish, use, and authorize others to 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 recipient 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 Item 6, 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 ofthe 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.

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

In the event the materials are not considered "works for hire" under the U.S. Copyright laws CONTRACTOR shall grant AGENCY, and any federal entity which provided federal funds used in this contract, retain a royalty-free, nonexclusive and irrevocable license to reproduce, publish, recover or otherwise use the material(s) or property and to authorize others to use the same for federal, state or local government purposes.

Material which CONTRACTOR uses to perform the contract but is not created for or paid for by AGENCY is not "work made for hire"; however, CONTRACTOR shall grant the AGENCY a nonexclusive, royalty- free, irrevocable license (with rights to sublicense others) in such materials to translate, reproduce, distribute, prepare derivative works, publicly perform, and publicly display, provided that such license shall be limited to the extent which CONTRACTOR has a right to grant such a license to use this material for AGENCY internal purposes at no charge to AGENCY. The CONTRACTOR warrants and represents that CONTRACTOR has all rights and permissions, including intellectual property rights, moral rights and rights of publicity, necessary to grant such a license to the AGENCY. The AGENCY shall receive prompt written notice of each notice or claim of infringement received by the CONTRACTOR with respect to any material delivered under this contract. The AGENCY shall have the right to modify or remove any restrictive markings placed upon the material by the CONTRACTOR.

17. INTERNATIONAL TRAVEL (including Canada) – FOR FEDERAL FUNDED AGREEMENTS ONLY

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

18. LIGHT REFRESHMENTS and/or MEALS

Unless the event(s) and all of its components are described in the approved work plan, the recipient agrees to obtain prior approval from EPA for the use of grant funds for light refreshments and/or meals served at meetings, conferences, training workshops, and outreach activities (events). The recipient must send requests for approval to the EPA Project Officer and include:

1) An estimated budget and description for the light refreshments, meals, and/or beverages to be served at the event(s);
2) A description of the purpose, agenda, location, length and timing for the event; and,
3) An estimated number of participants in the event and a description of their roles.

Cost for light refreshments and meals for recipient staff meetings and similar day-to-day activities are not allowable under EPA assistance agreements.

19. LOBBYING PROHIBITED

By signing this contract, CONTRACTOR agrees to comply with Title 40 CFR Part 34, New Restrictions on Lobbying, 31 U.S.C. § 1352, and 40 CFR Part 30 if applicable. CONTRACTOR shall include the language of this provision in subcontracts that exceed $100,000 of federal funds and require all subcontractors to certify and disclose accordingly.

a. No Federal appropriated funds shall be paid by or on behalf of the CONTRACTOR to anyperson for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

b. If this contract includes federal funds exceeding $100,000, CONTRACTOR shall sign and submit to AGENCY Exhibit D, Attachment 2, PSP Certification Regarding Lobbying (basedon EPA Form 6600-06 (Rev. 06/2008). If CONTRACTOR signed and submitted the PSP Certification Regarding Lobbying form during the procurement process for this contract it is not necessary to resubmit the certification.

c. If CONTRACTOR expends non-federal funds in any amount to lobby as detailed in a., above, CONTRACTOR shall complete and submit to Standard Form LLL (Rev. 4/2012), Disclosure of Lobbying Activity. The form can be found at: **http://www.epa.gov/ogd/AppKit/form/sfllin_sec.pdf**.

20. LOBBYING AND LITIGATION

a. All recipients

i. The chief executive officer of this recipient 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 recipient 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.

ii. The recipient agrees to comply with Title 40 CFR Part 34, New Restrictions on Lobbying. The recipient 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.

iii. 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.

iv. Contracts awarded by a recipient 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.

v. Pursuant to Section 18 of the Lobbying Disclosure Act, the recipient 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.

21. NONDISCRIMINATION and DISADVANTAGED BUSINESS ENTERPRISES

In accordance with 40 CFR 33.106 and its Appendix A, the CONTRACTOR shall not discriminate on the basis of race, color, national origin or sex in the performance of this contract. The contractor shall carry out applicable requirements of 40 CFR part 33 in the award and administration of contracts awarded under EPA financial assistance agreements. Failure by the contractor to carry out these requirements is a material breach of this contract which may result in the termination of this contract or other legally available remedies.

22. PAYMENT TO CONSULTANTS

EPA will limit its participation in salary rate (excluding overhead) paid to individual consultants retained by recipients or by a recipients' contractors or subcontractors shall be limited to the maximum daily rate for Level IV of the Executive Schedule (formerly GS-18), to be adjusted annually. This limit applies to consultation services of designated individuals with specialized skills who are paid at a daily or hourly rate. This rate does not include transportation and subsistence costs for travel performed (the recipient will pay these in accordance with their normal travel reimbursement practices).

Subagreements with firms for services which are awarded using the procurement requirements in 40 CFR Parts 30 or 31, are not affected by this limitation unless the terms of the contract provide the recipient with responsibility for the selection, direction and control of the individual who will be providing services under the contract at an hourly or daily rate of compensation. See 40 CFR 30.27(b) or 40 CFR 31.369j), as applicable, for additional information.

As of January 1, 2020, the limit is $654.71 per day $81.83 per hour.
(Calculations: 2020 Level IV Executive Schedule annual pay = $170,800 / 2087 = $81.83 per hour or
$654.71 per day).

23. PROJECT APPROVAL

The quality, extent and character of any and all work, deliverables and/or services to be performed under this agreement by the CONTRACTOR shall be subject to the review and approval of the AGENCY through the Project Manager or other designated official. In the event that the AGENCY determines, that any work, deliverable, and/or service performed by the CONTRACTOR is unsatisfactory, the AGENCY may withhold reimbursement for the unsatisfactory work performed by the CONTRACTOR or require that the CONTRACTOR remediate their work product to get it to the satisfaction of the AGENCY. The Parties may agree in the Statement of Work to specific approval, acceptance, and/or remediation terms. If the Statement of Work is silent on this topic, the Disputes provision, above, will govern the resolution process.

24. RECORDS MAINTENANCE

The parties to this Agreement shall each maintain books, records, documents and other evidence that sufficiently and properly reflect all direct and indirect costs expended by either party in the performance of the service(s) described herein. CONTRACTOR shall retain such records for a period of six years following the date of final payment.

At no additional cost, these records, including materials generated under the contract, shall be subject at all reasonable times to inspection, review or audit by the AGENCY, personnel duly authorized by the AGENCY, the Office of the State Auditor, and federal and state officials so authorized by law, regulation or agreement. If this contract exceeds $100,000 and any portion of the funding source is federal, the federal funding agency, the Comptroller General of the United States, or any duly authorized representatives shall have access to books documents, papers, and records of CONTRACTOR directly pertinent to this contract for purpose of making audits, examination, excerpts and transcriptions (40 CFR 30.48(d)).

If any litigation, claim or audit is started before the expiration of the six (6) year period, the records shall be retained until all litigation, claims, or audit findings involving the records have been resolved.

25. RECYCLED PAPER

In accordance with Section 6002 of the Resource Conservation and Recovery Act (RCRA) (42 U.S.C. 6962) any State agency or agency of a political subdivision of a State which is using appropriated Federal funds shall comply with the requirements set forth. Regulations issued under RCRA Section 6002 apply to any acquisition of an item where the purchase price exceeds $10,000 or where the quantity of such items acquired in the course of the preceding fiscal year was $10,000 or more. RCRA Section 6002 requires that preference be

given in procurement programs to the purchases of specific products containing recycled materials identified in guidelines developed by EPA. These guidelines are listed in 40 CFR 247.

In accordance with the policies set forth in EPA Order 1000.25 and Executive Order 13423, Strengthening Federal Environmental, Energy and Transportation Management (January 24, 2007), Sub- Recipient agrees to use recycled paper and double sided printing for all reports which are prepared as part of this Agreement and delivered to EPA. This requirement does not apply to reports prepared on forms supplied by EPA, or to Standard Forms, which are printed on recycled paper and are available through the General Services Administration.

26. RESPONSIBILITIES OF THE PARTIES

Each party to this Agreement hereby assumes responsibility for claims and/or damages to persons and/or property resulting from any act or omissions on the part of itself, its employees, its officers, and its agents. Neither party assumes any responsibility to the other party for the consequences of any claim, act, or omission of any person, agency, firm, or corporation not a part to this Agreement.

27. SEVERABILITY

If any term or condition of this Agreement is held invalid, such invalidity shall not affect the validity of the other terms or conditions of this Agreement.

28. STATE GRANT CYBERSECURITY

(a) The recipient agrees that when collecting and managing environmental data under thisassistance agreement, it will protect the data by following all applicable State law cybersecurity requirements.

(b) (1) EPA must ensure that any connections between the recipient's network or information system and EPA networks used by the recipient to transfer data under this agreement, are secure.

(2) The recipient agrees that any subawards it makes under this agreement will require the subrecipient to comply with the requirements in (b)(1) if the subrecipient' s network or information system is connected to EPA networks to transfer data to the Agency using systems other than the Environmental Information Exchange Network or EPA's Central Data Exchange.

29. SUBCONTRACTING

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

Additionally, the CONTRACTOR is responsible for ensuring that all terms, conditions, assurances and certifications set forth in this agreement are carried forward to any subcontracts

30. TERMINATION DUE TO FUNDING

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

31. TERMINATION FOR CAUSE

If for any cause either party does not fulfill in a timely and proper manner its obligations under this Agreement, or if either party violates any of these terms and conditions, the aggrieved party will give the other party written notice of such failure or violation. The responsible party will be given the opportunity to correct the violation or failure within 15 working days. If the failure or violation is not corrected, this Agreement may be terminated immediately by written notice of the aggrieved party to the other.

32. TERMINATION FOR CONVENIENCE

Either party may terminate this Agreement upon 30 calendar days' prior written notification to the other party. If this Agreement is so terminated, the parties shall be liable only for performance rendered or costs incurred in accordance with the terms of this Agreement prior to the effective date of termination.

33. TREATMENT OF ASSETS

a. Title to all property furnished by the AGENCY shall remain in the AGENCY. Title to all property furnished by the CONTRACTOR, for the cost of which the CONTRACTOR is entitled to be reimbursed as a direct item of cost under this contract, shall pass to and vest in

the AGENCY upon delivery of such property by the CONTRACTOR. Title to other property, the cost of which is reimbursable to the CONTRACTOR under this contract, shall pass to and vest in the AGENCY upon (i) issuance for use of such property in the performance of this contract, or (ii) commencement of use of such property in the performance of this contract, or (iii) reimbursement of the cost thereof by the AGENCY in whole or in part, whichever first occurs.

b. Any property of the AGENCY furnished to the CONTRACTOR shall, unless otherwiseprovided herein or approved by the AGENCY, be used only for the performance of this contract.

c. The CONTRACTOR shall be responsible for any loss or damage to property of the AGENCYthat results from the negligence of the CONTRACTOR or which results from the failure on the part of the CONTRACTOR to maintain and administer that property in accordance with sound management practices.

d. If any AGENCY property is lost, destroyed or damaged, the CONTRACTOR shall immediately notify the AGENCY and shall take all reasonable steps to protect the property from further damage.

e. The CONTRACTOR shall surrender to the AGENCY all property of the AGENCY priorto settlement upon completion, termination or cancellation of this contract.

f. All reference to the CONTRACTOR under this clause shall also include CONTRACTOR'S employees, agents or SUBCONTRACTORS.

34. WAIVER

Waiver of any default or breach shall not be deemed to be a waiver of any subsequent default or breach. Any waiver shall not be construed to be a modification of the terms of this Agreement unless stated to be such in writing and signed by personnel authorized to bind each of the parties.

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:** **Not Applicable**

11.1 **Termination for Default:** **Not Applicable**

11.2 **Termination for Reduction in Funding:** **Not Applicable**

11.3 **Termination for Public Convenience:** **Not Applicable**

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: Not Applicable

23.1 Labor Standards: Not Applicable

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.

31.2 Patent/Copyright Infringement: Not Applicable

32.1 Confidentiality: Not Applicable

33.1 Right to Review: Not Applicable

34.1 Proof of Insurance: Not Applicable

a. Professional Liability - $1,000,000 per occurrence: Not Applicable

34.2 Industrial Insurance Waiver: Not Applicable

34.3 Defense & Indemnity Agreement: **Not Applicable**

35.1 Non-Discrimination in Employment:

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

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

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

35.2 Non-Discrimination in Client Services: **Not Applicable**

36.1 Waiver of Noncompetition: **Not Applicable**

36.2 Conflict of Interest:

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

37.1 Administration of Contract:

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

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

Insert here (name, job title, work address)

37.2 Notice: **Not Applicable**

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

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

38.3 E-Verify: **Not Applicable**

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

40.1 Modifications:

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

40.2 Contractor Commitments, Warranties and Representations: Not Applicable

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

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

42.1 Disputes:

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

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

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

Series 30-39: Provisions Related to Administration of Agreement

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.

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

Whatcom County

COUNTY COURTHOUSE
311 Grand Avenue, Ste #105
Bellingham, WA 98225-4038
(360) 778-5010

Agenda Bill Master Report

File Number: AB2020-444

File ID:	AB2020-444	**Version:**	1	**Status:**	Agenda Ready
File Created:	10/13/2020	**Entered by:**	BBushaw@co.whatcom.wa.us		
Department:	Public Works Department	**File Type:**	Contract (FCZDBS)		
Assigned to:	Council Finance and Administrative Services Committee			**Final Action:**	
Agenda Date:	10/27/2020			**Enactment #:**	

Primary Contact Email: SDraper@co.whatcom.wa.us

TITLE FOR AGENDA ITEM:

Request authorization for the County Executive to enter into an Interlocal Agreement with the US Department of Interior Geological Survey Joint Funding Agreement for Stream Gaging (Council acting as the Whatcom County Flood Control Zone District Board of Supervisors)

SUMMARY STATEMENT OR LEGAL NOTICE LANGUAGE:

This Joint Funding Agreement between the US Department of Interior Geological Survey and the Flood Control Zone District provides for water quantity and quality data collection, data reporting and equipment maintenance at 8 gaging stations in the amount of $91,653 (Council acting as the Whatcom County Flood Control Zone District Board of Supervisors)

HISTORY OF LEGISLATIVE FILE

Date:	Acting Body:	Action:	Sent To:

Attachments: Memo-USGS, USGS Contract

WHATCOM COUNTY
PUBLIC WORKS DEPARTMENT

Jon Hutchings
Director

NATURAL RESOURCES
322 N. Commercial, Suite 110
Bellingham, WA 98225
Telephone: (360) 778-6230
FAX: (360) 778-6231
www.whatcomcounty.us

MEMORANDUM

TO: The Honorable Satpal Singh Sidhu, County Executive for the Whatcom County Flood Control Zone District

THROUGH: Jon Hutchings, Public Works Director

FROM: Gary Stoyka, Natural Resources Manager
John N. Thompson, Senior Salmon Recovery Planner

DATE: October 13, 2020

RE: USGS Joint Funding Agreement for Stream Gaging

Requested Action
Enclosed is a Joint Funding Agreement (No. 21YGJFA20075) between the United States Department of Interior, Geological Survey (USGS) and Whatcom County Flood Control Zone District (FCZD) for your review and signature.

Background and Purpose
This Joint Funding Agreement with the USGS will provide for continued data collection, real-time data access, and publication of surface water data at 8 stream gaging stations in the Nooksack River watershed for the 2021 water year (October 1, 2020 through September 30, 2021). Gaging stations were selected to provide data that complements data collected at these and other USGS and Ecology gaging sites and which collectively support watershed management and salmon recovery in WRIA 1.

Funding Amount and Source
This one-year agreement is for $91,653. The USGS also contributes $50,572 for a total project cost of $142,225. The approved 2020 Natural Resources budget includes authority for the fourth quarter 2020 work and the proposed Natural Resources 2021 budget includes a request for the remainder.

Differences from Previous Contract
This new agreement reflects a 2.6% increase over the previous agreement amount of $89,296 (WCC 201911005).

Please contact Gary Stoyka at extension 6218, if you have any questions or concerns regarding the terms of this agreement,

Encl.

WHATCOM COUNTY CONTRACT INFORMATION SHEET

Whatcom County Contract No.

Originating Department:	Public Works
Division/Program: *(i.e. Dept. Division and Program)*	Natural Resources/907010
Contract or Grant Administrator:	John N. Thompson
Contractor's / Agency Name:	U.S. Department of Interior Geological Survey

Is this a New Contract? Yes ◉ No ○ If not, is this an Amendment or Renewal to an Existing Contract? Yes ○ No ◉
If Amendment or Renewal, (per WCC 3.08.100 (a)) Original Contract #: _____

Does contract require Council Approval? Yes ◉ No ○ If No, include WCC: _____
Already approved? Council Approved Date: _____ (Exclusions see: Whatcom County Codes 3.06.010, 3.08.090 and 3.08.100)

Is this a grant agreement?
Yes ○ No ◉ If yes, grantor agency contract number(s): _____ CFDA#: _____

Is this contract grant funded?
Yes ○ No ◉ If yes, Whatcom County grant contract number(s): _____

Is this contract the result of a RFP or Bid process?
Yes ○ No ◉ If yes, RFP and Bid number(s): _____ Contract Cost Center: 169121

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.
- ☐ Goods and services provided due to an emergency
- ☐ Contract work is for less than $100,000.
- ☐ Contract for Commercial off the shelf items (COTS).
- ☐ Contract work is for less than 120 days.
- ☐ Work related subcontract less than $25,000.
- ☒ Interlocal Agreement (between Governments).
- ☐ Public Works - Local Agency/Federally Funded FHWA.

Contract Amount:(sum of original contract amount and any prior amendments):
$ 91,653

This Amendment Amount:
$

Total Amended Amount:
$ 91,653

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:

Requests authorization for the County Executive to enter into a Joint Funding Agreement between the Flood Control Zone District and U.S. Department of Interior Geological Survey for water quantity and quality data collection, data reporting, and equipment maintenance at 8 gaging stations in the amount of $91,653. (Council acting as the Whatcom County Flood Control Zone District Board of Supervisors)

Term of Contract: Fixed Cost	Expiration Date: 9/30/2021

Contract Routing:

1. Prepared by:	John N. Thompson	Date: 9/30/2020
2. Attorney signoff:	Christopher Quinn	Date: 10/12/2020
3. AS Finance reviewed:	M Caldwell	Date: 10/12/2020
4. IT reviewed (if IT related):		Date:
5. Contractor signed:		Date:
6. Submitted to Exec.:		Date:
7. Council approved (if necessary):		Date:
8. Executive signed:		Date:
9. Original to Council:		Date:

Last edited 07/06/20

Form 9-1366
(May 2018)

U.S. Department of the Interior
U.S. Geological Survey
Joint Funding Agreement
FOR
Water Resource Investigations

Customer #: 6000000721
Agreement #: 21YGJFA20075
Project #: YG00H1U
TIN #: 91-6001383

Fixed Cost Agreement YES[X] NO[ ]

THIS AGREEMENT is entered into as of the **October 1, 2020**, by the U.S. GEOLOGICAL SURVEY, Washington Water Science Center, UNITED STATES DEPARTMENT OF THE INTERIOR, party of the first part, and the **Whatcom County Flood Control Zone District,** party of the second part.

1. The parties hereto agree that subject to the availability of appropriations and in accordance with their respective authorities there shall be maintained in cooperation a **fixed-price agreement for the operation and maintenance of the cooperative streamgaging program between the USGS and Whatcom County Flood Control Zone District herein** called the program. The USGS legal authority is 43 USC 36C; 43 USC 50, and 43 USC 50b.

2. The following amounts shall be contributed to cover all of the cost of the necessary field and analytical work directly related to this program. 2(b) include In-Kind-Services in the amount of $0.00

(a) **$50,572** by the party of the first part during the period **October 1, 2020 to September 30, 2021**

(b) **$91,653** by the party of the second part during the period **October 1, 2020 to September 30, 2021**

(c) Contributions are provided by the party of the first part through other USGS regional or national programs, in the amount of: $0

Description of the USGS regional/national program:

(d) Additional or reduced amounts by each party during the above period or succeeding periods as may be determined by mutual agreement and set forth in an exchange of letters between the parties.

(e) The performance period may be changed by mutual agreement and set forth in an exchange of letters between the parties.

3. The costs of this program may be paid by either party in conformity with the laws and regulations respectively governing each party.

4. The field and analytical work pertaining to this program shall be under the direction of or subject to periodic review by an authorized representative of the party of the first part.

5. The areas to be included in the program shall be determined by mutual agreement between the parties hereto or their authorized representatives. The methods employed in the field and office shall be those adopted by the party of the first part to insure the required standards of accuracy subject to modification by mutual agreement.

6. During the course of this program, all field and analytical work of either party pertaining to this program shall be open to the inspection of the other party, and if the work is not being carried on in a mutually satisfactory manner, either party may terminate this agreement upon 60 days written notice to the other party.

7. The original records resulting from this program will be deposited in the office of origin of those records. Upon request, copies of the original records will be provided to the office of the other party.

8. The maps, records or reports resulting from this program shall be made available to the public as promptly as possible. The maps, records or reports normally will be published by the party of the first part. However, the party of the second part reserves the right to publish the results of this program, and if already published by the party of the first part shall, upon request, be furnished by the party of the first part, at cost, impressions suitable for purposes of reproduction similar to that for which the original copy was prepared. The maps, records or reports published by either party shall contain a statement of the

cooperative relations between the parties. The Parties acknowledge that scientific information and data developed as a result of the Scope of Work (SOW) are subject to applicable USGS review, approval, and release requirements, which are available on the USGS Fundamental Science Practices website (https://www.usgs.gov/about/organization/science-support/science-quality-and-integrity/fundamental-science-practices).

Form 9-1366
(May 2018)

U.S. Department of the Interior
U.S. Geological Survey
Joint Funding Agreement
FOR
Water Resource Investigations

Customer #: 6000000721
Agreement #: 21YGJFA20075
Project #: YG00H1U
TIN #: 91-6001383

9. Billing for this agreement will be rendered **quarterly**. Invoices not paid within 60 days from the billing date will bear Interest, Penalties, and Administrative cost at the annual rate pursuant the Debt Collection Act of 1982, (codified at 31 U.S.C. § 3717) established by the U.S. Treasury.

USGS Technical Point of Contact

Name: Cynthia Barton
Center Director
Address: 934 Broadway Suite 300
Tacoma, WA 98402
Telephone: (253) 552-1602
Fax: (253) 552-1581
Email: cbarton@usgs.gov

Customer Technical Point of Contact

Name: John Thompson
Senior Planner
Address: Whatcom County Public Works
Department, Natural Resources
Division 322 N. Commercial Street,
Suite 110
Bellingham, WA 98225
Telephone: 360-778-6295
Fax:
Email: Jnthomps@co.whatcom.wa.us

USGS Billing Point of Contact

Name: Sharbra Gordon-scott
Budget Analyst
Address: 934 Broadway Suite 300
Tacoma, WA 98402
Telephone: (253) 552-1698
Fax: (253) 552-1581
Email: sgordon-scott@usgs.gov

Customer Billing Point of Contact

Name: John Thompson
Senior Planner
Address: Whatcom County Public Works
Department, Natural Resources
Division 322 N. Commercial Street,
Suite 110
Bellingham, WA 98225
Telephone: 360-778-6295
Fax:
Email: Jntomps@co.whatcom.wa.us

U.S. Geological Survey
United States
Department of Interior

Signature

By CYNTHIA BARTON Digitally signed by CYNTHIA BARTON Date: 2020.08.04 15:43:49 -07'00' **Date:** _____

Name: Cynthia Barton, Ph.D, L.H.G., L.G.

Title: Center Director

Whatcom County Public Works

Signatures

By See attached FCZD Signature Page **Date:** _____

Name:

Title:

WHATCOM COUNTY:
Recommended for Approval:

10/13/20
Jon Hutchings, Public Works Director Date

Approved as to form:

CQ/Emailed/BB 10/12/2020
Christopher Quinn Date
Senior Deputy Prosecuting Attorney-Civil Division

Approved:
Accepted for Whatcom County Flood Control Zone District:

By: _____
Satpal Singh Sidhu, Whatcom County Executive

STATE OF WASHINGTON)
) ss
COUNTY OF WHATCOM)

On this _____ day of _____, 20 __, before me personally appeared Satpal Singh Sidhu, to me known to be the Executive of Whatcom County, who executed the above instrument and who acknowledged to me the act of signing and sealing thereof.

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

USGS - Whatcom County Flood Control Zone District Streamgaging Program, October 1, 2020 - September 30, 2021

USGS Station No.	Station Name	Whatcom County Flood Control Zone District	USGS Cooperative Matching Funds	Total	Remarks
NORTHWEST WASHINGTON FIELD OFFICE (FERNDALE), 360-312-8155					
12205000	**North Fork Nooksack River below Cascade Creek near Glacier**				
	Water temperature	$2,664	$1,536	$4,200	Streamflow discharge with priority real-time data transmission is funded by Whatcom Co. Public Works Dept. (River and Flood Division)-separate USGS agreement.
12209490	**Skookum Creek above Diversion near Wickersham**				
	Streamflow discharge	$13,761	$7,964	$21,725	with satellite telemetry
	Water temperature	$2,664	$1,536	$4,200	
12210000	**SF Nooksack River at Saxon Bridge**				
	Water temperature	$4,200		$4,200	
12210700	**Nooksack River at North Cedarville**				
	Water temperature	$2,664	$1,536	$4,200	Streamflow discharge with priority real-time data transmission is funded by a Whatcom Co. Public Works and Washington State DOE-through a separate USGS agreements.
12210900	**Anderson Creek at Smith Road near Goshen**				
	Streamflow discharge	$13,761	$7,964	$21,725	with satellite telemetry
	Water temperature	$2,664	$1,536	$4,200	
12212050	**Fishtrap Creek at Front Street at Lynden**				
	Streamflow discharge	$13,761	$7,964	$21,725	with satellite telemetry
	Water temperature	$2,664	$1,536	$4,200	
12212390	**Bertrand Creek at International Boundary**				
	Streamflow discharge	$13,761	$7,964	$21,725	with satellite telemetry
	Water temperature	$2,664	$1,536	$4,200	
12212430	**Unnamed Tributary to Bertrand Creek near H Street near Lynden**				
	Streamflow discharge	$13,761	$7,964	$21,725	with satellite telemetry
	Water temperature	$2,664	$1,536	$4,200	
	TOTAL	**$91,653**	**$50,572**	**$142,225**	

Whatcom County

COUNTY COURTHOUSE
311 Grand Avenue, Ste #105
Bellingham, WA 98225-4038
(360) 778-5010

Agenda Bill Master Report

File Number: AB2020-408

File ID:	AB2020-408	**Version:**	1	**Status:**	Agenda Ready
File Created:	09/21/2020	**Entered by:**	TAdrian@co.whatcom.wa.us		
Department:	Prosecuting Attorney's Office	**File Type:**	Contract		
Assigned to:	Council Finance and Administrative Services Committee			**Final Action:**	
Agenda Date:	10/27/2020			**Enactment #:**	

Primary Contact Email: tadrian@co.whatcom.wa.us

TITLE FOR AGENDA ITEM:

Request authorization for the County Executive to enter into a contract amendment between Whatcom County and SeaMar Community Health Centers in the amount of $470,793 for a total amended contract amount of $759,571

SUMMARY STATEMENT OR LEGAL NOTICE LANGUAGE:

See attachments

HISTORY OF LEGISLATIVE FILE

Date:	Acting Body:	Action:	Sent To:

Attachments: Contract Information Sheet, SeaMar Contract Cover memo, Contract Amendment - Whatcom County LEAD Program, contract between WCHA and Whatcom County

WHATCOM COUNTY CONTRACT INFORMATION SHEET

Whatcom County Contract No.

Originating Department:	Prosecuting Attorney's Office
Division/Program: *(i.e. Dept. Division and Program)*	6510 Prosecuting Attorney Admin
Contract or Grant Administrator:	Vanessa Martin
Contractor's / Agency Name:	Sea Mar Community Health Centers

Is this a New Contract? If not, is this an Amendment or Renewal to an Existing Contract? Yes (●) No ( )
Yes ( ) No ( ) If Amendment or Renewal, (per WCC 3.08.100 (a)) Original Contract #: 202005001

Does contract require Council Approval? Yes (●) No ( ) If No, include WCC: _____
Already approved? Council Approved Date: May 6, 2020 (Exclusions 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): 201911012 and K4513

Is this contract the result of a RFP or Bid process? Contract
Yes ( ) No ( ) If yes, RFP and Bid number(s): _____ Cost Center: 2622 and 2623

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):
$ 288,778.00

This Amendment Amount:
$ 470,793.00

Total Amended Amount:
$ 759,571.00

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 contract funds the oversight and administration of the LEAD Program and integration with the GRACE Program.

Term of Contract:	Expiration Date:

Contract Routing:

1. Prepared by: Vanessa Martin Date: 9/11/2020
2. Attorney signoff: Christopher Quinn Date:
3. AS Finance reviewed: Marianne Caldwell Date:
4. IT reviewed (if IT related): Date:
5. Contractor signed: Date:
6. Submitted to Exec.: Date:
7. Council approved (if necessary): Date:
8. Executive signed: Date:
9. Original to Council: Date:

WHATCOM COUNTY PROSECUTING ATTORNEY
ERIC J. RICHEY

CHIEF CRIMINAL DEPUTY
Erik Sigmar

ASST. CHIEF CRIMINAL DEPUTY
Warren Page

CRIMINAL DEPUTIES
David Graham
Dona Bracke
Jonathan Richardson
Melissa Stone
Kellen Kooistra
Evan Jones
Brandon Waldron
Benjamin Pratt
Gordon Jenkins
Kacie Emerick
Christina Garcia
Ariane Takano
Jesse Corkern
Evan Sterk

Whatcom County Courthouse
311 Grand Avenue, Suite 201
Bellingham, Washington 98225-4079
(360) 778-5710 /Main Office FAX (360)778-5711
Appellate FAX (360) 778-5712

CHIEF CIVIL DEPUTY
Karen Frakes

CIVIL DEPUTIES
Royce Buckingham
Christopher Quinn
Brandon Waldron
George Roche

CIVIL SUPPORT ENFORCEMENT DEPUTIES
Janelle Wilson/Lead
Dionne Clasen

APPELLATE DEPUTIES
Kimberly Thulin
Hilary Thomas

ADMIN MANAGER
Vanessa Martin

TO: Satpal Sidhu, County Executive

FROM: Vanessa Martin, Administrative Manager - Prosecutor's Office

RE: Sea Mar Community Health Centers – Law Enforcement Assisted Diversion (LEAD) Program Contract – Contract Amendment

DATE: September 21, 2020

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

- **Background and Purpose**

  The Prosecuting Attorney's Office has been awarded a 3-year grant to fund the Law Enforcement Assisted Division (LEAD) Program in Whatcom County. The LEAD Program is a community-based diversion program with the goal of improving public safety and public order, and reducing unnecessary justice system involvement of people who participate in the program. Sea Mar will provide oversight and administrative duties to support the care coordination and case management services to LEAD participants.

- **Funding Amount and Source**

  The contract between Whatcom County and Sea Mar is being amended to include additional funding from the Washington State Health Care Authority (HCA) to fund the LEAD program. The HCA awarded the County $662,804 to provide intensive case management services to recently arrested and/or high risk for arrest individuals.

Please contact Vanessa Martin at extension #5716 if you have any questions regarding this agreement.

Whatcom County Contract No.

_____

Amendment No. 1
Whatcom County Contract No. 202005001
CONTRACT BETWEEN WHATCOM COUNTY AND
Sea Mar Community Health Centers

THIS AMENDMENT is to the Contract between Whatcom County and Sea Mar Community Health Centers, dated May 6, 2020 and designated "Whatcom County Contract No.202005001. In consideration of the mutual benefits to be derived, the parties agree to the following:

This Amendment extends the term of this Agreement through June 30, 2021, and increases the maximum consideration by $470,793.00 to a total consideration of $759,571.00.

This Amendment also adds the following to the Scope of Work, Exhibit F: Under "Program Requirements," Contractor agrees to hire additional staff to meet scope of work requirements. The Washington State Health Care Authority's grant contract with Whatcom County is attached hereto and incorporated herein for reference.

This Amendment also adds the following to the Compensation, Exhibit G: Under "Budget and Source of Funding," Contractor's budget has been increased to include the Washington State Health Care Authority's (HCA) funding to carry out program operations in accordance with the HCA's contract requirements.

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: September 8, 2020, regardless of the date of signature.

IN WITNESS WHEREOF, Whatcom County and Sea Mar Community Health Centers have executed this Amendment on the date and year below written.

DATED this _____ day of _____, 20__.

CONTRACTOR:

CONTRACTOR NAME

_____
NAME, TITLE

STATE OF WASHINGTON)
) ss.
COUNTY OF WHATCOM)

On this ___ day of _____, 20___, before me personally appeared _____to me known to be the _____ _____of the _____ 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,

_____printed name,
residing at_____.
My commission expires _____.

WHATCOM COUNTY:

Recommended for Approval:

_____
Department Supervisor Date

Approved as to form:

_____
Prosecuting Attorney Date

Approved:
Accepted for Whatcom County:

By: _____
Satpal Singh Sidhu, Whatcom County Executive

STATE OF WASHINGTON)
) ss
COUNTY OF WHATCOM)

On this _____ day of _____, 20____, before me personally appeared Satpal Singh Sidhu, 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,
_____, printed name.
residing at _____. My commission expires _____.

CONTRACTOR INFORMATION:

Sea Mar Community Health Centers
Rogelio Riojas

1040 South Henderson Street
Seattle, Washington 98108
(253) 763.5277

Exhibit "F"
SCOPE OF WORK

I. Program Requirements

A. Staffing

The contractor will provide staffing sufficient to operate the LEAD program. Adequate capacity for operations must include program management and supervision, accounting and performance management, care coordination and case management, community engagement, participant programming facilitation, and collaboration with the LEAD advisory groups.

Hub operations and care coordination/case management will be provided by a multidisciplinary team of behavioral health and healthcare professionals. The Contractor shall ensure that LEAD program staff have the demonstrated ability to work with complex individuals who experience acute symptoms and lifestyle patterns that are disruptive to their health and well-being. Requirements for LEAD Hub program staff follow:

1. Retain program staff to provide Program Management, Care Coordination/Case Management capacity.

    a. Program Management shall be provided by a staff member, up to 0.4 FTE, with the demonstrated history and qualifications to manage a comprehensive program involving multiple community partners and complex participants.

    b. Care Coordination and Case Management services shall be provided by no less than six (6) full-time staff members qualified to work with highly complex individuals, with specialized training in behavioral health. One of the full time staff will act as Program lead/supervisor and the County prefers that this position holds a Master's level degree in a behavioral health or other relevant field. The County prefers that the case management staff hold a bachelor's degree or higher in a behavioral health, or other relevant field. A waiver of any of the educational or professional requirements requires approval by the County and will be considered as requested by the Contractor.

    c. No less than four (4) staff members must carry a full caseload of approximately 15-25 LEAD participants each and the Program Supervisor can carry a partial caseload if there's capacity to do so.

B. The Contractor will also fulfill the following requirements:

1. Provide administrative support sufficient to sustain the LEAD program functions.
2. Provide office space, furniture and equipment sufficient to support the LEAD Hub, co-locating with law enforcement, as appropriate.
3. Provide administrative and clinical supervision of program direct service staff.
4. Work with County to modify program as necessary in response to potential changes relative to data collection and reporting.
5. Work with County to review LEAD budget as needed to ensure adequate funding support for costs when/if program modifications are made.

6. Update Memorandums of Understanding (MOUs)/data sharing agreements with community service partners as necessary to clarify roles and responsibilities of coordination and collaborative efforts on behalf of LEAD participants, to be reviewed annually.
7. Update MOUs with Law Enforcement agencies as necessary to clarify roles and partnership between LEAD Care Coordination staff and law enforcement officers, to be reviewed annually.

Exhibit "G"
COMPENSATION

I. **Budget and Source of Funding**: The source of funding for this contract, in an amount not to exceed $759,571 is the United States Department of Justice – Law Enforcement Assisted Diversion (LEAD) Program Grant (CFDA #16.838) and the Washington State Health Care Authority LEAD Pilot Program Grant (CFDA #93.959). The budget for this work is as follows:

Personnel Costs		
Item	**Documentation Required**	**Budget**
LEAD Supervisor	General Ledger (GL) Detail	$65,000
Intensive Case Managers MA Level (2 FTEs)		$107,183
Intensive Case Managers BA Level 3 3FTE	GL Detail	$140,742
Administrative Assistant (.5 FTE)		$20,800
Program Manager (0.4 FTE)	GL Detail	$31,200
Benefits	GL Detail	$96,708
	Total Personnel Costs:	**$461,633**
Other Direct Costs (list):		
Item	**Documentation Required**	**Budget**
Mileage	Copies of mileage records, including the name of staff member, date of travel, starting point and destination of travel, number of miles traveled, per mile reimbursement rate, and a brief description of the purpose of travel. Mileage will be reimbursed at the current Federal rate.	$12,500
Training (including dues and licenses directly related to the Program), Travel (including per diem)	a. Receipts for fees related to registration, training, licenses, and dues. b. Ground transportation, parking, coach airfare, and ferries will be reimbursed at cost when accompanied by receipts. Reimbursement requests for allowable travel must include name of staff member, dates of travel, starting point and destination, and a brief description of purpose. Lodging and meal costs for training are not to exceed the U.S. General Services Administration Domestic Per Diem Rates (www.gsa.gov) specific to location.	$13,100
Office Furniture	GL Detail	$10,600
Office Supplies	GL Detail	$6,005
Technology (including cell phones, tablets, computers, monthly cell phone plans, internet, office phones)	GL Detail	$19,655
Client Direct Services (including transportation, transitional emergency services, housing assistance fees, financial planning service fees, clothing for interviews/work, and food expenses)	GL Detail/Receipts and documentation to support dispersals	$95,500
Marketing	GL Detail	$6,000

Transportation (the cost to lease vehicles for case managers, insurance coverage, fuel, bus passes, Uber transportation, and employee insurance coverage reimbursement)	GL Detail	$63,101
Personnel + Other Direct Costs		$688,094
Indirect Costs - not to exceed 11% of expenses (DOJ) and 10% (State)		$71,477
	TOTAL BUDGET:	**$759,571**

DocuSign Envelope ID: 39B39692-8710-498D-9681-FDFB9AA11221

Washington State Health Care Authority	**CLIENT SERVICES CONTRACT for** LEAD Pilot Site Development	HCA Contract Number: K4513

THIS CONTRACT is made by and between Washington State Health Care Authority, (HCA) and Whatcom County Prosecuting Attorney's Office, (Contractor).

CONTRACTOR NAME		CONTRACTOR DOING BUSINESS AS (DBA)		
Whatcom County Prosecuting Attorney's Office				
CONTRACTOR ADDRESS Street		City	State	Zip Code
311 Grand Avenue #201		Bellingham	WA	98225
CONTRACTOR CONTACT	CONTRACTOR TELEPHONE	CONTRACTOR E-MAIL ADDRESS		
Vanessa Martin	(360) 778-5716	vmartin@co.whatcom.wa.us		
Is Contractor a Subrecipient under this Contract? ☒YES ☐NO	CFDA NUMBER(S): 93.958	FFATA Form Required ☒YES ☐NO		

HCA PROGRAM	HCA DIVISION/SECTION
DBHR	DBHR/OFP/BHSup
HCA CONTACT NAME AND TITLE Michele Gayle,	HCA CONTACT ADDRESS Health Care Authority 626 8th Avenue SE PO Box 42730 Olympia, WA 98504-2730
HCA CONTACT TELEPHONE (360) 725-5935	HCA CONTACT E-MAIL ADDRESS michele.gayle@hca.wa.gov

CONTRACT START DATE	CONTRACT END DATE	TOTAL MAXIMUM CONTRACT AMOUNT
Date of Execution	June 30, 2021	$662,804

PURPOSE OF CONTRACT:

Provide intensive case management services to recently arrested and/or high risk for arrest individuals through the expansion of the WA State LEAD Program throughout Whatcom County.

The parties signing below warrant that they have read and understand this Contract, and have authority to execute this Contract. This Contract will be binding on HCA only upon signature by HCA.

CONTRACTOR SIGNATURE	PRINTED NAME AND TITLE	DATE SIGNED
DocuSigned by: Satpal Sidhu 5EF5FD08A79D4B9...	Satpal Sidhu Satpal Sidhu County Executive	6/24/2020
HCA SIGNATURE	**PRINTED NAME AND TITLE**	**DATE SIGNED**
DocuSigned by: Rachelle Amerine 71E17FEBBC774E7...	Rachelle Amerine Contracts Administrator	6/9/2020

DocuSign Envelope ID: 39B39692-8710-498D-9681-FDFB9AA11221

TABLE OF CONTENTS

Recitals **4**

1. STATEMENT OF WORK (SOW) **4**

2. DEFINITIONS **4**

3. SPECIAL TERMS AND CONDITIONS **7**

3.1 PERFORMANCE EXPECTATIONS 7
3.2 TERM 8
3.3 COMPENSATION 8
3.4 INVOICE AND PAYMENT 9
3.5 CONTRACTOR and HCA CONTRACT MANAGERS 10
3.6 LEGAL NOTICES 10
3.7 INCORPORATION OF DOCUMENTS AND ORDER OF PRECEDENCE 11
3.8 INSURANCE 11

4. GENERAL TERMS AND CONDITIONS **12**

4.1 ACCESS TO DATA 12
4.2 ADVANCE PAYMENT PROHIBITED 12
4.3 AMENDMENTS 13
4.4 ASSIGNMENT 13
4.5 ATTORNEYS' FEES 13
4.6 CHANGE IN STATUS 13
4.7 CONFIDENTIAL INFORMATION PROTECTION 13
4.8 CONTRACTOR'S PROPRIETARY INFORMATION 14
4.9 COVENANT AGAINST CONTINGENT FEES 14
4.10 DEBARMENT 14
4.11 DISPUTES 15
4.12 ENTIRE AGREEMENT 15
4.13 FEDERAL FUNDING ACCOUNTABILITY & TRANSPARENCY ACT (FFATA) 15
4.14 FORCE MAJEURE 16
4.15 FUNDING WITHDRAWN, REDUCED OR LIMITED 16
4.16 GOVERNING LAW 17
4.17 HCA NETWORK SECURITY 17
4.18 INDEMNIFICATION 17
4.19 INDEPENDENT CAPACITY OF THE CONTRACTOR 17
4.20 INDUSTRIAL INSURANCE COVERAGE 17
4.21 LEGAL AND REGULATORY COMPLIANCE 18

DocuSign Envelope ID: 39B39692-8710-498D-9681-FDFB9AA11221

4.22 LIMITATION OF AUTHORITY 18
4.23 NO THIRD-PARTY BENEFICIARIES 18
4.24 NONDISCRIMINATION 18
4.25 OVERPAYMENTS TO CONTRACTOR 18
4.26 PAY Equity 19
4.27 PUBLICITY 19
4.28 RECORDS AND DOCUMENTS REVIEW 19
4.29 REMEDIES NON-EXCLUSIVE 20
4.30 RIGHT OF INSPECTION 20
4.31 RIGHTS IN DATA/OWNERSHIP 20
4.32 RIGHTS OF STATE AND FEDERAL GOVERNMENTS 21
4.33 SEVERABILITY 21
4.34 SITE SECURITY 21
4.35 SUBCONTRACTING 22
4.36 SURVIVAL 22
4.37 TAXES 22
4.38 TERMINATION 23
4.39 TERMINATION PROCEDURES 25
4.40 WAIVER 26
4.41 WARRANTIES 26

Attachments

Attachment 1: Federal Compliance, Certifications and Assurances

Attachment 2: Federal Funding Accountability and Transparency Act Data Collection Form

Attachment 3: Federal Award Identification for Subrecipients

Schedules

Schedule A: Statement of Work (SOW) Lead Pilot Program

Exhibits

Exhibit A: LEAD Monthly Progress Report

DocuSign Envelope ID: 39B39692-8710-498D-9681-FDFB9AA11221

Contract #K4513 for LEAD Pilot Program

Recitals

71.24.589 RCW directs the Health Care Authority to implement a pilot project for Law Enforcement Assisted Diversion which shall adhere to Law Enforcement Assisted Diversion core principles recognized by the Law Enforcement Assisted Diversion national support bureau. Under the pilot project, HCA must partner with the Law Enforcement Assisted Diversion national support bureau to award a Contract for two or more geographic areas in the state of Washington for Law Enforcement Assisted Diversion. Cities, counties, and tribes may compete for participation in a pilot project.

HCA has determined that entering into a Contract with Whatcom County Prosecuting Attorney's Office will meet HCA's needs and will be in the State's best interest.

NOW THEREFORE, HCA awards to Whatcom County Prosecuting Attorney's Office this Contract, the terms and conditions of which will govern Contractor's providing to HCA the services and Data from Contractor's LEAD Pilot program.

IN CONSIDERATION of the mutual promises as set forth in this Contract, the parties agree as follows:

1. **STATEMENT OF WORK (SOW)**

The Contractor will provide the services and staff as described in Schedule A: *Statement of Work*.

2. **DEFINITIONS**

"Authorized Representative" means a person to whom signature authority has been delegated in writing acting within the limits of his/her authority.

"Breach" means the unauthorized acquisition, access, use, or disclosure of Confidential Information that compromises the security, confidentiality, or integrity of the Confidential Information.

"Business Associate" means a Business Associate as defined in 45 CFR 160.103, who performs or assists in the performance of an activity for or on behalf of HCA, a Covered Entity, that involves the use or disclosure of Protected Health Information (PHI). Any reference to Business Associate in this DSA includes Business Associate's employees, agents, officers, Subcontractors, third party contractors, volunteers, or directors.

"Business Days and Hours" means Monday through Friday, 8:00 a.m. to 5:00 p.m., Pacific Time, except for holidays observed by the state of Washington.

"Centers for Medicare and Medicaid Services" or **"CMS"** means the federal office under the Secretary of the United States Department of Health and Human Services, responsible for the Medicare and Medicaid programs.

DocuSign Envelope ID: 39B39692-8710-498D-9681-FDFB9AA11221

"CFR" means the Code of Federal Regulations. All references in this Contract to CFR chapters or sections include any successor, amended, or replacement regulation. The CFR may be accessed at http://www.ecfr.gov/cgi-bin/ECFR?page=browse.

"Community Agency" means an organization that works with and supports people working through behavioral health challenges but does not directly provide treatment. The organization can be a nonprofit or government/public agency as defined in the application

"Confidential Information" means information that may be exempt from disclosure to the public or other unauthorized persons under chapter 42.56 RCW or chapter 70.02 RCW or other state or federal statutes or regulations. Confidential Information includes, but is not limited to, any information identifiable to an individual that relates to a natural person's health, (see also Protected Health Information); finances, education, business, use or receipt of governmental services, names, addresses, telephone numbers, social security numbers, driver license numbers, financial profiles, credit card numbers, financial identifiers and any other identifying numbers, law enforcement records, HCA source code or object code, or HCA or State security information.

"Contract" means this Contract document and all schedules, exhibits, attachments, incorporated documents and amendments.

"**Contractor"** means Whatcom County Prosecuting Attorney's Office, its employees and agents. Contractor includes any firm, provider, organization, individual or other entity performing services under this Contract. It also includes any Subcontractor retained by Contractor as permitted under the terms of this Contract.

"Covered entity" means a health plan, a health care clearinghouse or a health care provider who transmits any health information in electronic form to carry out financial or administrative activities related to health care, as defined in 45 CFR 160.103.

"Data" means information produced, furnished, acquired, or used by Contractor in meeting requirements under this Contract.

"Date of Execution" or **"Effective Date"** means the first date this Contract is in full force and effect, or the date of the last signature of a party to this Contract.

"Government/Public Agency" means an educational service district, school district, law enforcement agency, therapeutic court or probation office, public health district, a recognized American Indian organization, an Urban Indian Health Organization, or a Tribe.

"HCA Contract Manager" means the individual identified on the cover page of this Contract who will provide oversight of the Contractor's activities conducted under this Contract.

"Health Care Authority" or **"HCA"** means the Washington State Health Care Authority, any division, section, office, unit or other entity of HCA, or any of the officers or other officials lawfully representing HCA.

"Law Enforcement Assisted Diversion" or **"LEAD"** means a registered trademark referring to the LEAD Program developed by the Seattle-King County LEAD Policy Coordinating Group. LEAD is

DocuSign Envelope ID: 39B39692-8710-498D-9681-FDFB9AA11221

managed by the Public Defender Association, and recognized as an evidence-based practice in the Washington Medicaid Waiver Toolkit and falls under the Office of Justice Programs standards for evidence-based practices.

“LEAD Monthly Progress Report Form” means the form detailing the progress of the Law Enforcement Assisted Diversion Program, and is Exhibit A here to.

“LEAD Program” means a pre-booking, jail diversion program in the criminal justice system. The LEAD Diversion Program leverages assistance from local law enforcement organizations to identify and refer individuals committing non-violent crimes into an intensive case.

“LEAD National Support Bureau” or **“NSB”** means project of the Public Defender Association. The LEAD National Support Bureau will be providing strategic guidance and Technical Assistance to the Pilot Sites developing LEAD Programs under this Contract. Including providing guidance on implementation with a commitment to the LEAD Core Principles.

“Monthly Data Collection Report” means the report provided by the Contractor through the agreed upon case management and Data collection system verifying the Subcontractors are meeting the Data collection requirements established in coordination with the PDA Technical Assistance Team. The Monthly Data Collection Report will not contain Personally Identifiable Information or Protected Health Information.

"Overpayment" means any payment or benefit to the Contractor in excess of that to which the Contractor is entitled by law, rule, or this Contract, including amounts in dispute.

“PDA Technical Assistance **Team”** means the individuals from PDA that are responsible for providing Technical Assistance for LEAD site selection, implementation, and evaluation.

“Pilot Site” or **“Site”** means the city, county, or tribe that will be implementing a LEAD program through the execution of this contract and per RCW 71.24.589.

“Proprietary Information” means information owned by Contractor to which Contractor claims a protectable interest under law. Proprietary Information includes, but is not limited to, information protected by copyright, patent, trademark, or trade secret laws.

“**Protected Health Information**” or **“PHI”** means individually identifiable information that relates to the provision of health care to an individual; the past, present, or future physical or mental health or condition of an individual; or past, present, or future payment for provision of health care to an individual, as defined in 45 CFR 160.103. Individually identifiable information is information that identifies the individual or about which there is a reasonable basis to believe it can be used to identify the individual, and includes demographic information. PHI is information transmitted, maintained, or stored in any form or medium. 45 CFR 164.501. PHI does not include education records covered by the Family Educational Rights and Privacy Act, as amended, 20 USC 1232g(a)(4)(b)(iv).

“Public Defender Association,” or **“PDA”** means the agency that will provide Technical Assistance for LEAD site selection, implementation and evaluation.

DocuSign Envelope ID: 39B39692-8710-498D-9681-FDFB9AA11221

"RCW" means the Revised Code of Washington. All references in this Contract to RCW chapters or sections include any successor, amended, or replacement statute. Pertinent RCW chapters can be accessed at: http://apps.leg.wa.gov/rcw/.

"Statement of Work" or **"SOW"** means a detailed description of the work activities the Contractor is required to perform under the terms and conditions of this Contract, including the deliverables and timeline, and is Schedule A hereto.

"Subcontractor" means a person or entity that is not in the employment of the Contractor, who is performing all or part of the business activities under this Contract under a separate contract with Contractor. The term "Subcontractor" means subcontractor(s) of any tier.

"Subrecipient" shall have the meaning given in 45 C.F.R. 75.2, or any successor or replacement to such definition, for any federal award from HHS; or 2 C.F.R. 200.93, or any successor or replacement to such definition, for any other federal award.

"USC" means the United States Code. All references in this Contract to USC chapters or sections will include any successor, amended, or replacement statute. The USC may be accessed at http://uscode.house.gov/

"WAC" means the Washington Administrative Code. All references to WAC chapters or sections will include any successor, amended, or replacement regulation. Pertinent WACs may be accessed at: http://app.leg.wa.gov/wac/.

3. SPECIAL TERMS AND CONDITIONS

3.1 PERFORMANCE EXPECTATIONS

Expected performance under this Contract includes, but is not limited to, the following:

3.1.1 Knowledge of applicable state and federal laws and regulations pertaining to subject of Contract;

3.1.2 Use of professional judgment;

3.1.3 Collaboration with HCA staff in Contractor's conduct of the services;

3.1.4 Conformance with HCA directions regarding the delivery of the services;

3.1.5 Timely, accurate and informed communications;

3.1.6 Regular completion and updating of project plans, reports, documentation and communications;

3.1.7 Regular, punctual attendance at all meetings;

3.1.8 Provision of high quality services, and

3.1.9 Receive technical assistance and guidance from the LEAD National Support Bureau for purposes of meeting model fidelity and compliance with core principals of LEAD Program.

DocuSign Envelope ID: 39B39692-8710-498D-9681-FDFB9AA11221

Prior to payment of invoices, HCA will review and evaluate the performance of Contractor in accordance with Contract and these performance expectations and may withhold payment if expectations are not met or Contractor's performance is unsatisfactory.

3.2 TERM

3.2.1 The initial term of the Contract will commence upon Date of Execution and continue through June 30, 2021, unless terminated sooner as provided herein.

3.2.2 This Contract may be extended through June 30, 2023 in whatever time increments HCA deems appropriate. No change in terms and conditions will be permitted during these extensions unless specifically agreed to in writing.

3.2.3 Work performed without a contract or amendment signed by the Authorized Representatives of both parties will be at the sole risk of the Contractor. HCA will not pay any costs incurred before a contract or any subsequent amendment(s) is fully executed.

3.3 COMPENSATION

3.3.1 The Maximum Compensation payable to Contractor for the performance of all things necessary for or incidental to the performance of work as set forth in Schedule A: *Statement of Work* is $662,804, and includes any allowable expenses.

3.3.2 Contractor's compensation for services rendered will be based in accordance with the deliverables table in Schedule A: *Statement of Work*.

3.3.3 Day-to-day expenses related to performance under the Contract, including but not limited to travel, lodging, meals, and incidentals, will not be reimbursed to Contractor. If Contractor is required by HCA to travel, any such travel must be authorized in writing by the HCA Contract Manager and reimbursement will be at rates not to exceed the then-current rules, regulations, and guidelines for State employees published by the Washington State Office of Financial Management in the Washington State Administrative and Accounting Manual (http://www.ofm.wa.gov/policy/10.htm); reimbursement will not exceed expenses actually incurred.

To receive reimbursement, Contractor must provide a detailed breakdown of authorized expenses and receipts for any expenses of $50 or more.

3.3.4 Federal funds disbursed through this Contract were received by HCA through OMB Catalogue of Federal Domestic Assistance (CFDA) Number: **93.959**, Substance Abuse Prevention & Treatment, **B08TI010056-19** , Substance Abuse Prevention & Treatment Block Grant. Contractor agrees to comply with applicable rules and regulations associated with these federal funds and has signed Attachment 1: *Federal Compliance, Certification and Assurances*, attached.

DocuSign Envelope ID: 39B39692-8710-498D-9681-FDFB9AA11221

3.4 INVOICE AND PAYMENT

3.4.1 Contractor must submit accurate invoices to the following address for all amounts to be paid by HCA via e-mail to the HCA Contract Manager listed on the cover page of this agreement. Include the HCA Contract number in the subject line of the email.

3.4.2 Invoices must describe and document to HCA's satisfaction a description of the work performed, the progress of the project, and fees. If expenses are invoiced, invoices must provide a detailed breakdown of each type. Any single expense in the amount of $50.00 or more must be accompanied by a receipt in order to receive reimbursement. All invoices will be reviewed and must be approved by the Contract Manager or his/her designee prior to payment.

3.4.3 Contractor must submit properly itemized invoices to include the following information, as applicable:

3.4.3.1 HCA Contract number K4513;

3.4.3.2 Contractor name, address, phone number;

3.4.3.3 Description of Services;

3.4.3.4 Date(s) of delivery;

3.4.3.5 Net invoice price for each item;

3.4.3.6 Applicable taxes;

3.4.3.7 Total invoice price; and

3.4.3.8 Payment terms and any available prompt payment discount.

3.4.4 HCA will return incorrect or incomplete invoices to the Contractor for correction and reissue. The Contract Number must appear on all invoices, bills of lading, packages, and correspondence relating to this Contract.

3.4.5 In order to receive payment for services or products provided to a state agency, Contractor must register with the Statewide Payee Desk at https://ofm.wa.gov/it-systems/statewide-vendorpayee-services/receiving-payment-state. Payment will be considered timely if made by HCA within thirty (30) calendar days of receipt of properly completed invoices. Payment will be directly deposited in the bank account or sent to the address Contractor designated in its registration.

3.4.6 Upon expiration of the Contract, any claims for payment for costs due and payable under this Contract that are incurred prior to the expiration date must be submitted by the Contractor to HCA within sixty (60) calendar days after the Contract expiration date. HCA is under no obligation to pay any claims that are submitted sixty-one (61) or more calendar days after the Contract expiration date ("Belated Claims"). HCA will pay Belated Claims at its sole discretion, and any such potential payment is contingent upon the availability of funds.

DocuSign Envelope ID: 39B39692-8710-498D-9681-FDFB9AA11221

3.5 CONTRACTOR AND HCA CONTRACT MANAGERS

3.5.1 Contractor's Contract Manager will have prime responsibility and final authority for the services provided under this Contract and be the principal point of contact for the HCA Contract Manager for all business matters, performance matters, and administrative activities.

3.5.2 HCA's Contract Manager is responsible for monitoring the Contractor's performance and will be the contact person for all communications regarding contract performance and deliverables. The HCA Contract Manager has the authority to accept or reject the services provided and must approve Contractor's invoices prior to payment.

3.5.3 The contact information provided below may be changed by written notice of the change (email acceptable) to the other party.

CONTRACTOR **Contract Manager Information**		**Health Care Authority** **Contract Manager Information**	
Name:	Vanessa Martin	Name:	Michele Gayle
Address:	311 Grand Avenue #201 Bellingham, WA 98225	Address:	626 8th Avenue SE PO Box 42730 Olympia, WA 98504-2730
Phone:	(360) 778-5716	Phone:	(360) 725-5935
Email:	vmartin@co.whatcom.wa.us	Email:	michele.gayle@hca.wa.gov

3.6 LEGAL NOTICES

Any notice or demand or other communication required or permitted to be given under this Contract or applicable law is effective only if it is in writing and signed by the applicable party, properly addressed, and delivered in person, via email, or by a recognized courier service, or deposited with the United States Postal Service as first-class mail, postage prepaid certified mail, return receipt requested, to the parties at the addresses provided in this section.

3.6.1 In the case of notice to the Contractor:

Attention: Vanessa Martin
Whatcom County Prosecuting Attorney's Office
311 Grand Avenue #201
Bellingham, WA 98225

3.6.2 In the case of notice to HCA:

Attention: Contracts Administrator
Health Care Authority
Division of Legal Services
Post Office Box 42702
Olympia, WA 98504-2702

DocuSign Envelope ID: 39B39692-8710-498D-9681-FDFB9AA11221

3.6.3 Notices are effective upon receipt or four (4) Business Days after mailing, whichever is earlier.

3.6.4 The notice address and information provided above may be changed by written notice of the change given as provided above.

3.7 INCORPORATION OF DOCUMENTS AND ORDER OF PRECEDENCE

Each of the documents listed below is by this reference incorporated into this Contract. In the event of an inconsistency, the inconsistency will be resolved in the following order of precedence:

3.7.1 Applicable Federal and State of Washington statutes and regulations;

3.7.2 Recitals

3.7.3 Special Terms and Conditions;

3.7.4 General Terms and Conditions;

3.7.5 Attachment 1: *Federal Compliance, Certifications and Assurances;*

3.7.6 Attachment 2: *Federal Funding Accountability and Transparency Act Data Collection Form;*

3.7.7 Attachment 3: *Federal Award Identification for Subrecipients*;

3.7.8 Schedule A: *Statement of Work - Lead Pilot Program*;

3.7.9 Exhibit A: LEAD Monthly Progress Report; and

3.7.10 Any other provision, term or material incorporated herein by reference or otherwise incorporated.

3.8 INSURANCE

Contractor must provide insurance coverage as set out in this section. The intent of the required insurance is to protect the State should there be any claims, suits, actions, costs, damages or expenses arising from any negligent or intentional act or omission of Contractor or Subcontractor, or agents of either, while performing under the terms of this Contract. Contractor must provide insurance coverage that is maintained in full force and effect during the term of this Contract, as follows:

3.8.1 Commercial General Liability Insurance Policy - Provide a Commercial General Liability Insurance Policy, including contractual liability, in adequate quantity to protect against legal liability arising out of contract activity but no less than $1 million per occurrence/$2 million general aggregate. Additionally, Contractor is responsible for ensuring that any Subcontractors provide adequate insurance coverage for the activities arising out of subcontracts.

DocuSign Envelope ID: 39B39692-8710-498D-9681-FDFB9AA11221

3.8.2 Business Automobile Liability. In the event that services delivered pursuant to this Contract involve the use of vehicles, either owned, hired, or non-owned by the Contractor, automobile liability insurance is required covering the risks of bodily injury (including death) and property damage, including coverage for contractual liability. The minimum limit for automobile liability is $1,000,000 per occurrence, using a Combined Single Limit for bodily injury and property damage.

3.8.3 Professional Liability Errors and Omissions – Provide a policy with coverage of not less than $1 million per claim/$2 million general aggregate.

3.8.4 The insurance required must be issued by an insurance company/ies authorized to do business within the state of Washington, and must name HCA and the state of Washington, its agents and employees as additional insured's under any Commercial General and/or Business Automobile Liability policy/ies. All policies must be primary to any other valid and collectable insurance. In the event of cancellation, non-renewal, revocation or other termination of any insurance coverage required by this Contract, Contractor must provide written notice of such to HCA within one (1) Business Day of Contractor's receipt of such notice. Failure to buy and maintain the required insurance may, at HCA's sole option, result in this Contract's termination.

Upon request, Contractor must submit to HCA a certificate of insurance that outlines the coverage and limits defined in the Insurance section. If a certificate of insurance is requested, Contractor must submit renewal certificates as appropriate during the term of the contract.

3.8.5 The Receiving Party certifies that it is self-insured, is a member of a risk pool, or maintains the types and amounts of insurance identified above and will provide certificates of insurance to that effect to HCA upon request.

Upon request, Contractor must submit to HCA a certificate of insurance that outlines the coverage and limits defined in the Insurance section. If a certificate of insurance is requested, Contractor must submit renewal certificates as appropriate during the term of the contract.

4. GENERAL TERMS AND CONDITIONS

4.1 ACCESS TO DATA

In compliance with RCW 39.26.180 (2) and federal rules, the Contractor must provide access to any data generated under this Contract to HCA, the Joint Legislative Audit and Review Committee, the State Auditor, and any other state or federal officials so authorized by law, rule, regulation, or agreement at no additional cost. This includes access to all information that supports the findings, conclusions, and recommendations of the Contractor's reports, including computer models and methodology for those models.

4.2 ADVANCE PAYMENT PROHIBITED

No advance payment will be made for services furnished by the Contractor pursuant to this Contract.

DocuSign Envelope ID: 39B39692-8710-498D-9681-FDFB9AA11221

4.3 AMENDMENTS

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

4.4 ASSIGNMENT

4.4.1 Contractor may not assign or transfer all or any portion of this Contract or any of its rights hereunder, or delegate any of its duties hereunder, except delegations as set forth in Section 4.35, *Subcontracting*, without the prior written consent of HCA. Any permitted assignment will not operate to relieve Contractor of any of its duties and obligations hereunder, nor will such assignment affect any remedies available to HCA that may arise from any breach of the provisions of this Contract or warranties made herein, including but not limited to, rights of setoff. Any attempted assignment, transfer or delegation in contravention of this Subsection 4.4.1 of the Contract will be null and void.

4.4.2 HCA may assign this Contract to any public agency, commission, board, or the like, within the political boundaries of the State of Washington, with written notice of thirty (30) calendar days to Contractor.

4.4.3 This Contract will inure to the benefit of and be binding on the parties hereto and their permitted successors and assigns.

4.5 ATTORNEYS' FEES

In the event of litigation or other action brought to enforce the terms of this Contract, each party agrees to bear its own attorneys' fees and costs.

4.6 CHANGE IN STATUS

In the event of any substantive change in its legal status, organizational structure, or fiscal reporting responsibility, Contractor will notify HCA of the change. Contractor must provide notice as soon as practicable, but no later than thirty (30) calendar days after such a change takes effect.

4.7 CONFIDENTIAL INFORMATION PROTECTION

4.7.1 Contractor acknowledges that some of the material and information that may come into its possession or knowledge in connection with this Contract or its performance may consist of Confidential Information. Contractor agrees to hold Confidential Information in strictest confidence and not to make use of Confidential Information for any purpose other than the performance of this Contract, to release it only to authorized employees or Subcontractors requiring such information for the purposes of carrying out this Contract, and not to release, divulge, publish, transfer, sell, disclose, or otherwise make the information known to any other party without HCA's express written consent or as provided by law. Contractor agrees to implement physical, electronic, and managerial safeguards to prevent unauthorized access to Confidential Information.

DocuSign Envelope ID: 39B39692-8710-498D-9681-FDFB9AA11221

4.7.2 Contractors that come into contact with Protected Health Information may be required to enter into a Business Associate Agreement with HCA in compliance with the requirements of the Health Insurance Portability and Accountability Act of 1996, Pub. L. 104-191, as modified by the American Recovery and Reinvestment Act of 2009 ("ARRA"), Sec. 13400 – 13424, H.R. 1 (2009) (HITECH Act) (HIPAA).

4.7.3 HCA reserves the right to monitor, audit, or investigate the use of Confidential Information collected, used, or acquired by Contractor through this Contract. Violation of this section by Contractor or its Subcontractors may result in termination of this Contract and demand for return of all Confidential Information, monetary damages, or penalties.

4.7.4 The obligations set forth in this section will survive completion, cancellation, expiration, or termination of this Contract.

4.8 CONTRACTOR'S PROPRIETARY INFORMATION

Contractor acknowledges that HCA is subject to chapter 42.56 RCW, the Public Records Act, and that this Contract will be a public record as defined in chapter 42.56 RCW. Any specific information that is claimed by Contractor to be Proprietary Information must be clearly identified as such by Contractor. To the extent consistent with chapter 42.56 RCW, HCA will maintain the confidentiality of Contractor's information in its possession that is marked Proprietary. If a public disclosure request is made to view Contractor's Proprietary Information, HCA will notify Contractor of the request and of the date that such records will be released to the requester unless Contractor obtains a court order from a court of competent jurisdiction enjoining that disclosure. If Contractor fails to obtain the court order enjoining disclosure, HCA will release the requested information on the date specified.

4.9 COVENANT AGAINST CONTINGENT FEES

Contractor warrants that no person or selling agent has been employed or retained to solicit or secure this Contract upon an agreement or understanding for a commission, percentage, brokerage or contingent fee, excepting bona fide employees or bona fide established agents maintained by the Contractor for the purpose of securing business. HCA will have the right, in the event of breach of this clause by the Contractor, to annul this Contract without liability or, in its discretion, to deduct from the contract price or consideration or recover by other means the full amount of such commission, percentage, brokerage or contingent fee.

4.10 DEBARMENT

By signing this Contract, Contractor certifies that it is not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded in any Washington State or Federal department or agency from participating in transactions (debarred). Contractor agrees to include the above requirement in any and all subcontracts into which it enters, and also agrees that it will not employ debarred individuals. Contractor must immediately notify HCA if, during the term of this Contract, Contractor becomes debarred. HCA may immediately terminate this Contract by providing Contractor written notice, if Contractor becomes debarred during the term hereof.

DocuSign Envelope ID: 39B39692-8710-498D-9681-FDFB9AA11221

4.11 DISPUTES

The parties will use their best, good faith efforts to cooperatively resolve disputes and problems that arise in connection with this Contract. Both parties will continue without delay to carry out their respective responsibilities under this Contract while attempting to resolve any dispute. When a genuine dispute arises between HCA and the Contractor regarding the terms of this Contract or the responsibilities imposed herein and it cannot be resolved between the parties' Contract Managers, either party may initiate the following dispute resolution process.

4.11.1 The initiating party will reduce its description of the dispute to writing and deliver it to the responding party (email acceptable). The responding party will respond in writing within five (5) Business Days (email acceptable). If the initiating party is not satisfied with the response of the responding party, then the initiating party may request that the HCA Director review the dispute. Any such request from the initiating party must be submitted in writing to the HCA Director within five (5) Business Days after receiving the response of the responding party. The HCA Director will have sole discretion in determining the procedural manner in which he or she will review the dispute. The HCA Director will inform the parties in writing within five (5) Business Days of the procedural manner in which he or she will review the dispute, including a timeframe in which he or she will issue a written decision.

4.11.2 A party's request for a dispute resolution must:

4.11.2.1 Be in writing;

4.11.2.2 Include a written description of the dispute;

4.11.2.3 State the relative positions of the parties and the remedy sought; and

4.11.2.4 State the Contract Number and the names and contact information for the parties.

4.11.3 This dispute resolution process constitutes the sole administrative remedy available under this Contract. The parties agree that this resolution process will precede any action in a judicial or quasi-judicial tribunal.

4.12 ENTIRE AGREEMENT

HCA and Contractor agree that the Contract is the complete and exclusive statement of the agreement between the parties relating to the subject matter of the Contract and supersedes all letters of intent or prior contracts, oral or written, between the parties relating to the subject matter of the Contract, except as provided in Section 4.41 *Warranties*.

4.13 FEDERAL FUNDING ACCOUNTABILITY & TRANSPARENCY ACT (FFATA)

4.13.1 This Contract is supported by federal funds that require compliance with the Federal Funding Accountability and Transparency Act (FFATA or the Transparency Act). The purpose of the Transparency Act is to make information available online so the public can see how federal funds are spent.

DocuSign Envelope ID: 39B39692-8710-498D-9681-FDFB9AA11221

4.13.2 To comply with the act and be eligible to enter into this Contract, Contractor must have a Data Universal Numbering System (DUNS®) number. A DUNS® number provides a method to verify data about your organization. If Contractor does not already have one, a DUNS® number is available free of charge by contacting Dun and Bradstreet at www.dnb.com.

4.13.3 Information about Contractor and this Contract will be made available on www.uscontractorregistration.com by HCA as required by P.L. 109-282. HCA's Attachment 2: *Federal Funding Accountability and Transparency Act Data Collection Form*, is considered part of this Contract and must be completed and returned along with the Contract.

4.14 FORCE MAJEURE

A party will not be liable for any failure of or delay in the performance of this Contract for the period that such failure or delay is due to causes beyond its reasonable control, including but not limited to acts of God, war, strikes or labor disputes, embargoes, government orders or any other force majeure event.

4.15 FUNDING WITHDRAWN, REDUCED OR LIMITED

If HCA determines in its sole discretion that the funds it relied upon to establish this Contract have been withdrawn, reduced or limited, or if additional or modified conditions are placed on such funding after the effective date of this contract but prior to the normal completion of this Contract, then HCA, at its sole discretion, may:

4.15.1 Terminate this Contract pursuant to Section 4.38.3, *Termination for Non-Allocation of Funds*;

4.15.2 Renegotiate the Contract under the revised funding conditions; or

4.15.3 Suspend Contractor's performance under the Contract upon five (5) Business Days' advance written notice to Contractor. HCA will use this option only when HCA determines that there is reasonable likelihood that the funding insufficiency may be resolved in a timeframe that would allow Contractor's performance to be resumed prior to the normal completion date of this Contract.

4.15.3.1 During the period of suspension of performance, each party will inform the other of any conditions that may reasonably affect the potential for resumption of performance.

4.15.3.2 When HCA determines in its sole discretion that the funding insufficiency is resolved, it will give Contractor written notice to resume performance. Upon the receipt of this notice, Contractor will provide written notice to HCA informing HCA whether it can resume performance and, if so, the date of resumption. For purposes of this subsection, "written notice" may include email.

4.15.3.3 If the Contractor's proposed resumption date is not acceptable to HCA and an acceptable date cannot be negotiated, HCA may terminate the contract by

DocuSign Envelope ID: 39B39692-8710-498D-9681-FDFB9AA11221

giving written notice to Contractor. The parties agree that the Contract will be terminated retroactive to the date of the notice of suspension. HCA will be liable only for payment in accordance with the terms of this Contract for services rendered prior to the retroactive date of termination.

4.16 GOVERNING LAW

This Contract is governed in all respects by the laws of the state of Washington, without reference to conflict of law principles. The jurisdiction for any action hereunder is exclusively in the Superior Court for the state of Washington, and the venue of any action hereunder is in the Superior Court for Thurston County, Washington. Nothing in this Contract will be construed as a waiver by HCA of the State's immunity under the 11th Amendment to the United States Constitution.

4.17 HCA NETWORK SECURITY

Contractor agrees not to attach any Contractor-supplied computers, peripherals or software to the HCA Network without prior written authorization from HCA's Chief Information Officer. Unauthorized access to HCA networks and systems is a violation of HCA Policy and constitutes computer trespass in the first degree pursuant to RCW 9A.52.110. Violation of any of these laws or policies could result in termination of the contract and other penalties.

Contractor will have access to the HCA visitor Wi-Fi Internet connection while on site.

4.18 INDEMNIFICATION

Contractor must defend, indemnify, and save HCA harmless from and against all claims, including reasonable attorneys' fees resulting from such claims, for any or all injuries to persons or damage to property, or Breach of its confidentiality and notification obligations under Section 4.7 *Confidential Information Protection*, arising from intentional or negligent acts or omissions of Contractor, its officers, employees, or agents, or Subcontractors, their officers, employees, or agents, in the performance of this Contract.

4.19 INDEPENDENT CAPACITY OF THE CONTRACTOR

The parties intend that an independent contractor relationship will be created by this Contract. Contractor and its employees or agents performing under this Contract are not employees or agents of HCA. Contractor will not hold itself out as or claim to be an officer or employee of HCA or of the State of Washington by reason hereof, nor will Contractor make any claim of right, privilege or benefit that would accrue to such employee under law. Conduct and control of the work will be solely with Contractor.

4.20 INDUSTRIAL INSURANCE COVERAGE

Prior to performing work under this Contract, Contractor must provide or purchase industrial insurance coverage for the Contractor's employees, as may be required of an "employer" as defined in Title 51 RCW, and must maintain full compliance with Title 51 RCW during the course of this Contract.

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4.21 LEGAL AND REGULATORY COMPLIANCE

4.21.1 During the term of this Contract, Contractor must comply with all local, state, and federal licensing, accreditation and registration requirements/standards, necessary for the performance of this Contract and all other applicable federal, state and local laws, rules, and regulations.

4.21.2 While on the HCA premises, Contractor must comply with HCA operations and process standards and policies (e.g., ethics, Internet / email usage, data, network and building security, harassment, as applicable). HCA will make an electronic copy of all such policies available to Contractor.

4.21.3 Failure to comply with any provisions of this section may result in Contract termination.

4.22 LIMITATION OF AUTHORITY

Only the HCA Authorized Representative has the express, implied, or apparent authority to alter, amend, modify, or waive any clause or condition of this Contract. Furthermore, any alteration, amendment, modification, or waiver or any clause or condition of this Contract is not effective or binding unless made in writing and signed by the HCA Authorized Representative.

4.23 NO THIRD-PARTY BENEFICIARIES

HCA and Contractor are the only parties to this contract. Nothing in this Contract gives or is intended to give any benefit of this Contract to any third parties.

4.24 NONDISCRIMINATION

During the performance of this Contract, the Contractor must comply with all federal and state nondiscrimination laws, regulations and policies, including but not limited to: Title VII of the Civil Rights Act, 42 U.S.C. §12101 et seq.; the Americans with Disabilities Act of 1990 (ADA), 42 U.S.C. §12101 et seq., 28 CFR Part 35; and Title 49.60 RCW, Washington Law Against Discrimination. In the event of Contractor's noncompliance or refusal to comply with any nondiscrimination law, regulation or policy, this Contract may be rescinded, canceled, or terminated in whole or in part under the Termination for Default sections, and Contractor may be declared ineligible for further contracts with HCA.

4.25 OVERPAYMENTS TO CONTRACTOR

In the event that Overpayments or erroneous payments have been made to the Contractor under this Contract, HCA will provide written notice to Contractor and Contractor will refund the full amount to HCA within thirty (30) calendar days of the notice. If Contractor fails to make timely refund, HCA may charge Contractor one percent (1%) per month on the amount due, until paid in full. If the Contractor disagrees with HCA's actions under this section, then it may invoke the dispute resolution provisions of Section 4.11 *Disputes*.

DocuSign Envelope ID: 39B39692-8710-498D-9681-FDFB9AA11221

4.26 PAY EQUITY

4.26.1 Contractor represents and warrants that, as required by Washington state law (Engrossed House Bill 1109, Sec. 211), during the term of this Contract, it agrees to equality among its workers by ensuring similarly employed individuals are compensated as equals. For purposes of this provision, employees are similarly employed if (i) the individuals work for Contractor, (ii) the performance of the job requires comparable skill, effort, and responsibility, and (iii) the jobs are performed under similar working conditions. Job titles alone are not determinative of whether employees are similarly employed.

4.26.2 Contractor may allow differentials in compensation for its workers based in good faith on any of the following: (i) a seniority system; (ii) a merit system; (iii) a system that measures earnings by quantity or quality of production; (iv) bona fide job-related factor(s); or (v) a bona fide regional difference in compensation levels.

4.26.3 Bona fide job-related factor(s)" may include, but not be limited to, education, training, or experience, that is: (i) consistent with business necessity; (ii) not based on or derived from a gender-based differential; and (iii) accounts for the entire differential.

4.26.4 A "bona fide regional difference in compensation level" must be (i) consistent with business necessity; (ii) not based on or derived from a gender-based differential; and (iii) account for the entire differential.

4.26.5 Notwithstanding any provision to the contrary, upon breach of warranty and Contractor's failure to provide satisfactory evidence of compliance within thirty (30) Days of HCA's request for such evidence, HCA may suspend or terminate this Contract.

4.27 PUBLICITY

4.27.1 The award of this Contract to Contractor is not in any way an endorsement of Contractor or Contractor's Services by HCA and must not be so construed by Contractor in any advertising or other publicity materials.

4.27.2 Contractor agrees to submit to HCA, all advertising, sales promotion, and other publicity materials relating to this Contract or any Service furnished by Contractor in which HCA's name is mentioned, language is used, or Internet links are provided from which the connection of HCA's name with Contractor's Services may, in HCA's judgment, be inferred or implied. Contractor further agrees not to publish or use such advertising, marketing, sales promotion materials, publicity or the like through print, voice, the Web, and other communication media in existence or hereinafter developed without the express written consent of HCA prior to such use.

4.28 RECORDS AND DOCUMENTS REVIEW

4.28.1 The Contractor must maintain books, records, documents, magnetic media, receipts, invoices or other evidence relating to this Contract and the performance of the services rendered, along with accounting procedures and practices, all of which sufficiently and properly reflect all direct and indirect costs of any nature expended in the performance of

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this Contract. At no additional cost, these records, including materials generated under this Contract, are subject at all reasonable times to inspection, review, or audit by HCA, the Office of the State Auditor, and state and federal officials so authorized by law, rule, regulation, or agreement [See 42 USC 1396a(a)(27)(B); 42 USC 1396a(a)(37)(B); 42 USC 1396a(a)(42(A); 42 CFR 431, Subpart Q; and 42 CFR 447.202].

4.28.2 The Contractor must retain such records for a period of six (6) years after the date of final payment under this Contract.

4.28.3 If any litigation, claim or audit is started before the expiration of the six (6) year period, the records must be retained until all litigation, claims, or audit findings involving the records have been resolved.

4.29 REMEDIES NON-EXCLUSIVE

The remedies provided in this Contract are not exclusive, but are in addition to all other remedies available under law.

4.30 RIGHT OF INSPECTION

The Contractor must provide right of access to its facilities to HCA, or any of its officers, or to any other authorized agent or official of the state of Washington or the federal government, at all reasonable times, in order to monitor and evaluate performance, compliance, and/or quality assurance under this Contract.

4.31 RIGHTS IN DATA/OWNERSHIP

4.31.1 HCA and Contractor agree that all data and work products (collectively "Work Product") produced pursuant to this Contract will be considered a *work for hire* under the U.S. Copyright Act, 17 U.S.C. §101 *et seq*, and will be owned by HCA. Contractor is hereby commissioned to create the Work Product. Work Product includes, but is not limited to, discoveries, formulae, ideas, improvements, inventions, methods, models, processes, techniques, findings, conclusions, recommendations, reports, designs, plans, diagrams, drawings, Software, databases, documents, pamphlets, advertisements, books, magazines, surveys, studies, computer programs, films, tapes, and/or sound reproductions, to the extent provided by law. Ownership includes the right to copyright, patent, register and the ability to transfer these rights and all information used to formulate such Work Product.

4.31.2 If for any reason the Work Product would not be considered a *work for hire* under applicable law, Contractor assigns and transfers to HCA, the entire right, title and interest in and to all rights in the Work Product and any registrations and copyright applications relating thereto and any renewals and extensions thereof.

4.31.3 Contractor will execute all documents and perform such other proper acts as HCA may deem necessary to secure for HCA the rights pursuant to this section.

DocuSign Envelope ID: 39B39692-8710-498D-9681-FDFB9AA11221

4.31.4 Contractor will not use or in any manner disseminate any Work Product to any third party, or represent in any way Contractor ownership of any Work Product, without the prior written permission of HCA. Contractor will take all reasonable steps necessary to ensure that its agents, employees, or Subcontractors will not copy or disclose, transmit or perform any Work Product or any portion thereof, in any form, to any third party.

4.31.5 Material that is delivered under this Contract, but that does not originate therefrom ("Preexisting Material"), must be transferred to HCA with a nonexclusive, royalty-free, irrevocable license to publish, translate, reproduce, deliver, perform, display, and dispose of such Preexisting Material, and to authorize others to do so. Contractor agrees to obtain, at its own expense, express written consent of the copyright holder for the inclusion of Preexisting Material. HCA will have the right to modify or remove any restrictive markings placed upon the Preexisting Material by Contractor.

4.31.6 Contractor must identify all Preexisting Material when it is delivered under this Contract and must advise HCA of any and all known or potential infringements of publicity, privacy or of intellectual property affecting any Preexisting Material at the time of delivery of such Preexisting Material. Contractor must provide HCA with prompt written notice of each notice or claim of copyright infringement or infringement of other intellectual property right worldwide received by Contractor with respect to any Preexisting Material delivered under this Contract.

4.32 RIGHTS OF STATE AND FEDERAL GOVERNMENTS

In accordance with 45 C.F.R. 95.617, all appropriate state and federal agencies, including but not limited to the Centers for Medicare and Medicaid Services (CMS), will have a royalty-free, nonexclusive, and irrevocable license to reproduce, publish, translate, or otherwise use, and to authorize others to use for Federal Government purposes: (i) software, modifications, and documentation designed, developed or installed with Federal Financial Participation (FFP) under 45 CFR Part 95, subpart F; (ii) the Custom Software and modifications of the Custom Software, and associated Documentation designed, developed, or installed with FFP under this Contract; (iii) the copyright in any work developed under this Contract; and (iv) any rights of copyright to which Contractor purchases ownership under this Contract.

4.33 SEVERABILITY

If any provision of this Contract or the application thereof to any person(s) or circumstances is held invalid, such invalidity will not affect the other provisions or applications of this Contract that can be given effect without the invalid provision, and to this end the provisions or application of this Contract are declared severable.

4.34 SITE SECURITY

While on HCA premises, Contractor, its agents, employees, or Subcontractors must conform in all respects with physical, fire or other security policies or regulations. Failure to comply with these regulations may be grounds for revoking or suspending security access to these facilities. HCA reserves the right and authority to immediately revoke security access to Contractor staff

DocuSign Envelope ID: 39B39692-8710-498D-9681-FDFB9AA11221

for any real or threatened breach of this provision. Upon reassignment or termination of any Contractor staff, Contractor agrees to promptly notify HCA.

4.35 SUBCONTRACTING

4.35.1 Neither Contractor, nor any Subcontractors, may enter into subcontracts for any of the work contemplated under this Contract without prior written approval of HCA. HCA has sole discretion to determine whether or not to approve any such subcontract. In no event will the existence of the subcontract operate to release or reduce the liability of Contractor to HCA for any breach in the performance of Contractor's duties.

4.35.2 Contractor is responsible for ensuring that all terms, conditions, assurances and certifications set forth in this Contract are included in any subcontracts.

4.35.3 If at any time during the progress of the work HCA determines in its sole judgment that any Subcontractor is incompetent or undesirable, HCA will notify Contractor, and Contractor must take immediate steps to terminate the Subcontractor's involvement in the work.

4.35.4 The rejection or approval by the HCA of any Subcontractor or the termination of a Subcontractor will not relieve Contractor of any of its responsibilities under the Contract, nor be the basis for additional charges to HCA.

4.35.5 HCA has no contractual obligations to any Subcontractor or vendor under contract to the Contractor. Contractor is fully responsible for all contractual obligations, financial or otherwise, to its Subcontractors.

4.36 SURVIVAL

The terms and conditions contained in this Contract that, by their sense and context, are intended to survive the completion, cancellation, termination, or expiration of the Contract will survive. In addition, the terms of the sections titled *Confidential Information Protection, Contractor's Proprietary Information, Disputes, Overpayments to Contractor, Publicity, Records and Documents Review, Rights in Data/Ownership, and Rights of State and Federal Governments* will survive the termination of this Contract. The right of HCA to recover any Overpayments will also survive the termination of this Contract.

4.37 TAXES

HCA will pay sales or use taxes, if any, imposed on the services acquired hereunder. Contractor must pay all other taxes including, but not limited to, Washington Business and Occupation Tax, other taxes based on Contractor's income or gross receipts, or personal property taxes levied or assessed on Contractor's personal property. HCA, as an agency of Washington State government, is exempt from property tax.

Contractor must complete registration with the Washington State Department of Revenue and be responsible for payment of all taxes due on payments made under this Contract.

DocuSign Envelope ID: 39B39692-8710-498D-9681-FDFB9AA11221

4.38 TERMINATION

4.38.1 TERMINATION FOR DEFAULT

In the event HCA determines that Contractor has failed to comply with the terms and conditions of this Contract, HCA has the right to suspend or terminate this Contract. HCA will notify Contractor in writing of the need to take corrective action. If corrective action is not taken within five (5) Business Days, or other time period agreed to in writing by both parties, the Contract may be terminated. HCA reserves the right to suspend all or part of the Contract, withhold further payments, or prohibit Contractor from incurring additional obligations of funds during investigation of the alleged compliance breach and pending corrective action by Contractor or a decision by HCA to terminate the Contract.

In the event of termination for default, Contractor will be liable for damages as authorized by law including, but not limited to, any cost difference between the original Contract and the replacement or cover Contract and all administrative costs directly related to the replacement Contract, e.g., cost of the competitive bidding, mailing, advertising, and staff time.

If it is determined that Contractor: (i) was not in default, or (ii) its failure to perform was outside of its control, fault or negligence, the termination will be deemed a “Termination for Convenience.”

4.38.2 TERMINATION FOR CONVENIENCE

When, at HCA’s sole discretion, it is in the best interest of the State, HCA may terminate this Contract in whole or in part by providing ten (10) calendar days’ written notice. If this Contract is so terminated, HCA will be liable only for payment in accordance with the terms of this Contract for services rendered prior to the effective date of termination. No penalty will accrue to HCA in the event the termination option in this section is exercised.

4.38.3 TERMINATION FOR NONALLOCATION OF FUNDS

If funds are not allocated to continue this Contract in any future period, HCA may immediately terminate this Contract by providing written notice to the Contractor. The termination will be effective on the date specified in the termination notice. HCA will be liable only for payment in accordance with the terms of this Contract for services rendered prior to the effective date of termination. HCA agrees to notify Contractor of such nonallocation at the earliest possible time. No penalty will accrue to HCA in the event the termination option in this section is exercised.

4.38.4 TERMINATION FOR WITHDRAWAL OF AUTHORITY

In the event that the authority of HCA to perform any of its duties is withdrawn, reduced, or limited in any way after the commencement of this Contract and prior to normal completion, HCA may immediately terminate this Contract by providing written notice to the Contractor. The termination will be effective on the date specified in the termination notice. HCA will be liable only for payment in accordance with the terms of this Contract

DocuSign Envelope ID: 39B39692-8710-498D-9681-FDFB9AA11221

for services rendered prior to the effective date of termination. HCA agrees to notify Contractor of such withdrawal of authority at the earliest possible time. No penalty will accrue to HCA in the event the termination option in this section is exercised.

DocuSign Envelope ID: 39B39692-8710-498D-9681-FDFB9AA11221

4.38.5 TERMINATION FOR CONFLICT OF INTEREST

HCA may terminate this Contract by written notice to the Contractor if HCA determines, after due notice and examination, that there is a violation of the Ethics in Public Service Act, Chapter 42.52 RCW, or any other laws regarding ethics in public acquisitions and procurement and performance of contracts. In the event this Contract is so terminated, HCA will be entitled to pursue the same remedies against the Contractor as it could pursue in the event Contractor breaches the contract.

4.39 TERMINATION PROCEDURES

4.39.1 Upon termination of this Contract, HCA, in addition to any other rights provided in this Contract, may require Contractor to deliver to HCA any property specifically produced or acquired for the performance of such part of this Contract as has been terminated.

4.39.2 HCA will pay Contractor the agreed-upon price, if separately stated, for completed work and services accepted by HCA and the amount agreed upon by the Contractor and HCA for (i) completed work and services for which no separate price is stated; (ii) partially completed work and services; (iii) other property or services that are accepted by HCA; and (iv) the protection and preservation of property, unless the termination is for default, in which case HCA will determine the extent of the liability. Failure to agree with such determination will be a dispute within the meaning of Section 4.11 *Disputes*. HCA may withhold from any amounts due the Contractor such sum as HCA determines to be necessary to protect HCA against potential loss or liability.

4.39.3 After receipt of notice of termination, and except as otherwise directed by HCA, Contractor must:

4.39.3.1 Stop work under the Contract on the date of, and to the extent specified in, the notice;

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

4.39.3.3 Assign to HCA, in the manner, at the times, and to the extent directed by HCA, all the rights, title, and interest of the Contractor under the orders and subcontracts so terminated; in which case HCA has the right, at its discretion, to settle or pay any or all claims arising out of the termination of such orders and subcontracts;

4.39.3.4 Settle all outstanding liabilities and all claims arising out of such termination of orders and subcontracts, with the approval or ratification of HCA to the extent

DocuSign Envelope ID: 39B39692-8710-498D-9681-FDFB9AA11221

HCA may require, which approval or ratification will be final for all the purposes of this clause;

4.39.3.5 Transfer title to and deliver as directed by HCA any property required to be furnished to HCA;

4.39.3.6 Complete performance of any part of the work that was not terminated by HCA; and

4.39.3.7 Take such action as may be necessary, or as HCA may direct, for the protection and preservation of the records related to this Contract that are in the possession of the Contractor and in which HCA has or may acquire an interest.

4.40 WAIVER

Waiver of any breach of any term or condition of this Contract will not be deemed a waiver of any prior or subsequent breach or default. No term or condition of this Contract will be held to be waived, modified, or deleted except by a written instrument signed by the parties. Only the HCA Authorized Representative has the authority to waive any term or condition of this Contract on behalf of HCA.

4.41 WARRANTIES

4.41.1 Contractor represents and warrants that it will perform all services pursuant to this Contract in a professional manner and with high quality and will immediately re-perform any services that are not in compliance with this representation and warranty at no cost to HCA.

4.41.2 Contractor represents and warrants that it will comply with all applicable local, State, and federal licensing, accreditation and registration requirements and standards necessary in the performance of the Services.

4.41.3 EXECUTIVE ORDER 18-03 – WORKERS' RIGHTS (MANDATORY INDIVIDUAL ARBITRATION). Contractor represents and warrants, as previously certified in Contractor's bid submission, that Contractor does NOT require its employees, as a condition of employment, to sign or agree to mandatory individual arbitration clauses or class or collective action waivers. Contractor further represents and warrants that, during the term of this Contract, Contractor shall not, as a condition of employment, require its employees to sign or agree to mandatory individual arbitration clauses or class or collective action waivers.

4.41.4 Any written commitment by Contractor within the scope of this Contract will be binding upon Contractor. Failure of Contractor to fulfill such a commitment may constitute breach and will render Contractor liable for damages under the terms of this Contract. For purposes of this section, a commitment by Contractor includes: (i) Prices, discounts, and options committed to remain in force over a specified period of time; and (ii) any warranty or representation made by Contractor to HCA or contained in any Contractor publications, or descriptions of services in written or other communication medium, used to influence HCA to enter into this Contract.

DocuSign Envelope ID: 39B39692-8710-498D-9681-FDFB9AA11221

Attachment 1

Federal Compliance, Certifications, and Assurances

In the event federal funds are included in this agreement, the following sections apply: I. Federal Compliance and II. Standard Federal Assurances and Certifications. In the instance of inclusion of federal funds, the Contractor may be designated as a sub-recipient and the effective date of the amendment shall also be the date at which these requirements go into effect.

I. FEDERAL COMPLIANCE - The use of federal funds requires additional compliance and control mechanisms to be in place. The following represents the majority of compliance elements that may apply to any federal funds provided under this contract. For clarification regarding any of these elements or details specific to the federal funds in this contract, contact: HCA Contract Manager, Michele Gayle

a. *Source of Funds:* This agreement is being funded partially or in full through Cooperative Agreement number **B08TI010056-19** the full and complete terms and provisions of which are hereby incorporated into this agreement can be found by reference in Exhibit C. Federal funds to support this agreement are identified by the Catalog of Federal Domestic Assistance (CFDA) number **93.959** and amount to **$475,250** The sub-awardee is responsible for tracking and reporting the cumulative amount expended under HCA Contract No. **K4513**.

b. *Period of Availability of Funds:* Pursuant to 45 CFR 92.23, Sub-awardee may charge to the award only costs resulting from obligations of the funding period specified in **B08TI010056-19** unless carryover of unobligated balances is permitted, in which case the carryover balances may be charged for costs resulting from obligations of the subsequent funding period. All obligations incurred under the award must be liquidated no later than 90 days after the end of the funding period.

c. *Single Audit Act:* A sub-awardee (including private, for-profit hospitals and non-profit institutions) shall adhere to the federal Office of Management and Budget (OMB) Super Circular 2 CFR 200.501 and 45 CFR 75.501. A sub-awardee who expends $750,000 or more in federal awards during a given fiscal year shall have a single or program-specific audit for that year in accordance with the provisions of OMB Super Circular 2 CFR 200.501 and 45 CFR 75.501.

d. *Modifications:* This agreement may not be modified or amended, nor may any term or provision be waived or discharged, including this particular Paragraph, except in writing, signed upon by both parties.
   1. Examples of items requiring Health Care Authority prior written approval include, but are not limited to, the following:
      i. Deviations from the budget and Project plan.
      ii. Change in scope or objective of the agreement.
      iii. Change in a key person specified in the agreement.
      iv. The absence for more than three months or a 25% reduction in time by the Project Manager/Director.
      v. Need for additional funding.
      vi. Inclusion of costs that require prior approvals as outlined in the appropriate cost principles.
      vii. Any changes in budget line item(s) of greater than twenty percent (20%) of the total budget in this agreement.
   2. No changes are to be implemented by the Sub-awardee until a written notice of approval is received from the Health Care Authority.

e. *Sub-Contracting:* The sub-awardee shall not enter into a sub-contract for any of the work performed under this agreement without obtaining the prior written approval of the Health Care Authority. If sub-contractors are approved by the Health Care Authority, the subcontract, shall contain, at a minimum, sections of the agreement pertaining to Debarred and Suspended Vendors, Lobbying certification, Audit requirements, and/or any other project Federal, state, and local requirements.

f. *Condition for Receipt of Health Care Authority Funds:* Funds provided by Health Care Authority to the sub-awardee under this agreement may not be used by the sub-awardee as a match or cost-sharing provision to secure other federal monies without prior written approval by the Health Care Authority.

g. *Unallowable Costs:* The sub-awardees' expenditures shall be subject to reduction for amounts included in any invoice or prior payment made which determined by HCA not to constitute allowable costs on the basis of audits, reviews, or monitoring of this agreement.

h. *Citizenship/Alien Verification/Determination:* The Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA) of 1996 (PL 104-193) states that federal public benefits should be made available only to U.S. citizens and qualified aliens. Entities that offer a service defined as a "federal public benefit" must make a citizenship/qualified alien determination/ verification of applicants at the time of application as part of the eligibility criteria. Non-US citizens and unqualified aliens are not eligible to receive the services. PL 104-193 also includes specific reporting requirements.

i. *Federal Compliance:* The sub-awardee shall comply with all applicable State and Federal statutes, laws, rules, and regulations in the performance of this agreement, whether included specifically in this agreement or not.

j. *Civil Rights and Non-Discrimination Obligations* During the performance of this agreement, the Contractor shall comply with all current and future federal statutes relating to nondiscrimination. These include but are not limited to: Title VI of the Civil Rights Act of 1964 (PL 88-352), Title IX of the Education Amendments of 1972 (20 U.S.C. §§ 1681-1683 and 1685-1686), section 504 of the Rehabilitation Act of 1973 (29 U.S.C. § 794), the Age Discrimination Act of 1975 (42 U.S.C. §§ 6101-6107), the Drug Abuse Office and Treatment Act of 1972 (PL 92-255), the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (PL 91-616), §§523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. §§290dd-3 and 290ee-3), Title VIII of the Civil Rights Act of 1968 (42 U.S.C. §§3601 et seq.), and the Americans with Disability Act (42 U.S.C., Section 12101 et seq.) http://www.hhs.gov/ocr/civilrights

HCA Federal Compliance Contact Information

Federal Grants and Budget Specialist
Health Care Policy
Washington State Health Care Authority
Post Office Box 42710
Olympia, Washington 98504-2710

II. **CIRCULARS 'COMPLIANCE MATRIX'** - The following compliance matrix identifies the OMB Circulars that contain the requirements which govern expenditure of federal funds. These requirements apply to the Washington State Health Care Authority (HCA), as the primary recipient of federal funds and then follow the funds to the sub-awardee,**Whatcom County Prosecuting Attorney's Office**. The federal Circulars which provide the applicable administrative requirements, cost principles and audit requirements are identified by sub-awardee organization type.

III.

OMB CIRCULAR			
ENTITY TYPE	**ADMINISTRATIVE REQUIREMENTS**	**COST PRINCIPLES**	**AUDIT REQUIREMENTS**
State. Local and Indian Tribal Governments and Governmental Hospitals	OMB Super Circular 2 CFR 200.501 and 45 CFR 75.501		
Non-Profit Organizations and Non-Profit Hospitals			
Colleges or Universities and Affiliated Hospitals			
For-Profit Organizations			

DocuSign Envelope ID: 39B39692-8710-498D-9681-FDFB9AA11221

Definitions:

"*Sub-recipient";* means the legal entity to which a sub-award is made and which is accountable to the State for the use of the funds provided in carrying out a portion of the State's programmatic effort under a sponsored project. The term may include institutions of higher education, for-profit corporations or non-U.S. Based entities.

"*Sub-award and Sub-grant*" are used interchangeably and mean a lower tier award of financial support from a prime awardee (e.g., Washington State Health Care Authority) to a Sub-recipient for the performance of a substantive portion of the program. These requirements do not apply to the procurement of goods and services for the benefit of the Washington State Health Care Authority.

IV. STANDARD FEDERAL CERTIFICATIONS AND ASSURANCES - Following are the Assurances, Certifications, and Special Conditions that apply to all federally funded (in whole or in part) agreements administered by the Washington State Health Care Authority.

CERTIFICATIONS

1. CERTIFICATION REGARDING DEBARMENT AND SUSPENSION

The undersigned (authorized official signing for the contracting organization) certifies to the best of his or her knowledge and belief, that the contractor, defined as the primary participant in accordance with 45 CFR Part 76, and its principals:

a) are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal Department or agency;
b) have not within a 3-year period preceding this contract been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
c) are not presently indicted or otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) with commission of any of the offenses enumerated in paragraph (b) of this certification; and
d) have not within a 3-year period preceding this contract had one or more public transactions (Federal, State, or local) terminated for cause or default.

Should the contractor not be able to provide this certification, an explanation as to why should be placed after the assurances page in the contract.

The contractor agrees by signing this contract that it will include, without modification, the clause titled "Certification Regarding Debarment, Suspension, In eligibility, and Voluntary Exclusion--Lower Tier Covered Transactions" in all lower tier covered transactions (i.e., transactions with sub-grantees and/or contractors) and in all solicitations for lower tier covered transactions in accordance with 45 CFR Part 76.

2. CERTIFICATION REGARDING DRUG-FREE WORKPLACE REQUIREMENTS

The undersigned (authorized official signing for the contracting organization) certifies that the contractor will, or will continue to, provide a drug-free workplace in accordance with 45 CFR Part 76 by:

a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;
b) Establishing an ongoing drug-free awareness program to inform employees about
   (1) The dangers of drug abuse in the workplace;
   (2) The contractor's policy of maintaining a drug-free workplace;
   (3) Any available drug counseling, rehabilitation, and employee assistance programs; and
   (4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;
c) Making it a requirement that each employee to be engaged in the performance of the contract be given a copy of the statement required by paragraph (a) above;
d) Notifying the employee in the statement required by paragraph (a), above, that, as a condition of employment under the contract, the employee will—
   (1) Abide by the terms of the statement; and

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(2) Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction;

e) Notifying the agency in writing within ten calendar days after receiving notice under paragraph (d)(2) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to every contract officer or other designee on whose contract activity the convicted employee was working, unless the Federal agency has designated a central point for the receipt of such notices. Notice shall include the identification number(s) of each affected grant;

f) Taking one of the following actions, within 30 calendar days of receiving notice under paragraph (d) (2), with respect to any employee who is so convicted—

(1) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or

(2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;

g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e), and (f).

For purposes of paragraph (e) regarding agency notification of criminal drug convictions, Authority has designated the following central point for receipt of such notices:

Legal Services Manager
WA State Health Care Authority
PO Box 42700
Olympia, WA 98504-2700

3. CERTIFICATION REGARDING LOBBYING

Title 31, United States Code, Section 1352, entitled "Limitation on use of appropriated funds to influence certain Federal contracting and financial transactions," generally prohibits recipients of Federal grants and cooperative agreements from using Federal (appropriated) funds for lobbying the Executive or Legislative Branches of the Federal Government in connection with a SPECIFIC grant or cooperative agreement. Section 1352 also requires that each person who requests or receives a Federal grant or cooperative agreement must disclose lobbying undertaken with non-Federal (nonappropriated) funds. These requirements apply to grants and cooperative agreements EXCEEDING $100,000 in total costs (45 CFR Part 93).

The undersigned (authorized official signing for the contracting organization) certifies, to the best of his or her knowledge and belief, that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federally appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure of Lobbying Activities," in accordance with its instructions. (If needed, Standard Form-LLL, "Disclosure of Lobbying Activities," its instructions, and continuation sheet are included at the end of this application form.)

(3) The undersigned shall require that the language of this certification be included in the award documents for all subcontracts at all tiers (including subcontracts, subcontracts, and contracts under grants, loans and cooperative agreements) and that all sub-recipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

4. CERTIFICATION REGARDING PROGRAM FRAUD CIVIL REMEDIES ACT (PFCRA)

The undersigned (authorized official signing for the contracting organization) certifies that the

DocuSign Envelope ID: 39B39692-8710-498D-9681-FDFB9AA11221

statements herein are true, complete, and accurate to the best of his or her knowledge, and that he or she is aware that any false, fictitious, or fraudulent statements or claims may subject him or her to criminal, civil, or administrative penalties. The undersigned agrees that the contracting organization will comply with the Public Health Service terms and conditions of award if a contract is awarded.

5. CERTIFICATION REGARDING ENVIRONMENTAL TOBACCO SMOKE

Public Law 103-227, also known as the Pro-Children Act of 1994 (Act), requires that smoking not be permitted in any portion of any indoor facility owned or leased or contracted for by an entity and used routinely or regularly for the provision of health, day care, early childhood development services, education or library services to children under the age of 18, if the services are funded by Federal programs either directly or through State or local governments, by Federal grant, contract, loan, or loan guarantee. The law also applies to children's services that are provided in indoor facilities that are constructed, operated, or maintained with such Federal funds. The law does not apply to children's services provided in private residence, portions of facilities used for inpatient drug or alcohol treatment, service providers whose sole source of applicable Federal funds is Medicare or Medicaid, or facilities where WIC coupons are redeemed.

Failure to comply with the provisions of the law may result in the imposition of a civil monetary penalty of up to $1,000 for each violation and/or the imposition of an administrative compliance order on the responsible entity.

By signing the certification, the undersigned certifies that the contracting organization will comply with the requirements of the Act and will not allow smoking within any portion of any indoor facility used for the provision of services for children as defined by the Act.

The contracting organization agrees that it will require that the language of this certification be included in any subcontracts which contain provisions for children's services and that all sub-recipients shall certify accordingly.

The Public Health Services strongly encourages all recipients to provide a smoke-free workplace and promote the non-use of tobacco products. This is consistent with the PHS mission to protect and advance the physical and mental health of the American people.

6. CERTIFICATION REGARDING DEBARMENT, SUSPENSION, AND OTHER RESPONSIBILITY MATTERS INSTRUCTIONS FOR CERTIFICATION

1) By signing and submitting this proposal, the prospective contractor is providing the certification set out below.
2) The inability of a person to provide the certification required below will not necessarily result in denial of participation in this covered transaction. The prospective contractor shall submit an explanation of why it cannot provide the certification set out below. The certification or explanation will be considered in connection with the department or agency's determination whether to enter into this transaction. However, failure of the prospective contractor to furnish a certification or an explanation shall disqualify such person from participation in this transaction.
3) The certification in this clause is a material representation of fact upon which reliance was placed when the department or agency determined to enter into this transaction. If it is later determined that the prospective contractor knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause of default.
4) The prospective contractor shall provide immediate written notice to the department or agency to whom this contract is submitted if at any time the prospective contractor learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
5) The terms covered transaction, debarred, suspended, ineligible, lower tier covered transaction, participant, person, primary covered transaction, principal, proposal, and voluntarily excluded, as used in this clause, have the meanings set out in the Definitions and Coverage sections of the rules implementing Executive Order 12549. You may contact the person to whom this contract is submitted for assistance in obtaining a copy of those regulations.
6) The prospective contractor agrees by submitting this contract that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from

DocuSign Envelope ID: 39B39692-8710-498D-9681-FDFB9AA11221

participation in this covered transaction, unless authorized by Authority.

7) The prospective contractor further agrees by submitting this contract that it will include the clause titled ``Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion -- Lower Tier Covered Transaction,'' provided by HHS, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.
8) A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Non-procurement List (of excluded parties).
9) Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
10) Except for transactions authorized under paragraph 6 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, Authority may terminate this transaction for cause or default.

7. CERTIFICATION REGARDING DEBARMENT, SUSPENSION, AND OTHER RESPONSIBILITY MATTERS -- PRIMARY COVERED TRANSACTIONS

1) The prospective contractor certifies to the best of its knowledge and belief, that it and its principals:
   a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;

b) Have not within a three-year period preceding this contract been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

   c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and
   d) Have not within a three-year period preceding this contract had one or more public transactions (Federal, State or local) terminated for cause or default.

2) Where the prospective contractor is unable to certify to any of the statements in this certification, such prospective contractor shall attach an explanation to this proposal.

DocuSign Envelope ID: 39B39692-8710-498D-9681-FDFB9AA11221

CONTRACTOR SIGNATURE REQUIRED

SIGNATURE OF AUTHORIZED CERTIFYING OFFICIAL	TITLE
Please also print or type name:	
ORGANIZATION NAME: (if applicable)	DATE

DocuSign Envelope ID: 39B39692-8710-498D-9681-FDFB9AA11221

Attachment 2

Federal Funding Accountability and Transparency Act (FFATA) Data Collection Form

This Contract is supported by federal funds that require compliance with the Federal Funding Accountability and Transparency Act (FFATA or the Transparency Act). The purpose of the Transparency Act is to make information available online so the public can see how federal funds are spent.

To comply with the act and be eligible to enter into this contract, your organization must have a Data Universal Numbering System (DUNS®) number. A DUNS® number provides a method to verify data about your organization. If you do not already have one, you may receive a DUNS® number free of charge by contacting Dun and Bradstreet at www.dnb.com.

Required Information about your organization and this contract will be made available on USASpending.gov by the Washington State Health Care Authority (HCA) as required by P.L. 109-282. As a tool to provide the information, HCA encourages registration with the Central Contractor Registry (CCR) because less data entry and re-entry is required by both HCA and your organization. You may register with CCR on-line at https://www.uscontractorregistration.com/.

Contractor must complete this form and return it to the Health Care Authority (HCA).

CONTRACTOR

1. Legal Name	2. DUNS Number
3. Principle Place of Performance	
3a. City	3b. State
3c. Zip+4	3d. Country

4. Are you registered in CCR (https://www.uscontractorregistration.com/)? ☐YES (skip to page 2. Sign, date and return) ☐NO

5. In the preceding fiscal year did your organization:
   a. Receive 80% or more of annual gross revenue from federal contracts, subcontracts, grants, loans, subgrants, and/or cooperative agreements; **and**
   b. $25,000,000 or more in annual gross revenues from federal contracts, subcontracts, grants, loans, subgrants, and/or cooperative agreements; **and**
   c. The public does not have access to information about the compensation of the executives through periodic reports filed with the IRS or the Security and Exchange Commission per 2 CFR Part 170.330

☐ NO (skip the remainder of this section - Sign, date and return)

☐ YES (You must report the names and total compensation of the top 5 highly compensated officials of your organization).

Name Of Official	Total Compensation
1.	
2.	
3.	
4.	
5.	

Note: "Total compensation" means the cash and noncash dollar value earned by the executive during the sub-recipient's past fiscal year of the following (for more information see 17 CFR 229.402 (c)(2)).

By signing this document, the Contractor Authorized Representative attests to the information.

DocuSign Envelope ID: 39B39692-8710-498D-9681-FDFB9AA11221

Signature of Contractor Authorized Representative	Date

HCA will not endorse the Contractor's subaward until this form is completed and returned.

FOR HEALTH CARE AUTHORITY USE ONLY

HCA Contract Number: _____
Sub-award Project Description (see instructions and examples below)

Instructions for Sub-award Project Description:
In the first line of the description provide a title for the sub-award that captures the main purpose of the subrecipients work. Then, indicate the name of the subrecipient and provide a brief description that captures the overall purpose of the sub-award, how the funds will be used, and what will be accomplished.

Example of a Sub-award Project Description:
Increase Healthy Behaviors: Educational Services District XYZ will provide training and technical assistance to chemical dependency centers to assist the centers to integrate tobacco use into their existing addiction treatment programs. Funds will also be used to assist centers in creating tobacco free treatment environments.

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Attachment 3

Federal Award Identification for Subrecipients (reference 2 CFR 200.331)

Substance Abuse Block Grant

(i)	Subrecipient name (which must match the name associated with its unique entity identifier);	Whatcom County Prosecuting Attorney's Office
(ii)	Subrecipient's Data Universal Numbering System (DUNS®) unique entity identifier	060044641
(iii)	Federal Award Identification Number (FAIN);	B08TI010056-19
(iv)	Federal Award Date (see §200.39 Federal award date);	10/11/2019
(v)	Subaward Period of Performance Start and End Date;	Date of execution- 6/30/21
(vi)	Amount of Federal Funds Obligated by this action;	$475,250
(vii)	Total Amount of Federal Funds Obligated to the subrecipient;	$475,250
(viii)	Total Amount of the Federal Award;	$38,119,291
(ix)	Federal award project description, as required to be responsive to the Federal Funding Accountability and Transparency Act (FFATA);	Substance Abuse Prevention and Treatment Block Grant
(x)	Name of Federal awarding agency, pass-through entity, and contact information for awarding official,	SAMHSA WA State Health Care Authority Keri Waterland, Assistant Director DBHR 626 8th Ave SE; Olympia, WA 98504-5330 Keri.waterland@hca.wa.gov
(xi)	Catalog of Federal Domestic Assistance (CFDA) Number and Name; the pass-through entity must identify the dollar amount made available under each Federal award and the CFDA number at time of disbursement;	93.959 Substance Abuse Prevention and Treatment Block Grant
(xii)	Identification of whether the award is Research & Development; and	☐ Yes ☒ No
(xiii)	Indirect cost rate for the Federal award, including if the de minimis rate is charged per §200.414 Indirect (Facilities & Administrative) costs.	De mimimus 10%

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Schedule A
Statement of Work

1. PURPOSE

HCA intends to enter into an agreement with the Contractor for purposes of establishing a LEAD Program that adheres to the Core Principles of LEAD as noted in SSB 5380 and RCW 71.24.589, which indicates that the HCA must partner with the Public Defender's Association-National Support Bureau (NSB) to expand availability of Law Enforcement Assisted Diversion (LEAD) programs statewide.

2. HCA RESPONSIBILITIES

2.1. Provide a Contract Manager to monitor all progress under the program; and

2.2. Provide timely responses to all inquiries from the Contractor.

3. CONTRACTOR RESPONSIBILITIES

3.1. Coordinate with NSB for purposes of receiving technical assistance;

3.2. Coordinate with NSB for training on policies and protocols for LEAD referrals and diversion-eligible offences;

3.3. Coordinate with NSB to develop a LEAD Program Site Evaluation Plan with the intent of yielding the following results:

3.3.1. Reduction in arrests, time spent in custody, and/or recidivism for program participants;

3.3.2. Increase access to and utilization of non-emergency community behavioral health and/or substance use services;

3.3.3. Reduction in the utilization in emergency services;

3.3.4. Increased resilience, stability, and well-being for program participants; and

3.3.5. Reduction in cost for the justice system in comparison to processing cases as usual through the justice system.

3.4. Establish under this Contract a pilot project for LEAD which shall adhere to LEAD core principles recognized by the Law Enforcement Assisted Diversion NSB, the efficacy of which have been demonstrated in peer-reviewed research studies. A major component of this will include the creation of an executive committee that consists of the following members:

3.4.1. Community-based organizations;

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3.4.2. Local government;

3.4.3. Law enforcement;

3.4.4. Prosecutors;

3.4.5. Public health experts; and

3.4.6. Organizations led by and representing individuals with past justice system involvement.

3.5. As a LEAD Pilot Site Contractor must:

3.5.1. Accept and follow all guidance provided by the PDA Technical Assistance Team to ensure that the Pilot Site maintains fidelity to the LEAD Model as referenced in RCW 71.24.589.

3.5.2. Ensure that the program is managed to achieve expected outcomes that are measurable and will be used in the future to evaluate the performance and to ensure accountability for the use of this funding. As such, the Contractor will work with the HCA to utilize Julota Data collection and case management system.

Because this system is not yet in place and HCA understands that every community's reporting needs will be different, the Contractor's reporting requirements can be flexible, as full utilization of the system will allow for most elements of the required Monthly Data Collection Reports to be either automated or manually generated in little time. The Monthly Data Collection Report will contain the following elements:

3.5.2.1. Number of individuals contacted through law enforcement response and/or social contact referrals;

3.5.2.2. Number of individuals admitted into LEAD Program;

3.5.2.3. Aggregated demographics for individuals admitted, including:

3.5.2.3.1. Race;

3.5.2.3.2. Gender;

3.5.2.3.3. Age; and

3.5.2.3.4. Housing/homelessness status.

3.5.2.4. Aggregated intake information:

3.5.2.4.1. Self-reported behavioral health;

3.5.2.4.2. Employment;

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3.5.2.4.3. Family; and

3.5.2.4.4. Financial information.

3.5.2.4.5. Number of staff contact(s) with participants;

3.5.2.4.6. Number of linkages to services; and

3.5.2.4.7. Criminal justice system involvement.

3.5.3. Coordinate with HCA, and any authorized agent, in evaluation required of the LEAD Program for legislative reporting.

3.5.4. LEAD Program Manager will ensure that all Subcontractors are meeting the Data collection requirements established in coordination with the PDA Technical Assistance Team. And provide a Monthly Data Collection Report through the agreed upon case management and Data collection system.

3.5.5. Hire LEAD Program Manager within 30 days of the execution of this Contract.

The LEAD Program Manager will be responsible for directing day to day operations of the LEAD pilot project as outlined in Section 3.6, *LEAD Program Manager Responsibilities*.

3.5.6. Create and publish position announcements, or coordinate with partnering behavioral health agency, for the hiring of necessary clinical support positions, to include the following:

3.5.6.1. Outreach Coordinator;

3.5.6.2. Clinical Supervisor; and

3.5.6.3. Case Manager.

3.5.7. Hire 3 Full Time Employees (FTE) to cover the functioning of the LEAD Program within 60 days of execution of this agreement. The FTEs hired must include the following positions:

3.5.7.1. Outreach Coordinator;

3.5.7.2. Clinical Supervisor; and

3.5.7.3. Case Manager.

3.5.8. Coordinate, schedule, and conduct operational workgroup meetings as needed.

Operational workgroup meetings are for the purposes of coordinating care for LEAD participants and only those participants that have signed and ROI with operational

DocuSign Envelope ID: 39B39692-8710-498D-9681-FDFB9AA11221

workgroups members are to be discussed during the workgroup meetings. LEAD Program Manager will ensure the following participants are in attendance:

3.5.8.1. Law Enforcement Officers referring to the LEAD Program;

3.5.8.2. Prosecutors considering cases involving LEAD participants;

3.5.8.3. Case Mangers assisting LEAD clients; and

3.5.8.4. LEAD project managers.

3.5.9. Provide referrals to local community agencies for intensive case management services, including but not limited to substance use, mental health, and behavioral health assessment and treatment.

3.5.10. Ensure LEAD referral services begin no later than within 30 days of Date of Execution of this Contract.

3.5.11. Monitor to ensure the LEAD Program has referred and admitted at least 50 individuals by June 30, 2021.

3.5.12. Submit a completed Exhibit A, *LEAD Monthly Progress Report*, to the HCA Contract Manager with each monthly invoice.

3.5.13. Ensure travel per diem, computers, office supplies and all the other supplies and tools necessary to perform defined duties are provided to LEAD staff and/or contracted staff.

3.6. LEAD Program Manager Responsibilities

The LEAD Program Manager will be responsible for directing day to day operations of the LEAD pilot project. This will include but is not limited to the following:

3.6.1. Provide a detailed program timeline that identifies any anticipated implementation challenges; and an outline of steps that will be taken and the time frame needed to resolve these challenges.

3.6.2. Create and execute MOUs to facilitate information sharing;

3.6.3. Provide logistical coordination, support, and record-keeping to the local LEAD advisory board and operational workgroup. Meetings will be scheduled as frequently as necessary during the implementation phase. This coordination and support shall include, but is not limited to, the following:

3.6.3.1. Set meeting dates and coordinate presenters and subject matter experts for the LEAD Advisory Board and Steering Board meetings;

3.6.3.2. Work with the PDA Technical Assistance Team to develop and provide an agenda to LEAD Advisory Board members for each meeting;

DocuSign Envelope ID: 39B39692-8710-498D-9681-FDFB9AA11221

3.6.3.3. Provide all meeting agendas, minutes, and pertinent documents to the PDA Technical Assistance Team and the HCA Contract Manager;

3.6.3.4. Meet at least monthly with the PDA Technical Assistance Team to ensure communication and coordination of project;

3.6.3.5. Upon request, participate in presentations to key state and local stakeholders on progress; and

3.6.3.6. Provide a satisfaction survey to participants, officers, and stake holders within the last quarter of the program. Share the results of the survey with the PDA Technical Assistance Team and HCA Contract Manager.

3.6.4. Coordinate, schedule, and conduct LEAD steering committee and advisory board meetings as needed throughout the induction phase of this project.

3.6.5. Participate in monthly Technical Assistance (TA) calls with the PDA Technical Assistance Team. This TA will include but is not limited to the following:

3.6.5.1. Create and convene a policy coordinating group;

3.6.5.2. Write policy and protocol around referrals and diversion-eligible offenses and making an MOU for all parties to work together;

3.6.5.3. Trainings on policy and protocol regarding referrals and diversion-eligible offenses; and

3.6.5.4. Establishing intake processes for candidates.

4. DELIVERABLES

DELIVERABLE		DUE DATE	PAYMENT
4.1	Program timeline with implementation challenges and resolutions identified as detailed in subsection 3.6.1.	Within thirty (30) days of the Date of Execution and each month thereafter for the duration of the Contract.	One-time payment of $15,000.
4.3	Minutes detailing all local LEAD advisory board and operational workgroup meetings. Up to 30 meetings throughout the duration of this Contract.	Meeting minutes due no more than sixty (60) days after each meeting is conducted.	$2,000 per meeting, not to exceed $60,000.
4.4	Monthly Technical Assistance (TA) calls with the PDA Technical Assistance Team.	No less than one (1) call per month.	$5,000 per month, not to exceed $65,000.
4.5	Clinical support positions filled as listed in subsection 3.5.7.	No later than July 31, 2020	One-time payment of $20,000.

DocuSign Envelope ID: 39B39692-8710-498D-9681-FDFB9AA11221

4.6	Monthly Data Collection Report	Due each month on or before the 15th of the following month.	$3,000 per month, not to exceed $40,000
4.7	LEAD Monthly Progress Report	Due each month on or before the 15th of the following month.	$3,000 per month, not to exceed $40,000
4.8	Successfully refer a minimum of 50 individuals through the LEAD Program for each case manager hired, each year.	Ongoing	Up to $7,000 per month per Case Manager and/or outreach coordinator, not to exceed $360,000
4.9	Indirect (administrative) costs: Only 10% of direct costs.	Monthly, and no later than 60 days following the Contract end date.	10% of direct costs-up to $62,804.00
MAXIMUM TOTAL			$662,804

5. CONSIDERATION.

HCA will authorize a lump sum payment for each deliverable only upon satisfactory completion and acceptance and only for the allowable costs as specified in Section 4, *Deliverables*.

5.1. The maximum dollar amount for this Contract will not exceed $662,804.

5.2. Administrative fees are not to exceed 10% of the billed expenses and are included as part of the Maximum Consideration.

5.3. Source of Funds: General State Funds and Substance Abuse Block Grant.

DocuSign Envelope ID: 39B39692-8710-498D-9681-FDFB9AA11221

Exhibit A
LEAD Monthly Progress Report

LAW ENFORCEMENT ASSISTED DIVERSION PROGRAM

DIVISION OF BEHAVIORAL HEALTH AND RECOVERY AT THE HEALTH CARE AUTHORITY

1. MONTHLY PROGRESS REPORT

Please respond to each question and submit this document with the monthly A-19 billing to SOR Treatment Manager, Michele Gayle at michele.gayle@hca.wa.gov. For additional questions, please contact Michele Gayle at (360) 725-5935.

Report Month/Year

☐April 2020 ☐May 2020 ☐June 2020 ☐July 2020 ☐August 2020

☐September 2020 ☐October 2020 ☐November 2020 ☐December 2020 ☐January 2021

☐February 2021 ☐March 2021 ☐April 2021 ☐May 2021 ☐June 2021

Name of the LEAD program completing this report: Click or tap here to enter text.

2. How many unique individuals referred to your LEAD program during this report month?

3. How many participants are currently in your LEAD program?

4. What are the basic demographics of your LEAD participants? (Please include gender, race, housing and insurance status)

5. Summarize any barrier(s) encountered and plans to overcome the barrier(s) with timeline.

6. How many days is it taking between initial referral and participant receiving behavioral health assessment?

7. Are you experiencing any training or technical assistance needs (e.g. policy & protocol, data collection, staffing, etc.)?

8. Have there been any staff changes since the last report. If so, what position(s) and location(s)?

9. Do you have a participant success story you would like to share below?

10. Are there any significant accomplishments you would like to share or other information you would like to know?

Completed By:
Date:

Whatcom County

COUNTY COURTHOUSE
311 Grand Avenue, Ste #105
Bellingham, WA 98225-4038
(360) 778-5010

Agenda Bill Master Report

File Number: AB2020-436

File ID:	AB2020-436	**Version:**	1	**Status:**	Agenda Ready
File Created:	10/02/2020	**Entered by:**	SBatdorf@co.whatcom.wa.us		
Department:	Parks and Recreation Department	**File Type:**	Interlocal		
Assigned to:	Council Finance and Administrative Services Committee			**Final Action:**	
Agenda Date:	10/27/2020			**Enactment #:**	

Primary Contact Email: sbatdorf@co.whatcom.wa.us

TITLE FOR AGENDA ITEM:

Request authorization for the County Executive to enter into an interlocal agreement between Whatcom County and the Blaine Birch Bay Park & Recreation District No. 2 for use of the gymnasium at Bay Horizon Park

SUMMARY STATEMENT OR LEGAL NOTICE LANGUAGE:

This interlocal agreement between Whatcom County and the Blaine Birch Bay Park & Recreation District No. 2 allows the district use of the County owned gymnasium and playground at Bay Horizon Park.

HISTORY OF LEGISLATIVE FILE

Date:	Acting Body:	Action:	Sent To:

Attachments: Memorandum, Interlocal Agreement

EzraBat25
WHATCOM COUNTY
Parks & Recreation
3373 Mount Baker Highway
Bellingham, WA 98226-7500

Michael G. McFarlane, Director
Christ Thomsen, Parks Operations Manager

MEMORANDUM

TO: Members of the Council and County Executive Satpal Sidhu

FROM: Michael McFarlane, Director

DATE: October 2, 2020

RE: **Blaine Birch Bay Parks & Recreation District No. 2 Interlocal Agreement for use of Gymnasium at Bay Horizon Park**

Enclosed please find an interlocal agreement for the use of the County owned Gymnasium and playground at Bay Horizon park by the Blaine Birch Bay Park & Recreation District No. 2.

The term of this agreement coincides with Whatcom County's lease agreement with Camp Horizon because the gymnasium was initially included in the camp's lease. Under separate agreement, the district agrees to make the gymnasium available for the camp's use when it's in session at no cost.

If there are any questions, I can be reached at extension 5855.

Thank you.

WHATCOM COUNTY CONTRACT INFORMATION SHEET

Whatcom County Contract No.

Originating Department:	Parks
Division/Program: *(i.e. Dept. Division and Program)*	Administration
Contract or Grant Administrator:	Michael McFarlane
Contractor's / Agency Name:	Blaine Birch Bay Park & Recreation District No. 2

Is this a New Contract? Yes ◉ No ○ If not, is this an Amendment or Renewal to an Existing Contract? Yes ○ No ◉
If Amendment or Renewal, (per WCC 3.08.100 (a)) Original Contract #: _____

Does contract require Council Approval? Yes ◉ No ○ If No, include WCC: _____
Already approved? Council Approved Date: _____ (Exclusions see: Whatcom County Codes 3.06.010, 3.08.090 and 3.08.100)

Is this a grant agreement?
Yes ○ No ◉ If yes, grantor agency contract number(s): _____ CFDA#: _____

Is this contract grant funded?
Yes ○ No ◉ If yes, Whatcom County grant contract number(s): _____

Is this contract the result of a RFP or Bid process?
Yes ○ No ◉ If yes, RFP and Bid number(s): _____ Contract Cost Center: _____

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.
- ☐ Goods and services provided due to an emergency
- ☐ Contract work is for less than $100,000.
- ☐ Contract for Commercial off the shelf items (COTS).
- ☐ Contract work is for less than 120 days.
- ☐ Work related subcontract less than $25,000.
- ☒ Interlocal Agreement (between Governments).
- ☐ Public Works - Local Agency/Federally Funded FHWA.

Contract Amount:(sum of original contract amount and any prior amendments):
$ N/A

This Amendment Amount:
$ _____

Total Amended Amount:
$ _____

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

1. Exercising an option contained in a contract previously approved by the council.
2. Contract is for design, construction, r-o-w acquisition, 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:

Interlocal agreement for use of the gymnasium at Bay Horizon Park by the Blaine Birch Bay Parks & Recreation District No. 2.

Term of Contract: 29.5 Months	Expiration Date: 12/31/22

Contract Routing:

1. Prepared by: Michael McFarlane		Date: 9/9/20
2. Attorney signoff:	(JVI)	Date: 9/11/20
3. AS Finance reviewed:	bbennett	Date: 10/2/20
4. IT reviewed (if IT related):		Date:
5. Contractor signed:		Date:
6. Submitted to Exec.:		Date:
7. Council approved (if necessary):		Date:
8. Executive signed:		Date:
9. Original to Council:		Date:

Last edited 07/06/20

INTERLOCAL AGREEMENT FOR OPERATION OF GYMNASIUM AND PLAYGROUND AT BAY HORIZON PARK

WHATCOM COUNTY, through its **PARKS & RECREATION DEPARTMENT**, hereinafter referred to as **"The County"** whose principal office is located at 3373 Mount Baker Highway, Bellingham, Washington 98226, and **THE BLAINE BIRCH BAY PARK & RECREATION DISTRICT No. 2,** hereinafter referred to as **"The District,"** whose local address is 7511 Gemini Street, Blaine, Washington 98230, hereby enter into an agreement as authorized per RCW 39.34, for the operation and maintenance of the gymnasium and playground at Bay Horizon Park, 7467 Gemini Street, Blaine, Washington 98230, for the **sole purpose** of providing park and recreation activities to the public. This agreement is subject to all terms and conditions of the *Federal Lands to Parks Program* as identified in the original instrument of conveyance to Whatcom County.

IT IS MUTUALLY AGREED as follows;

COUNTY RESPONSIBILITIES
The County shall make available to the District the gymnasium and playground at Bay Horizon Park under such conditions as are hereinafter set forth.

The County shall allow the District to collect reasonable fees and charges related to its recreational programming costs.

DISTRICT RESPONSIBILITIES
The District shall pay for all costs and provide all labor associated with the operation, maintenance, repair and improvement of the gymnasium and the playground, including performing and documenting weekly playground inspections. All improvements must be approved in advance by the County.

The District shall work with the Camp Horizon Foundation in developing and executing a scheduling agreement for the gymnasium to accommodate Camp Horizon's needs.

Assume all responsibility and liability for the gymnasium and playground.

Protect, defend, save and hold harmless Whatcom County, its authorized agents, elected officials, employees and volunteers, from all claims, costs, damages or expenses of any nature whatsoever arising out of or in connection with the operation of the gymnasium and playground by the District.

Designate, and report to the Parks Director the name of an individual(s) who shall act as a qualified coordinator of all District activities at Bay Horizon Park. This individual shall be the person with whom the Parks staff will work on day-to-day matters of operation and maintenance of the gymnasium and playground. Report any accidents that occur to the Whatcom County Parks & Recreation Department Office within 24-hours.

Not interfere with normal, customary use of Bay Horizon Park by the visiting public and Camp

Horizon Foundation, it's participants or activities.

District will maintain the gymnasium and immediate area in a neat, clean, safe and sanitary manner at all times.

District agrees to not discriminate and make its programs and activities available to all Whatcom County residents. District will provide to the County an annual report on its activities, attendees and use of Bay Horizon Park.

TERM
The term of this Agreement shall commence on July 14th, 2020 and expires December 31st, 2022. Provided, it may be amended or terminated at any time by mutual written agreement of both parties, and may be terminated by either party upon 60 days written notice to the other party.

FEES
The District shall pay all fees, utilities and assessments related to its use of facilities at Bay Horizon Park, including any lease hold tax should it be required.

SUBLETTING
No subletting is permitted.

RELATIONSHIP OF THE PARTIES
The parties intend that an independent contractor/department relationship will be created by this Agreement. No agent, employee, servant, or representative of the District shall be deemed to be an employee, agent, servant or representative of the Parks & Recreation Department or Whatcom County for any purpose. Employees of the District are not entitled to any of the benefits that Whatcom County provides for its employees. The District will be solely and entirely responsible for its acts and for the acts of its agents, employees, volunteers, elected officials, servants, subcontractors or otherwise during the performance of this Agreement. In the performance of the services herein contemplated, the District is an independent contractor with the authority to control and direct the performance of the details of the work. However, the results of the work contemplated herein must meet the approval of the Parks & Recreation Department and shall be subject to the Parks & Recreation Department's general rights, inspection and review to secure the satisfactory completion thereof.

INSURANCE
The District shall, at its own expense, obtain and continuously maintain the following insurance coverage for the duration of this agreement, which shall include insurance against claims for injuries to persons or damage to property which may arise from or in connection with the performance of the work hereunder by the District, its agents, representatives, subcontractors, volunteers or employees. All insurers providing such insurance shall have an A.M. Best Rating of not less that A- (or otherwise be acceptable to the County) and be licensed to do business in the State of Washington and admitted by the Washington State Insurance Commissioner. The aforementioned insurance coverage may be provided by comparable insurance risk pool

coverage, authorized by State of WA Chapter 48.62 RCW. Coverage limits shall be the minimum limits identified in this Contract or the coverage limits provided or available under the policies maintained by the District without regard to this Agreement, whichever are greater.

1. Commercial General Liability

Property Damage	$500,000.00, per occurrence
General Liability & bodily injury	$1,000,000.00, per occurrence
Annual Aggregate	$2,000,000.00

At least as broad as ISO form CG 00 01 or the equivalent, which coverage shall include personal injury, bodily injury and property damage for Premises Operations, Products and Completed Operations, Personal/Advertising Injury, Contractual Liability, Independent Contractor Liability, medical payments and Stop Gap/Employer's Liability. Coverage shall not exclude or contain sub-limits less than the minimum limits required, unless approved in writing by the County.

2. Business Automobile Liability

$1, 000,000.00 Minimum, per occurrence
$2,000,000.00 Minimum, Annual Aggregate

District shall provide auto liability coverage for owned, non-owned and hired autos using ISO Business Auto Coverage form CA 00 01 or the exact equivalent with a limit of no less than $1,000,000 per accident. If District owns no vehicles this requirement may be met through a non-owned auto Endorsement to the CGL policy.

3. Additional Insurance Requirements and Provisions

All insurance policies shall provide coverage on an occurrence basis.

Additional Insureds. Whatcom County, its departments, elected and appointed officials, employees, agents and volunteers shall be included as additional insureds on District's and District's subcontractors' insurance policies by way of endorsement for the full available limits of insurance required in this contract or maintained by the District and subcontractor(s), whichever is greater. In the alternative, either party to this agreement may fulfill the insurance obligations contained herein by maintaining membership in a joint self-insurance program authorized by RCW 48.62. In this regard, the parties understand that the party to this agreement who is a member of such a program is not able to name the other party as an "additional insured" under the liability coverage provided by the joint self-insurance program.

Primary and Non-contributory Insurance. District shall provide primary insurance coverage and the County's insurance shall be non-contributory. Any insurance, self-insured retention, deductible, risk retention or insurance pooling maintained or participated in by the County shall be excess and non- contributory to District's insurance.

Waiver of Subrogation. The insurance policy shall provide a waiver of subrogation with respect to each insurance policy maintained under this Agreement. When required by an insurer, or if a policy condition does not permit District to enter into a pre-loss agreement to waive subrogation without an endorsement, then District agrees to notify the insurer and obtain such endorsement. This requirement shall not apply to any policy which includes a condition expressly prohibiting waiver of subrogation by the insured or which voids coverage should the District enter into such a waiver of subrogation on a pre-loss basis.

Review of and Revision of Policy Provisions. Upon request, the District shall provide a full and complete certified copy of all requested insurance policies to the County. The County reserves the right, but not the obligation, to revise any insurance requirement, including but not limited to limits, coverages and endorsements, or to reject any insurance policies which fail to meet the requirements of this Agreement. Additionally, the County reserves the right, but not the obligation, to review and reject any proposed insurer providing coverage based upon the insurer's financial condition or licensing status in Washington.

Verification of Coverage/Certificates and Endorsements. The District shall furnish the County with a certificate of insurance and endorsements required by this contract. The certificates and endorsements for each policy shall be signed by a person authorized by the insurer to bind coverage on its behalf. The certificate and endorsements for each insurance policy are to be on forms approved by the County prior to commencement of activities associated with the agreement. The certificate and endorsements, and renewals thereof, shall be attached hereto as Exhibit "C". If Exhibit C is not attached, the District must submit the certificate and endorsements required in this Agreement to the County prior to the commencement of any work or activity on the County Property. A certificate alone is insufficient proof of the required insurance; endorsements must be included with the certificate. The certificate of insurance must reflect the insurance required in this Agreement, including appropriate limits, insurance coverage dates, per occurrence, and in the description of operations, include the County Property, Whatcom County, its departments, officials, employees, agents and volunteers as additional insureds, primary, non-contributory, and waiver of subrogation.

The County must be notified immediately in writing of any cancellation of the policy, exhaustion of aggregate limits, notice of intent not to renew insurance coverage, expiration of policy or change in insurer carrier. District shall always provide the County with a current copy of the certificate and endorsements throughout the duration of the contract.

No Limitation on Liability. The insurance maintained under this Agreement shall not in any manner limit the liability or qualify the liabilities or obligations of the District to the coverage provided by such insurance, or otherwise limit the County's recourse to any remedy available at law or equity.

Payment Conditioned on Insurance and Failure to Maintain Insurance. Use of the County Property by the District is expressly conditioned upon the District's compliance with all insurance requirements. Failure on the part of the District to maintain the insurance as required shall constitute a material breach of contract. Use of the County Property by the District may be suspended in the event of non-compliance, upon which the County may, after giving five business days' notice to the District to correct the breach, immediately terminate the Agreement or, at its discretion.

Workers' Compensation. The District shall maintain Workers' Compensation coverage as required under the Washington State Industrial Insurance Act, RCW Title 51, for all Districts' employees, agents and volunteers eligible for such coverage under the Industrial Insurance Act.

Failure of the District to take out and/or maintain required insurance shall not relieve the District or subcontractors from any liability under the Agreement, nor shall the insurance requirements be construed to conflict with or otherwise limit the obligations concerning indemnification. The County does not waive any insurance requirements even in the event the certificate or endorsements provided by the District were insufficient or inadequate proof of coverage but not objected to by the County. The County's failure to confirm adequate proof of insurance requirements does not constitute a waiver of the District's insurance requirements under this Contract.

Availability of District's Limits. If the District maintains higher insurance limits than the minimums shown above, the County shall be insured for the full available limits, including Excess or Umbrella liability maintained by the District, irrespective of whether such limits maintained by the District are greater than those required by this contract or whether any certificate furnished to the County evidences limits of liability lower than those maintained by the District.

Insurance for Subcontractors. If the District subcontracts (if permitted in the agreement) any portion of this Agreement, the District shall include all subcontractors as insureds under its policies or shall require separate certificates of insurance and policy endorsements from each subcontractor. Insurance coverages by subcontractors must comply with the insurance requirements of the District in this Agreement and shall be subject to all of the requirements stated herein, including naming the County as additional insured.

The District agrees District's insurance obligation shall survive the completion or termination of this Agreement for a minimum period of three years.

INDEMNIFICATION BY DISTRICT

To the fullest extent permitted by law, the District agrees to indemnify, defend and hold the County and its departments, elected and appointed officials, employees, agents and volunteers, harmless from and against any and all claims, damages, losses and expenses, including but not limited to court costs, attorney's fees and alternative dispute resolution costs, for any personal injury, for any bodily injury, sickness, disease or death and for any damage to or destruction of any property (including the loss of use resulting therefrom) which 1) are caused in whole or in part by any act or omission, negligent or otherwise, of the District, its employees, agents or volunteers or District's subcontractors and their employees, agents or volunteers; or 2) are directly or indirectly arising out of, resulting from, or in connection with performance of this Agreement; or 3) are based upon the District's or its subcontractors' use of, presence upon or proximity to the property of the County. This indemnification shall be effective regardless of whether or not District's act or omission caused, in whole or in part, the claims, damages, losses or expenses. This indemnification obligation of the District shall not apply in the limited circumstance where if the claims, damages, losses or expenses are caused by the sole negligence of the County. This indemnification obligation of the District shall not be limited in any way by the Washington State Industrial Insurance Act, RCW Title 51, or by application of any other workmen's compensation act, disability benefit act or other employee benefit act, and the District hereby expressly waives any immunity afforded by such acts. The foregoing indemnification obligations of the District are a material inducement to County to enter into this Agreement, are reflected in the District's use of County Property, and have been mutually negotiated by the parties.

Provider's initials acknowledging indemnity terms:

Participation by County – No Waiver. The County reserves the right, but not the obligation, to participate in the defense of any claim, damages, losses or expenses and such participation shall not constitute a waiver of District's indemnity obligations under this Agreement.

Survival of Provider's Indemnity Obligations. The District agrees all District's indemnity obligations shall survive the completion, expiration or termination of this Agreement

NON-WAIVER OF BREACH

The failure of the Parks & Recreation Department 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 instance 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.

EXTENT OF AGREEMENT

The Agreement contains all the terms and conditions agreed upon by the parties. The parties agree that there are no other understandings, oral or otherwise, regarding the subject matter of this Agreement.

MODIFICATION

No change or addition to this Agreement shall be valid or binding upon either party unless such

change or addition be in writing, executed by both parties.

VENUE STIPULATION

This Agreement has been and shall be construed as having been made and delivered within the State of Washington, and it is mutually understood and agreed by each party hereto that this Agreement shall be governed by the laws of the State of Washington, both as to interpretation and performance. Furthermore, any cause of action arising out of this Agreement shall be filed in the Superior Court of Whatcom County.

SEVERABILITY

It is understood and agreed by the parties hereto that if any part of this Agreement is determined to be illegal, the validity of the remaining provisions shall not be affected and the rights and obligations of the parties shall be construed as if the Agreement did not contain the particular illegal part. If it should appear that any provision herein is in conflict with any statutory provision of the State of Washington, said provision shall be deemed inoperative and null and void insofar as it may be in conflict therewith, and shall be modified to conform to such statutory provision.

DATED this _____ day of _____, 20____.

Executed as of the date first written above

FOR WHATCOM COUNTY

Satpal Singh Sidhu, County Executive

Barry Buchanan, Council Chair

STATE OF WASHINGTON)
) ss.
COUNTY OF WHATCOM)

On this day of _____, 20___, before me personally appeared SATPAL SIDHU, 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.

Given under my hand and official seal this____day of _____,20___.

NOTARY PUBLIC in and for the State of Washington, residing at _____Bellingham.
My appointment expires: _____

WHATCOM COUNTY PARKS & RECREATION DEPARTMENT

Michael G. McFarlane, Director

APPROVED AS TO FORM:

Deputy Prosecuting Attorney

FOR BLAINE BIRCH BAY PARK & RECREATION DISTRICT No. 2

Jeffrey D Carrington

(Name) JEFFREY D. CARRINGTON

STATE OF WASHINGTON)
) ss.
COUNTY OF WHATCOM)

On this day of 27 August, 2020, before me personally appeared Jeffrey D Carrington to me known to be the chairman, for the Blaine Birch Park & Recreation District No. 2, and who executed the above instrument and who acknowledged to me the act of signing and sealing thereof.

Given under my hand and official seal this 27 day of August, 2020.

Emily N S Wesel

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

My appointment expires: 06/17/2023

EMILY NICOLE S WESEL License 154252 NOTARY PUBLIC Expires 06-17-2023 STATE OF WASHINGTON

Whatcom County

COUNTY COURTHOUSE
311 Grand Avenue, Ste #105
Bellingham, WA 98225-4038
(360) 778-5010

Agenda Bill Master Report

File Number: AB2020-441

File ID:	AB2020-441	**Version:**	1	**Status:**	Agenda Ready
File Created:	10/09/2020	**Entered by:**	JThomson@co.whatcom.wa.us		
Department:	Health Department	**File Type:**	Interlocal		
Assigned to:	Council Finance and Administrative Services Committee			**Final Action:**	
Agenda Date:	10/27/2020			**Enactment #:**	

Primary Contact Email: ADeacon@co.whatcom.wa.us

TITLE FOR AGENDA ITEM:

Request authorization for the County Executive to enter into an interlocal agreement between Whatcom County and City of Bellingham for partial funding of maintenance and operations of the Crisis Stabilization Center, in the amount of $65,000

SUMMARY STATEMENT OR LEGAL NOTICE LANGUAGE:

See attachments

HISTORY OF LEGISLATIVE FILE

Date:	Acting Body:	Action:	Sent To:

Attachments: Memo to County Executive, Interlocal

WHATCOM COUNTY
Health Department

Erika Lautenbach, Director
Greg Stern, M.D., Health Officer

MEMORANDUM

TO: Satpal Sidhu, County Executive

FROM: Erika Lautenbach, Director

RE: City of Bellingham – Crisis Stabilization Center Operation & Maintenance

DATE: October 9, 2020

Attached is an interlocal agreement between Whatcom County and City of Bellingham for your review and signature.

- **Background and Purpose**
  This contract provides funding for all aspects of the ongoing maintenance and operation of the Crisis Stabilization Center. Whatcom County will lease the facility located at 2026 Division Street in Bellingham, to treatment providers who offer behavioral health treatment on site, 24 hours daily, seven days weekly. Services provided at this facility are intended to assist adults who are experiencing a behavioral health crisis and who can be managed successfully in this setting. These services are also intended to divert individuals when appropriate, from hospital utilization, arrest, or incarceration.

- **Funding Amount and Source**
  This contract provides partial funding in the amount of $65,000 for all aspects of the ongoing maintenance and operation of the Crisis Stabilization Center. These funds will be included in the 2021 budget. Council approval is required per RCW 39.34.030(2) for agreements between public agencies.

- **Differences from Previous Agreement**
  This is a new agreement, however, funding to support the operation and maintenance of the Crisis Stabilization Center (formerly known as the Triage Facility) has been provided by the City of Bellingham since 1998. In 2020, the Triage Facility will be vacated and in 2021, expanded services will be offered in the Crisis Stabilization Center.

Please contact Kathleen Roy at extension #6007 if you have any questions regarding this agreement.

Encl.

509 Girard Street
Bellingham, WA 98225-4005
360.778.6000 | FAX 360.778.6001
WhatcomCountyHealth
WhatcomCoHealth

Whatcom County HEALTH Department

1500 North State Street
Bellingham, WA 98225-4551
360.778.6100 | FAX 360.778.6101
www.whatcomcounty.us/health

WHATCOM COUNTY CONTRACT
INFORMATION SHEET

Whatcom County Contract No. ____

Originating Department:	85 Health
Division/Program: *(i.e. Dept. Division and Program)*	8550 Human Services / 855020 Mental Health
Contract or Grant Administrator:	Anne Deacon
Contractor's / Agency Name:	City of Bellingham

Is this a New Contract?		If not, is this an Amendment or Renewal to an Existing Contract?	Yes ☐	No ☐
Yes ☒	No ☐	If Amendment or Renewal, (per WCC 3.08.100 (a)) Original Contract #:		

Does contract require Council Approval?	Yes ☒	No ☐	If No, include WCC:	
Already approved? Council Approved Date:			(Exclusions see: Whatcom County Codes 3.06.010, 3.08.090 and 3.08.100)	

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

Is this contract the result of a RFP or Bid process?					
Yes ☐	No ☒	If yes, RFP and Bid number(s):		Contract Cost Center:	124116

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

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

$ 65,000

This Amendment Amount:

$

Total Amended Amount:

$

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

1. Exercising an option contained in a contract previously approved by the council.
2. Contract is for design, construction, r-o-w acquisition, 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: Under this agreement, the Contractor provides funding for ongoing maintenance and operation of the Crisis Stabilization Center located at 2026 Division Street in Bellingham.

Term of Contract:	1 Year	Expiration Date:	12/31/2021

Contract Routing:			
1. Prepared by:	JT	Date:	10/09/2020
2. Health Budget Approval:		Date:	
3. Attorney signoff:	RB	Date:	10/09/2020
4. AS Finance reviewed:	M Caldwell	Date:	10/09/2020
5. IT reviewed (if IT related):		Date:	
6. Contractor approved:		Date:	
7. Submitted to Exec.:		Date:	
8. Council approved (if necessary):		Date:	
9. Executive signed:		Date:	
10. Original to Council:		Date:	

INTERLOCAL FINANCIAL ASSISTANCE AGREEMENT FOR
CRISIS INTERVENTION SERVICES
CITY OF BELLINGHAM - WHATCOM COUNTY

The **CITY OF BELLINGHAM**, a first-class municipal corporation of the State of Washington (hereinafter the "City"), with offices at 210 Lottie Street, Bellingham, Washington 98225, and **WHATCOM COUNTY**, a political subdivision of the State of Washington, acting through the Whatcom County Health Department, (hereinafter the "Recipient"), located at 509 Girard Street, Bellingham, Washington 98225, in consideration of the mutual covenants herein, do agree as follows:

1. **PURPOSE.** This Agreement sets out the terms of financial assistance provided by the City to the Recipient to assist the latter in providing programs and services that address alcoholism and other drug addictions as further detailed in Exhibit A "Scope of Work", attached hereto and incorporated herein by this reference.

2. **TERM OF AGREEMENT.** Notwithstanding the date of execution hereof, this Agreement shall be in effect from January 1, 2021 through December 31, 2021.

3. **LIAISON.** The City's Project Manager for this Agreement is Renee Firos. The Recipient's responsible person is Anne Deacon, Human Services Manager.

4. **SCOPE OF WORK.** See attached Exhibit A, incorporated herein by this reference.

5. **FUNDS PROVIDED AND METHOD OF PAYMENT.**

A. The financial assistance provided to the Recipient shall not exceed **$65,000**. The city's share of liquor taxes and profits in the amount of $22,000 is included in this total and authorized in RCW 71.24.555.

B. The City agrees to financially assist the Recipient only for activities specified in Exhibit A. Payment shall be based on properly executed quarterly invoices. The Recipient shall submit the invoices, documentation and any necessary reports by the 15th of the month following the period being invoiced, except for January where the same will be due by the 10th of the month. The City will make payment to the Recipient no more than thirty (30) days after said reimbursement request is received and approved by the City.

6. **EXTRA WORK AND CHANGE ORDERS.** Work in addition to or different from that provided for in

the Scope of Work section shall only be allowed by prior authorization in writing, as a modification to this Agreement. Such modifications shall be attached hereto and shall be approved in the same manner as this Agreement.

7. **ACCOUNTING AND AUDIT.** The Recipient agrees to keep records of all financial matters pertaining to this Agreement in accordance with generally accepted accounting principles and to retain the same for a period of three years after termination of this Agreement. The financial records shall be made available to representatives of the City or any other governmental agency with jurisdiction for audit, at such reasonable times and places as the City shall designate.

8. **INDEMNIFICATION AND INSURANCE.** The Recipient agrees to defend the City, hold it harmless, and indemnify it as to all claims, suits, costs, fees and liability arising out of the acts or work of the Recipient, its employees, subcontractors, or agents (including field work) pursuant to this Agreement, where such liability is incurred as a result of the actions or omissions of such parties. Recipient will obtain and maintain in force adequate insurance and/or self-insurance with coverage limits sufficient to cover potential liability arising within the Scope of Work.

   Recipient specifically and expressly waives any immunity that may be granted it under the Washington State Industrial Insurance Act, Title 51 RCW. Further, the indemnification obligation under this contract shall not be limited in any way by any limitation on benefits payable to or for any third party under the workers' compensation acts.

9. **COMPLIANCE WITH LAWS.** The Recipient shall comply with all applicable laws, ordinances, and codes of the local, State, and Federal governments. Recipient shall submit any and all information the City requires to demonstrate compliance with such laws, ordinances, and codes within two weeks of City's request for such information. The Recipient covenants that its employees have no interest and will not acquire interest, direct or indirect, or any other interest which would conflict in any manner or degree with the performance of services hereunder. The Recipient further covenants that in the performance of this Agreement, no person having such interest will be employed.

10. **NONDISCRIMINATION IN CLIENT SERVICES:**
    The Recipient shall not, on the grounds of race, color, sex, religion, national origin, creed, marital status, age, sexual orientation, gender identity, or disability, unlawfully deny a qualified individual any facilities, financial aid, services or other benefits provided under this Agreement or otherwise deny or condition services in a manner that violates any applicable laws against discrimination. If

assignment or subcontracting has been authorized, said assignment or subcontract shall include appropriate safeguards against discrimination in client services binding upon each contractor or subcontractor. The Recipient shall take such action as may be required to ensure full compliance with the provisions of this clause, including sanctions for noncompliance.

11. TERMINATION; REDUCTION IN FUNDING.

A. Should either party hereto believe that the other has failed to perform, or is likely to be unable to substantially perform, all or a material part of its obligations under this Agreement, it shall deliver written notice to that effect to the other, specifying the alleged default and giving the other party fifteen (15) days to cure such default. Thereafter, should the default not be remedied to the satisfaction of the non-defaulting party, this Agreement may be terminated upon seven (7) days written notice (delivered by certified mail).

B. In the event that funding is withdrawn, reduced or limited in any way after the effective date of this Agreement due to City budgetary constraints or economic downturn resulting in reduced revenues, and prior to its normal completion, the City may summarily terminate the 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 City deems that the continuation of the services covered by this Agreement is no longer in the best interest of the City, the City may summarily terminate this Agreement in whole notwithstanding any other termination of this Agreement. Termination under this Section shall be effective upon receipt or written notice thereof.

C. Termination of this Agreement shall not prevent the City from invoking those provisions herein necessary to protect or enforce its rights hereunder, which provisions shall survive termination.

12. ASSIGNMENT. Neither party shall assign or delegate any or all interests in this Agreement without first obtaining the written consent of the other party; provided, however, that the City acknowledges that the Recipient contracts with service providers to operate the crisis intervention services that are partially funded by this Agreement and the City consents to such arrangement.

13. VENUE STIPULATION. This Agreement has been and shall be considered as having been made and delivered within the State of Washington, and shall be governed by the laws of the State of Washington both as to interpretation and performance. Any action in law or equity, or judicial proceeding for the enforcement of this Agreement or any of the provisions contained therein, shall

be instituted and maintained only in Skagit County Superior Court, Washington.

14. STATUS OF RECIPIENT. Neither Recipient nor personnel employed by the Recipient shall acquire any rights or status in the City's employment, nor shall they be deemed employees or agents of the City for any purpose other than as specified herein. Recipient shall be deemed an independent contractor and shall be responsible in full for payment of its employees, including worker's compensation, insurance, payroll deductions, and all related costs.

EXECUTED, this ____ day of _____, 2020, for the **WHATCOM COUNTY:**

_____
Satpal Sidhu, Whatcom County Executive

APPROVED AS TO FORM:

Approved by email RB/JT 10/09/2020

_____ _____
Royce Buckingham, Prosecuting Attorney *Date*

APPROVED AS TO PROGRAM:

Approved by email AD/JT 10/09/2020

_____ _____
Anne Deacon, Human Services Manger *Date*

APPROVAL AS TO DEPARTMENT:

_____ _____
Erika Lautenbach, Director *Date*

EXECUTED, this ____ day of _____, 2020, for the **CITY OF BELLINGHAM.**

_____
Seth Fleetwood, Mayor

Attest:

_____
Finance Director

Approved as to Form:

_____
Office of the City Attorney

Departmental Approval:

_____
David Doll, Chief of Police
Bellingham Police Department

Exhibit A
Statement of Work

I. Background:

Recipient owns the Crisis Stabilization Center located at 2026 Division Street, Bellingham, Washington. Recipient leases the facility to treatment providers who offer behavioral health treatment on-site 24 hours daily, seven days weekly. Services provided at this facility are intended to assist adults who are experiencing a behavioral health crisis, and who can be managed successfully in this setting. These services are also intended to divert individuals when appropriate, from hospital utilization, arrest or incarceration.

Services provided at the Crisis Stabilization Center include:

1. Sixteen (16) beds dedicated to providing acute substance withdrawal management services to adults.
2. Medication-assisted treatment to mitigate the symptoms of withdrawal and stabilize recovery.
3. Sixteen (16) beds dedicated to providing mental health stabilization services to adults. Many of these adults are also challenged with substance use disorders that may exacerbate their symptoms of mental illness. Co-occurring treatment is offered to ensure comprehensive care to these individuals.
4. Discharge planning and connection to community or in-patient treatment providers offered to optimize client recovery and stabilization.

Law Enforcement officials may directly refer and transport individuals to the Crisis Stabilization Center as they deem appropriate, and as accepted by the facility.

II. Scope of Work:

This contract provides partial funding of all aspects of the ongoing maintenance and operation of the Crisis Stabilization Center as set forth in the Background section above.

Whatcom County

COUNTY COURTHOUSE
311 Grand Avenue, Ste #105
Bellingham, WA 98225-4038
(360) 778-5010

Agenda Bill Master Report

File Number: AB2020-443

File ID:	AB2020-443	**Version:**	1	**Status:**	Agenda Ready
File Created:	10/12/2020	**Entered by:**	THelms@co.whatcom.wa.us		
Department:	County Executive's Office	**File Type:**	Contract		
Assigned to:	Council Finance and Administrative Services Committee			**Final Action:**	
Agenda Date:	10/27/2020			**Enactment #:**	

Primary Contact Email: Tschroed@co.whatcom.wa.us

TITLE FOR AGENDA ITEM:

Request authorization for the County Executive to enter into a contract between Whatcom County and Bayside Pathology, Inc. for the provision of all medical examiner services consistent with the Whatcom County Code, Charter, and Washington State Law in the amount of $605,000

SUMMARY STATEMENT OR LEGAL NOTICE LANGUAGE:

See attached

HISTORY OF LEGISLATIVE FILE

Date:	Acting Body:	Action:	Sent To:

Attachments: Contract, Routing Form

Whatcom County Contract No.

202010009

CONTRACT FOR SERVICES
Bayside Pathology, Inc.

Bayside Pathology, Inc., hereinafter called **Contractor**, and Whatcom County, hereinafter referred to as **County**, agree and contract as set forth in this Agreement, including:

General Conditions, pp. 1 to 8,
Exhibit A (Scope of Work), p. 9,
Exhibit B (Compensation), p 10,
Exhibit C (Certificate of Insurance), p 11.

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

The term of this Agreement shall commence on the 1st day of January, 20 21, and shall, unless terminated or renewed as elsewhere provided in the Agreement, terminate on the 31st day of December, 2021.

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

The maximum consideration for this agreement shall not exceed $605,000 for 2021. In addition, Whatcom County will reimburse Contractor for reasonable lab studies, phones and x-ray expenses. 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, 32.1, and 34.3, if included, are totally and fully part of this contract and have been mutually negotiated by the parties.

IN WITNESS WHEREOF, the parties have executed this Agreement this ____ day of _____, 20 ____.

CONTRACTOR:

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

_____
Gary Goldfogel, M.D. President

STATE OF WASHINGTON)
) ss.
COUNTY OF _____)

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

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

WHATCOM COUNTY:

Approved as to form:

_____
Prosecuting Attorney Date

Approved:
Accepted for Whatcom County:

By: _____
Satpal Singh Sidhu, Whatcom County Executive

STATE OF WASHINGTON)
) ss
COUNTY OF WHATCOM)

On this _____ day of _____, 20 __, before me personally appeared Satpal Singh Sidhu, to me known to be the Executive of Whatcom County, who executed the above instrument and who acknowledged to me the act of signing and sealing thereof.

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

CONTRACTOR INFORMATION:

Gary Goldfogel, M.D.

Address:
1500 N. State Street
Bellingham, WA 98225

Mailing Address:
Same

Contact Name: Gary Goldfogel, M.D.

Contact Phone: 360.738.4557

Contact FAX 360.922.7054

Contact Email:ggoldfogel@gmail.com

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

0.1 Scope of Services:

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

1.0 Permitted Use of Facility:

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

The Contractor shall be responsible for:

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

The County shall be responsible for:

- maintenance and repairs of the building exterior as well as the HVAC, electrical and plumbing systems
- repair and replacement of capital equipment
- reasonable cost of water, heat, and power

Series 10-19: Provisions Related to Term and Termination

10.1 Term:

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

10.2 Extension:

The parties may elect to (but have no obligation) to extend this Agreement beyond December 31, 2021. The parties shall begin any negotiations over an extension (including Contractor's future compensation) no later than August 1, 2021. The parties acknowledge that this Agreement shall end on December 31, 2021 absent the parties executing an agreement extending the term.

11.1 Termination for Default:

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

The Whatcom County Medical Examiner Council is described as follows:

(a) Composition of Council. This council shall be composed of the following individuals or officially designated alternates invited to attend:

(1) Whatcom County Executive
(2) Whatcom County Prosecuting Attorney
(3) Whatcom County Sheriff
(4) Whatcom County Health Officer
(5) Board-certified forensic pathologist
(6) City of Bellingham Police Chief
(7) Police Chief of another city in Whatcom County

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

The board-certified forensic pathologist member shall be recommended by the medical examiner and approved by the medical examiner council membership. The police chief position for a city other than Bellingham shall be selected by the cities' police chiefs and rotate periodically.

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

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

Series 20-29: Provisions Related to Consideration and Payments

20.1 Accounting and Payment for Contractor Services:

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

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

21.1 Taxes:

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

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

22.1 Withholding Payment:

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

23.1 Labor Standards:

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

Series 30-39: Provisions Related to Administration of Agreement

30.1 Independent Contractor:

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

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

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

30.2 Assignment and Subcontracting:

The County continues to designate Dr. Goldfogel as its Medical Examiner pursuant to RCW 36.24 and the County Charter. Dr. Goldfogel will insure that all services contemplated by this Agreement are performed to applicable, national standards. The County understands and agrees that the ME may assign individual tasks or coverage responsibilities to other qualified individuals subject to those same standards and at Contractor’s expense.

30.3 No Guarantee of Employment:

The performance of all or part of this contract by the Contractor shall not operate to vest any employment rights whatsoever and shall not be deemed to guarantee any employment of the Contractor or any employee of the Contractor or any subcontractor or any employee of any subcontractor by the County at the present time or in the future.

31.2 Patent/Copyright Infringement: Not Applicable

32.1 Confidentiality:

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

33.1 Right to Review:

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

34.1 Proof of Insurance:

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

1) Commercial General Liability coverage –
    a) Property Damage - $1,000,000.00 per occurrence;
    b) General Liability & Bodily injury- $1,000,000.00 per occurrence

A Certificate of insurance that also identifies the County as an additional insured for the above-stated coverage is attached hereto as Exhibit "C". This insurance shall be considered as primary and noncontributory and shall waive all rights of subrogation. The County insurance shall not serve as a source of contribution.

Professional Liability - $1,000,000.00 per occurrence:

If the professional liability insurance is a claims made policy, and if the contractor discontinues coverage either during the term of this contract or within three years of completion, the contractor agrees to purchase tail coverage for a minimum of three years from the completion date of this contract or any amendment to this contract.

34.3 Defense & Indemnity Agreement:

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

35.1 Non-Discrimination in Employment:

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

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

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

35.2 Non-Discrimination in Client Services: Not Applicable

36.1 Waiver of Noncompetition: Not Applicable

36.2 Conflict of Interest:

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

37.1 Administration of Contract:

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

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

Tawni Helms, Administrative Coordinator
311 Grand Avenue, Suite 108
Bellingham, WA 98225
(360) 778-5208

37.2 Notice:

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

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

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

38.3 E-Verify: Not Applicable

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

40.1 Modifications:

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

40.2 Contractor Commitments, Warranties and Representations: Not Applicable

41.1 Severability:

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

41.2 Waiver:

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

42.1 Disputes:

a. General:

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

b. Notice of Potential Claims:

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

c. Detailed Claim:

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

d. Arbitration:

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

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

43.1 Venue and Choice of Law:

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

44.1 Survival:

The provisions of paragraphs 11.1, 21.1, 22.1, 30.1, 32.1, 33.1, 34.3, 41.2, 42.1, and 43.1, if utilized, shall survive, notwithstanding the termination or invalidity of this Agreement for any reason.

45.1 Entire Agreement:

This written Agreement, comprised of the writings signed or otherwise identified and attached hereto, represents the entire Agreement between the parties and supersedes any prior oral statements, discussions or understandings between the parties.

EXHIBIT "A"
(SCOPE OF WORK)

The County continues to designate Dr. Goldfogel as its Medical Examiner (ME) authorized to investigate sudden, unexpected, violent, suspicious or unnatural deaths. The purpose of the ME is to bring trained medical evaluation into the investigation of those deaths that are a concern to the public health, safety and welfare.

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

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

The ME will insure that the County has coverage 24 hours per day, 365 days per year for the performance of the following functions:

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

The County understands and agrees that the ME may assign individual tasks or coverage responsibilities to other qualified individuals subject to national standards and at the Contractor's expense. The ME shall not have authority or responsibility over the personal effects of the deceased or the responsibility or authority for notifying the next of kin to the deceased. These functions shall remain with the appropriate police and/or law enforcement agency. The ME shall not have authority or responsibility for making probate arrangements of the deceased.

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

EXHIBIT "B"
(COMPENSATION)

All payments under this contract are considered reimbursement for services rendered. Except as outlined below, maximum consideration for Medical Examiner Services shall be $605,000 for 2021.

Whatcom County will (in addition to the amount listed above) reimburse Medical Examiner on a quarterly basis for reasonable expenses for lab studies, phones and x-rays. Invoices will include documentation and receipts as appropriate for allowable reimbursement.

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

The ME will provide the County with monthly invoices for Medical Examiner services. Copies of receipts must be attached to invoice for reimbursement. Payment will be made no more than one time per month. The Contract Number, set forth above, shall be included on all billings or correspondence in connection therewith.

WHATCOM COUNTY CONTRACT INFORMATION SHEET

Whatcom County Contract No.

Originating Department:	Prosecuting Attorney's Office
Division/Program: *(i.e. Dept. Division and Program)*	6510 Prosecuting Attorney Admin
Contract or Grant Administrator:	Vanessa Martin
Contractor's / Agency Name:	Sea Mar Community Health Centers

Is this a New Contract? If not, is this an Amendment or Renewal to an Existing Contract? Yes (●) No ( )
Yes ( ) No (●) If Amendment or Renewal, (per WCC 3.08.100 (a)) Original Contract #: 202005001

Does contract require Council Approval? Yes (●) No ( ) If No, include WCC: _____
Already approved? Council Approved Date: May 6, 2020 (Exclusions 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): 201911012 and K4513

Is this contract the result of a RFP or Bid process? Contract
Yes ( ) No (●) If yes, RFP and Bid number(s): _____ Cost Center: 2622 and 2623

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.
- [ ] Goods and services provided due to an emergency
- [ ] Contract work is for less than $100,000.
- [ ] Contract for Commercial off the shelf items (COTS).
- [ ] Contract work is for less than 120 days.
- [ ] Work related subcontract less than $25,000.
- [ ] Interlocal Agreement (between Governments).
- [ ] Public Works - Local Agency/Federally Funded FHWA.

Contract Amount:(sum of original contract amount and any prior amendments):
$ 288,778.00

This Amendment Amount:
$ 470,793.00

Total Amended Amount:
$ 759,571.00

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 contract funds the oversight and administration of the LEAD Program and integration with the GRACE Program.

Term of Contract:	Expiration Date:

Contract Routing:

1. Prepared by: Vanessa Martin Date: 9/11/2020
2. Attorney signoff: Christopher Quinn Date:
3. AS Finance reviewed: Marianne Caldwell Date:
4. IT reviewed (if IT related): Date:
5. Contractor signed: Date:
6. Submitted to Exec.: Date:
7. Council approved (if necessary): Date:
8. Executive signed: Date:
9. Original to Council: Date:

Whatcom County

COUNTY COURTHOUSE
311 Grand Avenue, Ste #105
Bellingham, WA 98225-4038
(360) 778-5010

Agenda Bill Master Report

File Number: AB2020-451

File ID:	AB2020-451	**Version:**	1	**Status:**	Agenda Ready
File Created:	10/15/2020	**Entered by:**	THelms@co.whatcom.wa.us		
Department:	County Executive's Office	**File Type:**	Contract		
Assigned to:	Council Finance and Administrative Services Committee			**Final Action:**	
Agenda Date:	10/27/2020			**Enactment #:**	

Primary Contact Email: Tschroed@co.whatcom.wa.us

TITLE FOR AGENDA ITEM:

Request authorization for the County Executive to enter into a subrecipient agreement between Whatcom County and the Port of Bellingham for costs associated with responding to the COVID-19 emergency in an amount not to exceed $238,172

SUMMARY STATEMENT OR LEGAL NOTICE LANGUAGE:

See attached

HISTORY OF LEGISLATIVE FILE

Date:	Acting Body:	Action:	Sent To:

Attachments: Contract, Routing Form

SUBRECIPIENT AGREEMENT BETWEEN WHATCOM COUNTY AND PORT OF BELLINGHAM FOR FINANCIAL ASSISTANCE THROUGH THE CARES ACT TO ADDRESS EXPENSES ARISING FROM THE COVID-19 HEALTH EMERGENCY THAT INCLUDE ADDITIONAL CLEANING, HVAC FILTERS, PERSONAL PROTECTIVE EQUIPMENT, THE UNIFIED COMMANDER AND THE POINT ROBERTS FERRY

THIS AGREEMENT entered this _____ day of _____, 2020, by and between the County of Whatcom, Washington, (herein called the "County" or "Whatcom County"), and the **Port of Bellingham** (herein called "Subrecipient"). The County and Subrecipient shall sometimes be referred to herein individually as the "Party" and collectively as the "Parties."

WHEREAS, on March 27, 2020, the United States Congress adopted the Coronavirus Aid, Relief, and Economic Security Act ("CARES Act") which, among other things, amended Section 601(a) of the Social Security Act and established the Coronavirus Relief Fund ("CRF") into which Congress appropriated $150,000,000,000 to make payments for specified uses to states and certain local governments; and

WHEREAS, the CRF is available to reimburse government recipients for necessary expenditures incurred due to the COVID-19 public health emergency that were not accounted for in the government recipient's most-recently appropriated budget and that were incurred during the period between March 1, 2020 and October 31, 2020; and

WHEREAS, the County adopted Supplemental Budget Ordinance Number 13 (Ordinance 2020-035) amending the 2019-2020 Biennial Budget Increasing Appropriations and Estimated Revenues in the COVID-19 Emergency Response Fund for COVID-19 response programs from the CARES Act grant, including funds to address the public health emergency response throughout Whatcom County; and

WHEREAS, Whatcom County has allotted $238,172. of its CRF funds to address the countywide impacts on public health attributable to the COVID-19 emergency;

WHEREAS, the operation of Whatcom Unified Command was activated to provide an integrated, coordinated, multi-jurisdictional response to the threat of COVID-19 locally;

WHEREAS, the person serving in the capacity of Whatcom Unified Commander is an employee of the Port of Bellingham;

WHEREAS, Whatcom County will reimburse the Port of Bellingham for the wages and benefits of the Whatcom Unified Commander working in that capacity from March, 2020 through November 30, 2020;

WHEREAS, the COVID-19 emergency has substantially increased the need to provide personal protection equipment (PPE) and conduct additional cleaning and sanitizing for the protection of employees and the public;

WHEREAS, Point Roberts is situated in a unique location in Whatcom County. With the closing of the Canadian Border residents have had limited access out of Point Roberts. Adding a weekly ferry to transport residents to shopping and businesses outside of Point Roberts has been an effective way to grant them access outside of Point Roberts;

WHEREAS, the Subrecipient is uniquely situated to address the versatile needs of the community in response to the impacts from the COVID-19 emergency;

WHEREAS, in order to provide funds for Subrecipient to pay necessary expenditures it has or will incur due to the COVID-19 public health emergency, the Parties have agreed that Whatcom County, in its sole and absolute discretion, may reimburse Subrecipient for eligible expenses to address the needs as provided herein;

NOW, THEREFORE, in consideration of the premises and promises, terms and conditions set forth below, it is agreed as follows:

I. AGREEMENT TERM

A. This Agreement shall become effective on the date of execution, and end on November 30, 2020 (the "Initial Term").

B. This Agreement may be extended beyond the Initial Term only upon the written approval of both Parties; provided, however, that all terms and conditions of this Agreement shall remain in full force and effect unless this Agreement is specifically amended.

C. The County, in its sole and absolute discretion, may terminate this Agreement at any time.

II. ACTIVITIES & ELIGIBLE EXPENSES

A. Activities

Subrecipient shall be responsible for administering all COVID-19 response in a manner reasonably satisfactory to the County and consistent with any standards required as a condition of providing these funds. Allowable activities of Subrecipient must be directly tied to response and recovery efforts related to COVID-19 and must be allowable pursuant to the CRF requirements.

B. Eligible Expenses

Whatcom County, in its sole and absolute discretion, may reimburse and/or provide funding to Subrecipient for "Eligible Expenses" incurred by Subrecipient as described on Attachment A of this Agreement. Notwithstanding anything herein to the contrary, "Eligible Expenses" shall not include lost revenue. Failure of Subrecipient to comply with the provisions of this Agreement, including non-compliance with 2 C.F.R. 200, may result in expenses being disallowed, withholding of federal funds, and/or termination of this Agreement.

III. SOURCES OF FUNDING

Funding for this Agreement may not exceed $238,172. Funds under the Contract are made available and are subject to Section 601 (a) of the Social Security Act, as amended by section 5001 of the Coronavirus Aid, Relief, and Economic Security Act (CARES Act), and Title V and VI of the CARES ACT. This project was supported by federal assistance awarded by the US Department

of the Treasury. Federal assistance funds are administered by the Local Government Coronavirus Relief Fund thru the Washington State Department of Commerce (CFDA 21.016). COMMERCE and the State of Washington are not liable for claims or damages arising from Subrecipient performance of this contract.

IV. NOTICES

Notices to the County as required by this Agreement shall be delivered in writing and addressed to Whatcom County as set forth below. Notices to Subrecipient as required by this Agreement shall be in writing, via email and addressed to Subrecipient as set forth below. All such notices shall also be deemed duly given if personally delivered, or if deposited in the Unites States mail, registered or certified return receipt requested.

A. Notices to Whatcom County shall be sent to the following address:

Whatcom County Executive's Office
Attn: Tawni Helms
Whatcom County Courthouse, Suite 108,311 Grand Avenue
Bellingham, WA 98225

B. Notices to Subrecipient shall be sent to the following address:

Name of Subrecipient:
Port of Bellingham
Rob Fix, Executive Director
1801 Roeder Avenue
Bellingham, WA 98225

V. TERMS & CONDITIONS

The following requirements are applicable to all activities undertaken with CRF funds.

A. Compliance

During the performance of this Agreement, the Subrecipient shall comply with all applicable state, federal and local laws and regulations, including, including, but not limited to, the following:

- Compliance with all applicable terms and condition of the Interagency Agreement between Whatcom County and Washington State Department of Commerce, Whatcom County contract #202006003 attached hereto as Attachment B,
- Compliance with Coronavirus Relief Fund Guidance for State, Territorial, Local, and Tribal Governments Updated September 2, 2020 attached hereto as Attachment C,
- 2 C.F.R. 200.303 regarding internal controls.
- 2 C.F.R. 200.330 through 200.332 regarding subrecipient monitoring and management.
- 2 CFR 200, Subpart F regarding audit requirements.

Subcontracts, if any, require prior approval and shall contain a provision making them subject to all of the provisions stipulated in this Agreement.

Subrecipient acknowledges that this Agreement requires compliance with the regulations of the State of Washington and with all applicable state and local orders, laws, regulations, rules, policies,

and certifications governing any activities undertaken during the performance of this Agreement. Subrecipient also acknowledges that Eligible Expenses funded or reimbursed by Whatcom County to Subrecipient are not considered to be grants but are "other financial assistance" under 2 C.F.R. 200.40. This Agreement requires compliance with certain provisions of Title 2 C.F.R. 200 – Uniform Administrative Requirements, Cost Principals, and Audit Requirements for Federal Awards as mentioned above. Subrecipient agrees to comply with all applicable federal laws, regulations, and policies governing the funds provided under this Agreement. Subrecipient further agrees to utilize available funds under this Agreement to supplement rather than supplant funds otherwise available.

With respect to any conflict between such federal requirements and the terms of this Agreement and/or the provisions of state law and except as otherwise required under federal law or regulation, the more stringent requirement shall control

B. Hold Harmless

Subrecipient shall hold harmless, release, and defend Whatcom County from any and all claims, actions, suits, charges and judgments whatsoever that arise out of the Subrecipient's performance or nonperformance of the services or subject matter called for in this Agreement.

C. Indemnification

To the extent permitted by law, the Subrecipient shall defend the County and indemnify and hold the County harmless against any claim or liability of any nature in connection with or arising in any manner out of this Agreement including, without limitation, any breach of covenants, representations, certifications, and warranties made by Recipient in connection with the application or the provisions of Program Award Funds under the Program, and any determination by the County, the United States Treasury, the State of Washington, or any other governmental authority or as otherwise determined by a court of law, that the Recipient's administration or expenditure of Program Award Funds awarded under the Program was inconsistent with, or in violation of, any applicable law, including the CARES Act, 42 U.S.C. § 801, and any applicable regulations and guidance issued in connection therewith, or any use of the Program Award Funds provided under the Program to the Recipient, or the performance of the services or activities relating thereto, or any other activities of the Recipient, its subcontractors. Agents, independent contractors, or employees. In the event of any dispute between the Subrecipient and its employees, subcontractors or anyone with a claim to some or all of the Recipient's Program Award Funds, the Recipient shall be responsible for resolution of any such claim and the County shall have no responsibility or obligation in the resolution process or outcome.

Further, to the fullest extent permitted by law, Subrecipient shall also indemnify, defend, and hold harmless the state of Washington, the Department of Commerce, agencies of the state and all officials, agents, and employees of the state, from and against all claims for injuries or death arising out of or resulting from the performance of the Agreement.

"Claim" as used in this Agreement, means any financial loss, claim, suit, action, damage, or death, or injury to or the destruction of tangible property including loss of use resulting therefrom.

Subrecipient's obligation to indemnify, defend, and hold harmless the State includes any claim by Recipient's agents, employees, representatives, or any subgrantee/subcontractor or its employees.

Subrecipient expressly agrees, to the extent permitted by law, to indemnify, defend, and hold harmless the County and the State form any claim arising out of or incident to Subrecipient's or subgrantee's/subcontractor's performance or failure to perform the Grant. Subrecipient's obligations to indemnify, defendant and hold harmless the County and the State shall not be eliminated or reduced by any actual or alleged concurrent negligence of the County or the State or their agents, agencies, employees and officials.

Subrecipient waives its immunity under Title 51 RCW to the extent it is required to indemnify, defend and hold harmless the County and the State and their agencies, officers, agents or employees.

D. Misrepresentations & Noncompliance

Subrecipient hereby asserts, certifies and reaffirms that all representations and other information contained in Subrecipient's application, request for funding, or request for reimbursement are true, correct and complete, to the best of Subrecipient's knowledge, as of the date of this Agreement. Subrecipient acknowledges that all such representations and information have been relied on by the County to provide the funding under this Agreement.

Subrecipient shall promptly notify the County, in writing, of the occurrence of any event or any material change in circumstances which would make any Subrecipient representation or information untrue or incorrect or otherwise impair Subrecipient's ability to fulfill Subrecipient's obligations under this Agreement.

E. Workers' Compensation

Subrecipient shall provide Workers' Compensation Insurance coverage for all of its employees involved in the performance of this Agreement.

F. Insurance

Subrecipient shall carry sufficient insurance coverage to protect any funds provided to Subrecipient under this Agreement from loss due to theft, fraud and/or undue physical damage. Subrecipients that are self-insured shall maintain excess coverage over and above its self-insured retention limits.

G. Amendments

This Agreement may be amended at any time only by a written instrument signed by both Parties. Such amendments shall not invalidate this Agreement, nor relieve or release either Party from its obligations under this Agreement. The County may, in its discretion, amend this Agreement to conform with Federal, state or local governmental guidelines, policies and available funding amounts. If such amendments result in a change in the funding, the scope of services, or schedule of the activities to be undertaken as part of this Agreement, such modifications will be incorporated only by written amendment signed by both Parties.

H. Suspension or Termination

Whatcom County may suspend or terminate this Agreement if Subrecipient materially fails to comply with any terms of this Agreement, which include (but are not limited to), the following:

1. Failure to comply with any of the rules, regulations or provisions referred to herein, or such statutes, regulations, executive orders, and Federal awarding agency guidelines, policies or directives as may become applicable at any time;

2. Failure, for any reason, of Subrecipient to fulfill in a timely and proper manner its obligations under this Agreement;

3. Ineffective or improper use of funds provided under this Agreement; or

4. Submission by the Subrecipient to Whatcom County reports that are incorrect or incomplete in any material respect.

I. Program Fraud & False or Fraudulent Statements or Related Acts

Subrecipient and any subcontractors must comply with 31 U.S.C. Chapter 38, Administrative Remedies for False Claims and Statements, which shall apply to the activities and actions of Subrecipient and any subcontractors pertaining to any matter resulting from a contract.

J. Debarment / Suspension and Voluntary Exclusion

1. Non-Federal entities, subrecipients and contractors are subject to the debarment and suspension regulations implementing Executive Order 12549, Debarment and Suspension (1986) and Executive Order 12689, Debarment and Suspension (1989) at 2 C.F.R. Part 180 and the Department of Homeland Security's regulations at 2 C.F.R. Part 3000 (Nonprocurement Debarment and Suspension).

2. These regulations restrict awards, subawards, and contracts with certain parties that are debarred, suspended, or otherwise excluded from or ineligible for participation in Federal assistance programs and activities. A contract award must not be made to parties listed in the Systems of Award Management ("SAM") Exclusions. SAM Exclusions is the list maintained by the General Services Administration that contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549. SAM exclusions can be accessed at www.sam.gov.

3. Subrecipient certifies that neither it nor any of its subrecipients or contractors are debarred or suspended in accordance with the regulations and requirements stated above.

K. Governing Law and Venue. This Agreement shall be interpreted under, and governed by, the laws of the State of Washington, without regard to conflicts of laws principles. Any claim, suit, action, or proceeding brought in connection with this Agreement shall be in Whatcom County Superior Court and each party hereby irrevocably consents to the personal and subject matter jurisdiction of such court and waives any claim that such court does not constitute a convenient and appropriate venue for such claims, suits, actions, or proceedings.

VI. ADMINISTRATIVE REQUIREMENTS

A. Financial Management

Subrecipient agrees to comply with and agrees to adhere to appropriate accounting principles and procedures, utilize adequate internal controls, and maintain necessary source documentation for all Eligible Expenses.

B. Duplication of Benefits; Subrogation

Subrecipient shall not carry out any of the activities under this Agreement in a manner that results in a prohibited duplication of benefits as defined by Section 312 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5155) and in accordance with Section 1210 of the Disaster Recovery Reform Act of 2018 (division D of Public Law 115–254; 132 Stat. 3442), which amended section 312 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5155).

If Subrecipient receives duplicate benefits from another source, Subrecipient must refund the benefits provided by the County back to the County.

C. Documentation & Recordkeeping

As required by 2 C.F.R. 200.331(a)(5), the County, or any duly authorized representative of The County, shall have the right of access to any records, documents, financial statements, papers, or other records of Subrecipient that are pertinent to this Agreement, in order to comply with any audits pertaining to funds allocated to Subrecipient under this Agreement. The right of access also includes timely and reasonable access to Subrecipient's personnel for the purpose of interview and discussion related to such documents. The right of access is not limited to the required retention period, as set forth in paragraph D below, but lasts as long as the records are retained.

D. Record Retention

Subrecipient shall retain sufficient records, which may include, but are not limited to financial records, supporting documents, statistical records, and all other Subrecipient records pertinent to the Agreement to show its compliance with the terms of this Agreement, as well as the compliance of all subcontractors or consultants paid from funds under this Agreement, for a period of (6) years from the date of submission of the final expenditure report. Records shall be made available upon request to the County, Commerce, state and federal auditors.

E. Internal Controls

Subrecipient must comply with 2 C.F.R. 200.303 and establish and maintain effective internal control over the funds allocated under this Agreement and provide reasonable assurance that the Subrecipient is managing the award in compliance with Federal statutes, regulations, and the terms and conditions of the award. These internal controls should be in compliance with guidance in “Standards for Internal Control in the Federal Government” issued by the Comptroller General of the United States or the “Internal Control Integrated Framework” issued by the Committee of Sponsoring Organizations of the Treadway Commission.

F. Personally Identifiable Information

Subrecipient must comply with 2 C.F.R. 200.303(e) and take reasonable measures to safeguard protected personally identifiable information, as defined in 2 C.F.R. 200.82, and other information designated as sensitive or the Subrecipient considers sensitive consistent with applicable Federal, state, local, and tribal laws regarding privacy and obligations of confidentiality.

G. Monitoring & Compliance

The County shall evaluate the Subrecipient's risk of noncompliance and monitor the activities of Subrecipient as necessary to ensure that the CRF funds are used for authorized purposes, in compliance with Federal statutes, regulations, and the terms and conditions of this Agreement. Monitoring of Subrecipient shall include reviewing invoices for eligible expenses, reviewing payroll logs, applicable contracts and other documentation that may be requested by the County to substantiate eligible expenses. Failure to submit proper documentation verifying eligible expenses may result in termination of this agreement and recoupment of awarded funds from the Subrecipient.

The Subrecipient shall be audited as required by 2 C.F.R. Part 200 Subpart F—Audit Requirements and shall provide a copy of the audit to the County. The County may take enforcement action against noncompliant Subrecipient as described in 2 C.F.R. 200.338 Remedies for noncompliance of this part and in program regulations.

H. Payment & Reporting Procedures

1. Payment Procedures

The County will pay to the Subrecipient funds available under this Agreement based upon information submitted by the Subrecipient and consistent with the allocations and disbursement policies established by the County:

a. The Subrecipient shall submit itemized invoices and copies of receipts by October 31, 2020. The Subrecipient shall submit invoices to (include contract #):

Whatcom County Executive's Office
Attn: Tawni Helms
Whatcom County Courthouse, Suite 108
311 Grand Avenue
Bellingham, WA 98225

b. Payment by the County will be considered timely if it is made within 30 days of the receipt and acceptance of billing information from Subrecipient. The County may withhold payment of an invoice if the Subrecipient submits it after October 31, 2020.

c. 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.

d. Duplication of Billed Costs or Payments for Service: The Subrecipient shall not bill the County for services performed or provided under this contract, and the County shall not pay the Subrecipient, if the Subrecipient 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.

VII. PERSONNEL & PARTICIPATION CONDITIONS

Conflict of Interest

The Subrecipient shall maintain written standards of conduct covering conflicts of interest and governing the actions of its employees engaged in the selection, award and administration of contracts. No employee, officer, or agent may participate in the selection, award, or administration

of a contract supported by a Federal award if he or she has a real or apparent conflict of interest. Such a conflict of interest would arise when the employee, officer, or agent, any member of his or her immediate family, his or her partner, or an organization which employs or is about to employ any of the parties indicated herein, has a financial or other interest in or a tangible personal benefit from a firm considered for a contract.

VIII. ATTACHMENTS

All attachments to this Agreement are incorporated as if set out fully. In the event of any inconsistencies or conflict between the language of this Agreement and the attachments, the language of the attachments shall control, but only to the extent of the conflict or inconsistency.

This Agreement contains the following attachments:

• Attachment A – Eligible Expenses

• Attachment B – Interagency Agreement between Whatcom County and Washington State Department of Commerce, Whatcom County contract #202006003

• Attachment C – Coronavirus Relief Fund Guidance for State, Territorial, Local, and Tribal Governments Updated September 2, 2020

IX. SEVERABILITY

If any provision of this Agreement is held invalid, the remainder of the Agreement shall not be affected thereby and all other parts of this Agreement shall nevertheless be in full force and effect.

X. WAIVER

Whatcom County's failure to act with respect to a breach by the Subrecipient does not waive its right to act with respect to subsequent or similar breaches. The failure of Whatcom County to exercise or enforce any right or provision shall not constitute a waiver of such right or provision.

XI. CERTIFICATION

The Subrecipient hereby certifies that they have the authority and approval from their governing body, if applicable, to execute this Agreement and request reimbursement from Whatcom County from the allocation of the Coronavirus Relief Fund provided to Whatcom County for eligible expenditures. The Subrecipient further certifies the funds received for reimbursement from the Coronavirus Relief Funds were or will be used only to cover those costs that:

a. Are necessary expenditures incurred due to the public health emergency with respect to the Coronavirus Disease 2019 (COVID-19);

b. Were not accounted for in the budget most recently approved as of March 27, 2020; and

c. Were incurred during the period that begins on March 1, 2020, and ends on October 31, 2020.

Subrecipient understands any award of funds pursuant to this agreement must adhere to official federal guidance issued or to be issued on what constitutes a necessary expenditure and that the subrecipient has reviewed the guidance established by U.S. Department of the Treasury and certify costs meet the required guidance. Any funds expended by the Subrecipient any manner that does not adhere to official federal guidance shall be returned to Whatcom County.

II. ENTIRE AGREEMENT

This Agreement constitutes the entire agreement between the Parties for the use of funds received under this Agreement and it supersedes all prior or contemporaneous communications and proposals, whether electronic, oral, or written between the Parties relating to Whatcom County's allocation of CRF funding to Subrecipient. This Agreement is subject to availability of Federal assistance under the Coronavirus Relief Funds as authorized under the CARES Act. Whatcom County has no legal requirement to provide funding to any Subrecipient.

XIII. SIGNATURE AUTHORITY

The following specific officers/officials, or their authorized designees, are required to sign this Agreement on behalf of theof Subrecipient. Note: If this Agreement is signed by a designee, a duly authenticated delegation of authority evidencing the signer's authority to execute the Agreement for and on behalf of the Subrecipient must be attached to the Agreement for review by Whatcom County.

IN WITNESS WHEREOF, the Parties hereto have caused their duly authorized representatives to execute this Agreement on the dates hereafter set forth below.

PORT OF BELLINGHAM

Signed:

Its Duly Authorized Agent

Printed Name: Rob Fix

Title: Executive Director

Date:

WHATCOM COUNTY, WASHINGTON

Signed:

Its Duly Authorized Agent

Printed Name: Satpal Singh Sidhu

Title: County Executive

Date:

Approved as to form:

Signed: _____
Christopher Quinn
Senior Deputy Prosecuting Attorney for Whatcom County

ATTACHMENT A

Eligible Expenses.

The Port of Bellingham shall ensure that the funds cover only those costs that are necessary and eligible to comply with public health measures and restrictions arising from the COVID-19 public health emergency. Under this agreement eligible expenses directly attributable to the COVID-19 emergency may include:

1) payroll expenses for Port of Bellingham employee, Scott McCreary, for his time serving as an Incident Commander with Whatcom Unified Command (not to exceed $88,127.02)

2) technology costs required for remote work

3) cleaning/janitorial services, facility HVAC/MERC filters, PPE, facility signage (e.g. floor stickers, mask requirements)

4) Point Roberts Ferry service arising from COVID emergency

Eligible payroll expenses for Scott McCreary (above, 1) shall be reimbursed independent of remaining expenses (2-4) listed above. Those remaining expenses (above, 2-4) that are found eligible shall be reimbursed in a total amount not to exceed $150,000.00.

Eligible Cost Test.

The Port of Bellingham shall determine whether or not an expense is eligible using the Washington State Department of Commerce's five-part cost test as presented below. If all responses for the particular incurred cost are "true" for all five statements below, the Port of Bellingham may deem the cost is eligible:

(a) The expense is connected to the COVID-19 emergency;

(b) The expense is "necessary;"

(c) The expense is not to fill a shortfall in government revenues;

(d) The expense is not funded through another budget line-item, allotment or allocation, as of March 27, 2020; and

(e) The expense would not exist but for COVID -19 or would be for a "substantially different" purpose.

ATTACHMENT B



Interagency Agreement with

Whatcom County

through

the Coronavirus Relief Fund for Local Governments

For

Costs incurred due to the public health emergency with respect to the Coronavirus Disease 2019 (COVID-19) during the period of March 1, 2020 thru October 31, 2020.

Start date: March 1, 2020

TABLE OF CONTENTS

Special Terms and Conditions

1. Authority 1
2. Acknowledgement of Federal Funding 1
3. Contract Management 1
4. Compensation 1
5. Expenses 1
6. Indirect Costs 1
7. Billing Procedures and Payment 1
8. Audit 2
9. Debarment 3
10. Laws 3
11. Order of Precedence 4

General Terms and Conditions

1. Definitions 5
2. All Writings Contained Herein 5
3. Amendments 5
4. Assignment 5
5. Confidentiality and Safeguarding of Information 5
6. Copyright 6
7. Disputes 6
8. Governing Law and Venue 6
9. Indemnification 7
10. Licensing, Accreditation and Registration 7
11. Recapture 7
12. Records Maintenance 7
13. Savings 7
14. Severability 7
15. Subcontracting 7
16. Survival 8
17. Termination for Cause 8
18. Termination for Convenience 8
19. Termination Procedures 8
20. Waiver 9

Attachment A, Scope of Work 10
Attachment B, Budget & Invoicing 12
Attachment C, A-19 Certification 13
Attachment D, A-19 Activity Report 15

CONTRACTOR ORIGINAL

FACE SHEET

Contract Number: 20-6541C-037

Washington State Department of Commerce
Local Government Division
Community Capital Facilities Unit
Coronavirus Relief Fund for Local Governments

WHATCOM COUNTY
CONTRACT NO.
20200 6003

1. Contractor	2. Contractor Doing Business As (optional)
Whatcom County 311 Grand Avenue, Suite 108 Bellingham, Washington 98225	

3. Contractor Representative	4. COMMERCE Representative	
Tyler Schroeder Deputy County Executive (360) 778-5207 tschroed@co.whatcom.wa.us	Emily Hafford Project Manager (360) 725-5001 Fax 360-586-5880 emily.hafford@commerce.wa.gov	P.O. Box 42525 1011 Plum Street SE Olympia, WA 98504-2525

5. Contract Amount	6. Funding Source	7. Start Date	8. End Date
$12,391,500.00	Federal: X State: Other: N/A:	March 1, 2020	October 31, 2020

9. Federal Funds (as applicable)	Federal Agency:	CFDA Number:	Indirect Rate (if applicable):
$12,391,500.00	US Dept. of the Treasury	21.019	10.00%

10. Tax ID #	11. SWV #	12. UBI #	13. DUNS #
XXXXXXXXXXXXXX	SWV0002425-09	371010246	060044641

14. Contract Purpose

To provide funds for costs incurred due to the public health emergency with respect to the Coronavirus Disease 2019 (COVID-19) during the period of March 1, 2020 thru October 31, 2020. Final invoices must be received by November 15, 2020.

15. Signing Statement

COMMERCE, defined as the Department of Commerce, and the Contractor, as defined above, acknowledge and accept the terms of this Contract and Attachments and have executed this Contract on the date below and warrant they are authorized to bind their respective agencies. The rights and obligations of both parties to this Contract are governed by this Contract and the following documents hereby incorporated by reference: Attachment "A" – Scope of Work, Attachment "B" – Budget & Invoicing, Attachment "C" – A-19 Certification, Attachment "D" – A-19 Activity Report

FOR CONTRACTOR

Satpal Singh Sidhu, County Executive

06/03/2020
Date

FOR WHATCOM
APPROVED AS TO FORM:

Prosecuting Attorney

FOR COMMERCE

Mark K. Barkley, Assistant Director, Local Government Division

6/10/2020
Date

APPROVED AS TO FORM ONLY BY ASSISTANT ATTORNEY GENERAL 05-01-2020.
APPROVAL ON FILE.

SPECIAL TERMS AND CONDITIONS
INTERAGENCY AGREEMENT
FEDERAL FUNDS

1. AUTHORITY

COMMERCE and Contractor enter into this Contract pursuant to the authority granted by the Interlocal Cooperation Act, Chapter 39.34 RCW.

2. ACKNOWLEDGMENT OF FEDERAL FUNDS

Funds under the Contract are made available and are subject to Section 601(a) of the Social Security Act, as amended by section 5001 of the Coronavirus Aid, Relief, and Economic Security Act (CARES Act), and Title V and VI of the CARES Act.

The Contractor agrees that any publications (written, visual, or sound) but excluding press releases, newsletters, and issue analyses, issued by the Contractor describing programs or projects funded in whole or in part with federal funds under this Contract, shall contain the following statements:

"This project was supported by a grant awarded by US Department of the Treasury. Points of view in this document are those of the author and do not necessarily represent the official position or policies of the US Department of the Treasury. Grant funds are administered by the Local Government Coronavirus Relief Fund thru the Washington State Department of Commerce."

3. CONTRACT MANAGEMENT

The Representative for each of the parties shall be responsible for and shall be the contact person for all communications and billings regarding the performance of this Contract.

The Representative for COMMERCE and their contact information are identified on the Face Sheet of this Contract.

The Representative for the Contractor and their contact information are identified on the Face Sheet of this Contract.

4. COMPENSATION

COMMERCE shall pay an amount not to exceed the contract amount listed on the Face Sheet for the performance of all things necessary for or incidental to the performance of work under this Contract as set forth in the Scope of Work (Attachment A).

5. EXPENSES

Contractor shall receive reimbursement for allowable expenses as identified in the Scope of Work (Attachment A) or as authorized in advance by COMMERCE as reimbursable.

Travel expenses may include airfare (economy or coach class only), other transportation expenses, and lodging and subsistence necessary during periods of required travel. Contractor shall receive compensation for travel expenses at current state travel reimbursement rates.

6. INDIRECT COSTS

Contractor shall provide their indirect cost rate that has been negotiated between their entity and the federal government. If no such rate exists a *de minimis* indirect cost rate of 10% of modified total direct costs (MTDC) will be used.

7. BILLING PROCEDURES AND PAYMENT

COMMERCE shall reimburse the Contractor for eligible Project expenditures, up to the maximum payable under this Contract. When requesting reimbursement for expenditures made, Contractor shall submit all Invoice Vouchers and any required documentation electronically through COMMERCE's Contracts Management System (CMS), which is available through the Secure Access Washington (SAW) portal. If the Contractor has constraints preventing access to COMMERCE's online A-19 portal, a hard copy A-19 form may be provided by the COMMERCE Project Manager upon request.

The voucher must be certified by an official of the Contractor with authority to bind the Contractor. The final voucher shall be submitted to COMMERCE no later than November 15, 2020.

COMMERCE will pay Contractor upon acceptance of services provided and receipt of properly completed invoices, which shall be submitted to the Representative for COMMERCE not more often than monthly.

The invoices shall describe and document, to COMMERCE's satisfaction, reimbursable expenditures as set forth under the Scope of Work (Attachment A) and Budget & Invoicing (Attachment B). The invoice shall include the Contract Number as stated on the Face Sheet.

Each voucher must be accompanied by an A-19 Certification (Attachment C) and A-19 Activity Report (Attachment D). The A-19 Certification must be certified by an authorized party of the Contractor to certify and attest all expenditures submitted on the voucher are in compliance with the United States Treasury Coronavirus Relief Fund ("Fund") Guidance for State, Territorial, Local, and Tribal Governments:

https://home.treasury.gov/system/files/136/Coronavirus-Relief-Fund-Guidance-for-State-Territorial-Local-and-Tribal-Governments.pdf

The A-19 Activity Report must be submitted which describes, in Excel spreadsheet and narrative form, a detailed breakdown of the expenditures within each applicable budget sub-category identified in the voucher, as well as a report of expenditures to date. COMMERCE will not release payment for any reimbursement request received unless and until the A-19 Certification and A-19 Activity Report is received. After approving the Invoice Voucher, A-19 Certification and Activity Report, COMMERCE shall promptly remit a warrant to the Contractor.

Payment shall be considered timely if made by COMMERCE within thirty (30) calendar days after receipt of properly completed invoices. Payment shall be sent to the address designated by the Contractor.

COMMERCE may, in its sole discretion, terminate the Contract or withhold payments claimed by the Contractor for services rendered if the Contractor fails to satisfactorily comply with any term or condition of this Contract.

No payments in advance or in anticipation of services or supplies to be provided under this Agreement shall be made by COMMERCE.

Duplication of Billed Costs

The Contractor shall not bill COMMERCE for services performed under this Agreement, and COMMERCE shall not pay the Contractor, if the Contractor is entitled to payment or has been or will be paid by any other source, including grants, for that service.

Disallowed Costs

The Contractor is responsible for any audit exceptions or disallowed costs incurred by its own organization or that of its subcontractors.

Should the Contractor be found to spent funds inconsistent with federal laws, rules, guidelines, or otherwise inappropriately, it is the responsibility of the Contractor to reimburse Commerce for any amount spent on disallowed costs.

8. AUDIT

Contractor shall maintain internal controls providing reasonable assurance it is managing federal awards in compliance with laws, regulations, and provisions of contracts or grant agreements that could have a material effect on each of its federal programs; and prepare appropriate financial statements, including a schedule of expenditures of federal awards.

If the Contractor is a subrecipient and expends $750,000 or more in federal awards from any and/or all sources in any fiscal year, the Contractor shall procure and pay for a single audit or a program-specific audit for that fiscal year. Upon completion of each audit, the Contractor shall:

A. Submit to COMMERCE the reporting package specified in OMB Super Circular 2 CFR 200.501, reports required by the program-specific audit guide (if applicable), and a copy of any management letters issued by the auditor.
B. Submit to COMMERCE follow-up and developed corrective action plans for all audit findings.

If the Contractor is a subrecipient and expends less than $750,000 in federal awards from any and/or all sources in any fiscal year, the Contractor shall notify COMMERCE they did not meet the single audit requirement.

The Contractor shall send all single audit documentation to auditreview@commerce.wa.gov.

9. DEBARMENT

A. Contractor, defined as the primary participant and it principals, certifies by signing these General Terms and Conditions that to the best of its knowledge and belief that they:

i. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency.

ii. Have not within a three-year period preceding this Contract, been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public or private agreement or transaction, violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, tax evasion, receiving stolen property, making false claims, or obstruction of justice;

iii. Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) with commission of any of the offenses enumerated in paragraph (1)(b) of federal Executive Order 12549; and

iv. Have not within a three-year period preceding the signing of this Contract had one or more public transactions (Federal, State, or local) terminated for cause of default.

B. Where the Contractor is unable to certify to any of the statements in this Contract, the Contractor shall attach an explanation to this Contract.

C. The Contractor agrees by signing this Contract that it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by COMMERCE.

D. The Contractor further agrees by signing this Contract that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction," as follows, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions:

LOWER TIER COVERED TRANSACTIONS

i. The lower tier Contractor certifies, by signing this Contract that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.
ii. Where the lower tier Contractor is unable to certify to any of the statements in this Contract, such contractor shall attach an explanation to this Contract.

E. The terms **covered transaction, debarred, suspended, ineligible, lower tier covered transaction, person, primary covered transaction, principal, and voluntarily excluded**, as used in this section, have the meanings set out in the Definitions and Coverage sections of the rules implementing Executive Order 12549. You may contact COMMERCE for assistance in obtaining a copy of these regulations.

10. LAWS

The Contractor shall comply with all applicable laws, ordinances, codes, regulations, and policies of local, state, and federal governments, as now or hereafter amended, including, but not limited to:

United States Laws, Regulations and Circulars (Federal)

Contractor shall comply with Uniform Administrative Requirements, Cost Principles, and Audit Requirement for Federal Award, 2 CFR 200, Subpart F – Audit Requirements.

Contractor shall comply with the applicable requirements of 2 CFR Part 200, including any future amendments to 2 CFR Part 200, and any successor or replacement Office of Management and Budget (OMB) Circular or regulation.

Contractor shall comply with Omnibus Crime Control and Safe streets Act of 1968, Title VI of the Civil Rights Act of 1964, Section 504 of the Rehabilitation Act of 1973, Title II of the Americans with Disabilities Act of 1990, Title IX of the Education Amendments of 1972, The Age Discrimination Act of 1975, and The Department of Justice Non-Discrimination Regulations, 28 C.F.R. Part 42, Subparts C.D.E. and G, and 28 C.F.R. Part 35 and 39.

11. ORDER OF PRECEDENCE

In the event of an inconsistency in this Contract, the inconsistency shall be resolved by giving precedence in the following order:

- Applicable federal and state of Washington statutes and regulations
- Special Terms and Conditions
- General Terms and Conditions
- Attachment A – Scope of Work
- Attachment B – Budget & Invoicing
- Attachment C – A-19 Certification
- Attachment D – A-19 Activity Report

1. DEFINITIONS

As used throughout this Contract, the following terms shall have the meaning set forth below:

A. "Authorized Representative" shall mean the Director and/or the designee authorized in writing to act on the Director's behalf.

B. "COMMERCE" shall mean the Department of Commerce.

C. "Contract" or "Agreement" means the entire written agreement between COMMERCE and the Contractor, including any attachments, documents, or materials incorporated by reference. E-mail or facsimile transmission of a signed copy of this contract shall be the same as delivery of an original.

D. "Contractor" shall mean the entity identified on the face sheet performing service(s) under this Contract, and shall include all employees and agents of the Contractor.

E. "Personal Information" shall mean information identifiable to any person, including, but not limited to, information that relates to a person's name, health, finances, education, business, use or receipt of governmental services or other activities, addresses, telephone numbers, social security numbers, driver license numbers, other identifying numbers, and any financial identifiers.

F. "State" shall mean the state of Washington.

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

2. ALL WRITINGS CONTAINED HEREIN

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

3. AMENDMENTS

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

4. ASSIGNMENT

Neither this Contract, work thereunder, nor any claim arising under this Contract, shall be transferred or assigned by the Contractor without prior written consent of COMMERCE.

5. CONFIDENTIALITY AND SAFEGUARDING OF INFORMATION

A. "Confidential Information" as used in this section includes:

i. All material provided to the Contractor by COMMERCE that is designated as "confidential" by COMMERCE;

ii. All material produced by the Contractor that is designated as "confidential" by COMMERCE; and

iii. All personal information in the possession of the Contractor that may not be disclosed under state or federal law.

B. The Contractor shall comply with all state and federal laws related to the use, sharing, transfer, sale, or disclosure of Confidential Information. The Contractor shall use Confidential Information solely for the purposes of this Contract and shall not use, share, transfer, sell or disclose any Confidential Information to any third party except with the prior written consent of COMMERCE or as may be required by law. The Contractor shall take all necessary steps to assure that Confidential Information is safeguarded to prevent unauthorized use, sharing, transfer, sale or disclosure of Confidential Information or violation of any state or federal laws related thereto. Upon request, the Contractor shall provide COMMERCE with its policies and procedures on confidentiality.

COMMERCE may require changes to such policies and procedures as they apply to this Contract whenever COMMERCE reasonably determines that changes are necessary to prevent unauthorized disclosures. The Contractor shall make the changes within the time period specified by COMMERCE. Upon request, the Contractor shall immediately return to COMMERCE any Confidential Information that COMMERCE reasonably determines has not been adequately protected by the Contractor against unauthorized disclosure.

C. Unauthorized Use or Disclosure. The Contractor shall notify COMMERCE within five (5) working days of any unauthorized use or disclosure of any confidential information, and shall take necessary steps to mitigate the harmful effects of such use or disclosure.

6. COPYRIGHT

Unless otherwise provided, all Materials produced under this Contract shall be considered "works for hire" as defined by the U.S. Copyright Act and shall be owned by COMMERCE. COMMERCE shall be considered the author of such Materials. In the event the Materials are not considered "works for hire" under the U.S. Copyright laws, the Contractor hereby irrevocably assigns all right, title, and interest in all Materials, including all intellectual property rights, moral rights, and rights of publicity to COMMERCE effective from the moment of creation of such Materials.

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

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

The Contractor shall exert all reasonable effort to advise COMMERCE, at the time of delivery of Materials furnished under this Contract, of all known or potential invasions of privacy contained therein and of any portion of such document which was not produced in the performance of this Contract. The Contractor shall provide COMMERCE with prompt written notice of each notice or claim of infringement received by the Contractor with respect to any Materials delivered under this Contract. COMMERCE shall have the right to modify or remove any restrictive markings placed upon the Materials by the Contractor.

7. DISPUTES

In the event that a dispute arises under this Agreement, it shall be determined by a Dispute Board in the following manner: Each party to this Agreement shall appoint one member to the Dispute Board. The members so appointed shall jointly appoint an additional member to the Dispute Board. The Dispute Board shall review the facts, Agreement terms and applicable statutes and rules and make a determination of the dispute. The Dispute Board shall thereafter decide the dispute with the majority prevailing. The determination of the Dispute Board shall be final and binding on the parties hereto. As an alternative to this process, either of the parties may request intervention by the Governor, as provided by RCW 43.17.330, in which event the Governor's process will control.

8. GOVERNING LAW AND VENUE

This Contract shall be construed and interpreted in accordance with the laws of the state of Washington, and any applicable federal laws, and the venue of any action brought hereunder shall be in the Superior Court for Thurston County.

9. INDEMNIFICATION

Each party shall be solely responsible for the acts of its employees, officers, and agents.

10. LICENSING, ACCREDITATION AND REGISTRATION

The Contractor shall comply with all applicable local, state, and federal licensing, accreditation and registration requirements or standards necessary for the performance of this Contract.

11. RECAPTURE

In the event that the Contractor fails to perform this Contract in accordance with state laws, federal laws, and/or the provisions of this Contract, COMMERCE reserves the right to recapture funds in an amount to compensate COMMERCE for the noncompliance in addition to any other remedies available at law or in equity.

Repayment by the Contractor of funds under this recapture provision shall occur within the time period specified by COMMERCE. In the alternative, COMMERCE may recapture such funds from payments due under this Contract.

12. RECORDS MAINTENANCE

The Contractor shall maintain books, records, documents, data and other evidence relating to this contract and performance of the services described herein, including but not limited to accounting procedures and practices that sufficiently and properly reflect all direct and indirect costs of any nature expended in the performance of this contract.

The Contractor shall maintain records that identify, in its accounts, all federal awards received and expended and the federal programs under which they were received, by Catalog of Federal Domestic Assistance (CFDA) title and number, award number and year, name of the federal agency, and name of the pass-through entity.

The Contractor shall retain such records for a period of six (6) years following the date of final payment. At no additional cost, these records, including materials generated under the contract, shall be subject at all reasonable times to inspection, review or audit by COMMERCE, personnel duly authorized by COMMERCE, the Office of the State Auditor, and federal and state officials so authorized by law, regulation or agreement.

If any litigation, claim or audit is started before the expiration of the six (6) year period, the records shall be retained until all litigation, claims, or audit findings involving the records have been resolved.

13. SAVINGS

In the event funding from state, federal, or other sources is withdrawn, reduced, or limited in any way after the effective date of this Contract and prior to normal completion, COMMERCE may suspend or terminate the Contract under the "Termination for Convenience" clause, without the ten calendar day notice requirement. In lieu of termination, the Contract may be amended to reflect the new funding limitations and conditions.

14. SEVERABILITY

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

15. SUBCONTRACTING

The Contractor may only subcontract work contemplated under this Contract if it obtains the prior written approval of COMMERCE.

If COMMERCE approves subcontracting, the Contractor shall maintain written procedures related to subcontracting, as well as copies of all subcontracts and records related to subcontracts. For cause, COMMERCE in writing may: (a) require the Contractor to amend its subcontracting procedures as they

relate to this Contract; (b) prohibit the Contractor from subcontracting with a particular person or entity; or (c) require the Contractor to rescind or amend a subcontract.

Every subcontract shall bind the Subcontractor to follow all applicable terms of this Contract. Contractor shall incorporate 2 CFR Part 200, Subpart F audit requirements into all subcontracts. The Contractor is responsible to COMMERCE if the Subcontractor fails to comply with any applicable term or condition of this Contract. The Contractor shall appropriately monitor the activities of the Subcontractor to assure fiscal conditions of this Contract. In no event shall the existence of a subcontract operate to release or reduce the liability of the Contractor to COMMERCE for any breach in the performance of the Contractor's duties.

Every subcontract shall include a term that COMMERCE and the State of Washington are not liable for claims or damages arising from a Subcontractor's performance of the subcontract.

16. SURVIVAL

The terms, conditions, and warranties contained in this Contract that by their sense and context are intended to survive the completion of the performance, cancellation or termination of this Contract shall so survive.

17. TERMINATION FOR CAUSE

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

In the event of termination or suspension, the Contractor shall be liable for damages as authorized by law including, but not limited to, any cost difference between the original contract and the replacement or cover contract and all administrative costs directly related to the replacement contract, e.g., cost of the competitive bidding, mailing, advertising and staff time.

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

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

18. TERMINATION FOR CONVENIENCE

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

19. TERMINATION PROCEDURES

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

COMMERCE shall pay to the Contractor the agreed upon price, if separately stated, for completed work and services accepted by COMMERCE, and the amount agreed upon by the Contractor and COMMERCE for (i) completed work and services for which no separate price is stated, (ii) partially completed work and services, (iii) other property or services that are accepted by COMMERCE, and (iv) the protection and preservation of property, unless the termination is for default, in which case the Authorized Representative shall determine the extent of the liability of COMMERCE. Failure to agree

with such determination shall be a dispute within the meaning of the "Disputes" clause of this contract. COMMERCE may withhold from any amounts due the Contractor such sum as the Authorized Representative determines to be necessary to protect COMMERCE against potential loss or liability.

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

After receipt of a notice of termination, and except as otherwise directed by the Authorized Representative, the Contractor shall:

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

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

C. Assign to COMMERCE, in the manner, at the times, and to the extent directed by the Authorized Representative, all of the rights, title, and interest of the Contractor under the orders and subcontracts so terminated, in which case COMMERCE has the right, at its discretion, to settle or pay any or all claims arising out of the termination of such orders and subcontracts;

D. Settle all outstanding liabilities and all claims arising out of such termination of orders and subcontracts, with the approval or ratification of the Authorized Representative to the extent the Authorized Representative may require, which approval or ratification shall be final for all the purposes of this clause;

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

F. Complete performance of such part of the work as shall not have been terminated by the Authorized Representative; and

G. Take such action as may be necessary, or as the Authorized Representative may direct, for the protection and preservation of the property related to this contract, which is in the possession of the Contractor and in which the Authorized Representative has or may acquire an interest.

20. WAIVER

Waiver of any default or breach shall not be deemed to be a waiver of any subsequent default or breach. Any waiver shall not be construed to be a modification of the terms of this Contract unless stated to be such in writing and signed by Authorized Representative of COMMERCE.

Scope of Work

This funding is made available under section 601(a) of the Social Security Act, as added by section 5001 of the Coronavirus Aid, Relief, and Economic Security Act ("CARES Act") and Section V and VI of the CARES Act, for costs incurred due to the public health emergency with respect to the Coronavirus Disease 2019 (COVID-19). Under the CARES Act, the Coronavirus Relief Fund may be used to cover costs that:

1. **Are necessary expenditures incurred due to the public health emergency with respect to the Coronavirus Disease 2019 (COVID–19); AND**

2. **Are not accounted for in the budget most recently approved as of March 27, 2020 (the date of enactment of the CARES Act) for the State or government.**

These funds may be used to reimburse for expenditures incurred during the period of March 1, 2020 thru Oct. 31, 2020. Please note: In order to ensure all funds have been fully utilized prior to the US Treasury's December 30, 2020 end date, the State of Washington must closeout contracts by October 31, 2020. All final requests for reimbursement must be received no later than November 15, 2020.

Expenditures must be used for necessary actions taken to respond to the public health emergency. These may include expenditures incurred to allow the local government to respond directly to the emergency, such as by addressing medical or public health needs, as well as expenditures incurred to respond to second-order effects of the emergency, such as by providing economic support to those suffering from employment or business interruptions due to COVID-19-related business closures.

Funds may not be used to fill shortfalls in government revenue to cover expenditures that would not otherwise qualify under the statute. Although a broad range of uses is allowed, revenue replacement is not a permissible use of Fund payments.

Payments may be used only to cover costs not accounted for in the budget most recently approved as of March 27, 2020. A cost meets this requirement if either:

1. The cost cannot lawfully be funded using a line item, allotment, or allocation within that budget; OR

2. The cost is for a substantially different use from any expected use of funds in such a line item, allotment, or allocation.

The "most recently approved" budget is the enacted budget for the relevant fiscal period for the particular government. A cost is not considered to have been accounted for in a budget merely because it could be met using a budgetary stabilization fund, rainy day fund, or similar reserve account.

Allowable expenditures include, but are not limited to:

1. Medical expenses such as:
   a. COVID-19-related expenses of public hospitals, clinics, and similar facilities.
   b. Expenses of establishing temporary public medical facilities and other measures to increase COVID-19 treatment capacity, including related construction costs.
   c. Costs of providing COVID-19 testing, including serological testing.
   d. Emergency medical response expenses, including emergency medical transportation, related to COVID-19.
   e. Expenses for establishing and operating public telemedicine capabilities for COVID-19-related treatment.

2. Public health expenses such as:

a. Expenses for communication and enforcement by State, territorial, local, and Tribal governments of public health orders related to COVID-19.
b. Expenses for acquisition and distribution of medical and protective supplies, including sanitizing products and personal protective equipment, for medical personnel, police officers, social workers, child protection services, and child welfare officers, direct service providers for older adults and individuals with disabilities in community settings, and other public health or safety workers in connection with the COVID-19 public health emergency.
c. Expenses for disinfection of public areas and other facilities, e.g., nursing homes, in response to the COVID-19 public health emergency.
d. Expenses for technical assistance to local authorities or other entities on mitigation of COVID-19-related threats to public health and safety.
e. Expenses for public safety measures undertaken in response to COVID-19.
f. Expenses for quarantining individuals.

3. Payroll expenses for public safety, public health, health care, human services, and similar employees whose services are substantially dedicated to mitigating or responding to the COVID-19 public health emergency.

4. Expenses of actions to facilitate compliance with COVID-19-related public health measures, such as:
   a. Expenses for food delivery to residents, including, for example, senior citizens and other vulnerable populations, to enable compliance with COVID-19 public health precautions.
   b. Expenses to facilitate distance learning, including technological improvements, in connection with school closings to enable compliance with COVID-19 precautions.
   c. Expenses to improve telework capabilities for public employees to enable compliance with COVID-19 public health precautions.
   d. Expenses of providing paid sick and paid family and medical leave to public employees to enable compliance with COVID-19 public health precautions.
   e. COVID-19-related expenses of maintaining state prisons and county jails, including as relates to sanitation and improvement of social distancing measures, to enable compliance with COVID-19 public health precautions.
   f. Expenses for care for homeless populations provided to mitigate COVID-19 effects and enable compliance with COVID-19 public health precautions.

5. Expenses associated with the provision of economic support in connection with the COVID-19 public health emergency, such as:
   a. Expenditures related to the provision of grants to small businesses to reimburse the costs of business interruption caused by required closures.
   b. Expenditures related to a State, territorial, local, or Tribal government payroll support program.
   c. Unemployment insurance costs related to the COVID-19 public health emergency if such costs will not be reimbursed by the federal government pursuant to the CARES Act or otherwise.

6. Any other COVID-19-related expenses reasonably necessary to the function of government that satisfy the Fund's eligibility criteria.

Budget & Invoicing

The Contractor shall determine the appropriate budget and use of funds within the following 6 budget categories and their sub-categories:

1. Medical
2. Public Health
3. Payroll
4. Actions to Comply with Public Health Measures
5. Economic Support
6. Other Covid-19 Expenses

The Contractor shall submit invoice reimbursement requests to the Commerce Representative using the Commerce Contract Management System's (CMS) Online A-19 Portal. Each reimbursement request must include:

1. A-19 Certification form – An authorized party of the local government will certify each invoice (A19) submitted for reimbursement and attest that all incurred expenditures meet the US Treasury Department's guidance: https://home.treasury.gov/system/files/136/Coronavirus-Relief-Fund-Guidance-for-State-Territorial-Local-and-Tribal-Governments.pdf
2. A-19 Activity Report
3. A detailed breakdown of the expenditures incurred within each applicable budget sub-category on the A-19 Activity Report.

The A-19 Certification and Activity Report templates will be provided with the executed contract. The documents are included in Attachment C and Attachment D for reference.

Receipts and proof of payment for costs incurred do not need to be submitted with A-19s. All contractors are required to maintain accounting records in accordance with state and federal laws. Records must be sufficient to demonstrate the funds have been used in accordance with section 601(d) of the Social Security Act. Commerce reserves the right to audit any costs submitted for reimbursement. The Contractor shall comply with Commerce A-19 audits and provide the appropriate records upon request.

LOCAL GOVERNMENT CORONAVIRUS RELIEF FUNDS CERTIFICATION

I, **<FIRST, LAST NAME>**, am the **<TITLE>** of **<LOCAL GOVERNMENT>**, and I certify that:

1. I have the authority and approval from the governing body on behalf of the Local Government to request reimbursement from the Department of Commerce (Commerce) per contract number **<COMMERCE CONTRACT NUMBER>** from the allocation of the Coronavirus Relief Fund as created in section 5001 of H.R.748, the Coronavirus Aid, Relief, and Economic Security Act ("CARES Act") for eligible expenditures included on the corresponding A-19 invoice voucher for report period **<REPORT PERIOD FROM A-19>**.

2. I understand that as additional federal guidance becomes available, a contract amendment to the agreement between Commerce and the Local Government may become necessary.

3. I understand Commerce will rely on this certification as a material representation in processing this reimbursement.

4. I certify the use of funds submitted for reimbursement from the Coronavirus Relief Funds under this contract were used only to cover those costs that:
   a. Are *necessary expenditures* incurred due to the public health emergency with respect to the Coronavirus Disease 2019 (COVID-19);
   b. Were not accounted for in the budget most recently approved as of March 27, 2020; and
   c. Were incurred during the period that begins on March 1, 2020, and ends on October 31, 2020.

5. I understand the use of funds pursuant to this certification must adhere to official federal guidance issued or to be issued on what constitutes a necessary expenditure. We have reviewed the guidance established by U.S. Department of the Treasury[1] and certify costs meet the required guidance. Any funds expended by the Local Government or its subcontractor(s) in any manner that does not adhere to official federal guidance shall be returned to the State of Washington.

6. I understand the Local Government receiving funds pursuant to this certification shall retain documentation of all uses of the funds, including but not limited to invoices and/or sales receipts in a manner consistent with §200.333 *Retention requirements for records* of 2 CFR Part 200 *Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards* (Uniform Guidance). Such documentation shall be produced to Commerce upon request and may be subject to audit by the State Auditor.

7. I understand any funds provided pursuant to this certification cannot be used as a revenue replacement for lower than expected tax or other revenue collections.

8. I understand funds received pursuant to this certification cannot be used for expenditures for which the Local Government has received any other emergency COVID-19 supplemental funding (whether state, federal or private in nature) for that same expense.

I certify that I have read the above certification and my statements contained herein are true and correct to the best of my knowledge.

_____
Printed Name

_____
Title

_____
Signature

_____
Date:

CRF A-19 Activity Report
INSTRUCTIONS

INSTRUCTIONS:

A completed CRF A-19 Certification and Activity Report must be submitted with each A-19 reimbursement request. The A-19 Activity Report must be submitted as an Excel spreadsheet, not a PDF. You must also include a detailed breakdown of the individual expenditures reported in **Column F** for each applicable sub-category included on the A-19 Activity Report.

There are 6 primary budget categories:

1. Medical Expenses
2. Public Health Expenses
3. Payroll expenses for public employees dedicated to COVID-19
4. Expenses to facilitate compliance with COVID-19-measures
5. Economic Supports
6. Other COVID-19 Expenses

Each primary budget category includes sub-categories and provides an option to add "other" sub-categories not listed.

Follow the below instructions when completing the A-19 Activity Report.

1. **REPORT PERIOD** - *Enter* the report period into **Cell D1** of the A-19 Activity Report.
   - a. This should match the report period entered on the corresponding A-19.
   - b. Report period should include MM/YY to MM/YYYY, i.e. 03/20, March 2020, 03/2020, etc.

2. **COLUMN E** - *Enter* the total amount of all previous reimbursement requests submitted to Commerce for each applicable sub-category.

3. **COLUMN F** - *Enter* the total amount being requested in the current reimbursement request for each applicable sub-category.

4. **COLUMN H: USE OF FUNDS** - You must include a general description of the use of the funds being requested for each applicable sub-category. Keep descriptions as concise as possible, but include adequate context to demonstrate how these funds helped address the COVID-19 emergency. If applicable, please consider:
   - a. Providing a brief description of the specific activities performed.
   - b. Identifying specific populations served.
   - c. Identifying specific programs created or utilized.
   - d. Including any known or intended outcomes, results, or community impacts.

5. **OTHER SUB-CATEGORIES** - Budget categories 1-5 include a placeholder to add an additional sub-category if necessary.
   - a. *Enter* a **Title** for other expenses added within the appropriate budget category.
   - b. *Enter* titles into **Cells D10, D19, D27, D36, and D41**.
   - c. There is only one "other" placeholder in each budget category section. Please combine multiple "other" sub-categories added to the same budget category.

6. **OTHER BUDGET CATEGORIES** - Budget category 6 is where you should include any eligible expenditures that don't fall under budget categories 1-5.
   - a. *Enter* a **Title** for these "other" expenses within budget category 6.
   - b. *Enter* titles into **Cells D44 - D48**.
   - c. There are only 5 entry fields available within Budget Category 6.

Coronavirus Relief Fund
-19 Activity Report

Report Period:

Eligible Expenditures	Previously Reported Expenditures	Current Expenditures this Invoice	Total Cumulative Expenditures	Brief Description of Use of Funds
1 Medical Expenses				
A Public hospitals, clinics, and similar facilities	$ -	$ -	$ -	
B Temporary public medical facilities & increased capacity	$ -	$ -	$ -	
C COVID-19 testing, including serological testing	$ -	$ -	$ -	
D Emergency medical response expenses	$ -	$ -	$ -	
E Telemedicine capabilities	$ -	$ -	$ -	
F Other	$ -	$ -	$ -	
Sub-Total:	$	$	$	
2 Public Health Expenses				
A Communication and enforcement of public health measures	$ -	$ -	$ -	
B Medical and protective supplies, including sanitation and PPE	$ -	$ -	$ -	
C Disinfecting public areas and other facilities	$ -	$ -	$ -	
D Technical assistance on COVID-19 threat mitigation	$ -	$ -	$ -	
E Public safety measures undertaken	$ -	$ -	$ -	
F Quarantining individuals	$ -	$ -	$ -	
G Other	$ -	$ -	$ -	
Sub-Total:	$	$	$	
3 Payroll expenses for public employees dedicated to COVID-19				
A Public Safety	$ -	$ -	$ -	
B Public Health	$ -	$ -	$ -	
C Health Care	$ -	$ -	$ -	
D Human Services	$ -	$ -	$ -	
E Economic Development	$ -	$ -	$ -	
F Other	$ -	$ -	$ -	
Sub-Total:	$	$	$	
4 Expenses to facilitate compliance with COVID-19-measures				
A Food access and delivery to residents	$ -	$ -	$ -	
B Distance learning tied to school closings	$ -	$ -	$ -	
C Telework capabilities of public employees	$ -	$ -	$ -	
D Paid sick and paid family and medical leave to public employees	$ -	$ -	$ -	
E COVID-19-related expenses in county jails	$ -	$ -	$ -	
F Care and mitigation services for homeless populations	$ -	$ -	$ -	
G Other	$ -	$ -	$ -	
Sub-Total:	$	$	$	
5 Economic Supports				
A Small Business Grants for business interruptions	$ -	$ -	$ -	
B Payroll Support Programs	$ -	$ -	$ -	
C Other	$ -	$ -	$ -	
Sub-Total:	$	$	$	
6 Other COVID-19 Expenses				
A Other	$ -	$ -	$ -	
B Other	$ -	$ -	$ -	
C Other	$ -	$ -	$ -	
D Other	$ -	$ -	$ -	
E Other	$ -	$ -	$ -	
Sub-Total:	$	$	$	
TOTAL:	**$ -**	**$ -**	**$ -**	

ATTACHMENT C
Coronavirus Relief Fund
Guidance for State, Territorial, Local, and Tribal Governments
Updated September 2, 2020[1]

The purpose of this document is to provide guidance to recipients of the funding available under section 601(a) of the Social Security Act, as added by section 5001 of the Coronavirus Aid, Relief, and Economic Security Act ("CARES Act"). The CARES Act established the Coronavirus Relief Fund (the "Fund") and appropriated $150 billion to the Fund. Under the CARES Act, the Fund is to be used to make payments for specified uses to States and certain local governments; the District of Columbia and U.S. Territories (consisting of the Commonwealth of Puerto Rico, the United States Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands); and Tribal governments.

The CARES Act provides that payments from the Fund may only be used to cover costs that—

1. are necessary expenditures incurred due to the public health emergency with respect to the Coronavirus Disease 2019 (COVID–19);

2. were not accounted for in the budget most recently approved as of March 27, 2020 (the date of enactment of the CARES Act) for the State or government; and

3. were incurred during the period that begins on March 1, 2020, and ends on December 30, 2020.[2]

The guidance that follows sets forth the Department of the Treasury's interpretation of these limitations on the permissible use of Fund payments.

Necessary expenditures incurred due to the public health emergency

The requirement that expenditures be incurred "due to" the public health emergency means that expenditures must be used for actions taken to respond to the public health emergency. These may include expenditures incurred to allow the State, territorial, local, or Tribal government to respond directly to the emergency, such as by addressing medical or public health needs, as well as expenditures incurred to respond to second-order effects of the emergency, such as by providing economic support to those suffering from employment or business interruptions due to COVID-19-related business closures.

Funds may not be used to fill shortfalls in government revenue to cover expenditures that would not otherwise qualify under the statute. Although a broad range of uses is allowed, revenue replacement is not a permissible use of Fund payments.

The statute also specifies that expenditures using Fund payments must be "necessary." The Department of the Treasury understands this term broadly to mean that the expenditure is reasonably necessary for its intended use in the reasonable judgment of the government officials responsible for spending Fund payments.

[1] On June 30, 2020, the guidance provided under "Costs incurred during the period that begins on March 1, 2020, and ends on December 30, 2020" was updated. On September 2, 2020, the "Supplemental Guidance on Use of Funds to Cover Payroll and Benefits of Public Employees" and "Supplemental Guidance on Use of Funds to Cover Administrative Costs" sections were added.
[2] *See* Section 601(d) of the Social Security Act, as added by section 5001 of the CARES Act.

Costs not accounted for in the budget most recently approved as of March 27, 2020

The CARES Act also requires that payments be used only to cover costs that were not accounted for in the budget most recently approved as of March 27, 2020. A cost meets this requirement if either (a) the cost cannot lawfully be funded using a line item, allotment, or allocation within that budget *or* (b) the cost is for a substantially different use from any expected use of funds in such a line item, allotment, or allocation.

The "most recently approved" budget refers to the enacted budget for the relevant fiscal period for the particular government, without taking into account subsequent supplemental appropriations enacted or other budgetary adjustments made by that government in response to the COVID-19 public health emergency. A cost is not considered to have been accounted for in a budget merely because it could be met using a budgetary stabilization fund, rainy day fund, or similar reserve account.

Costs incurred during the period that begins on March 1, 2020, and ends on December 30, 2020

Finally, the CARES Act provides that payments from the Fund may only be used to cover costs that were incurred during the period that begins on March 1, 2020, and ends on December 30, 2020 (the "covered period"). Putting this requirement together with the other provisions discussed above, section 601(d) may be summarized as providing that a State, local, or tribal government may use payments from the Fund only to cover previously unbudgeted costs of necessary expenditures incurred due to the COVID–19 public health emergency during the covered period.

Initial guidance released on April 22, 2020, provided that the cost of an expenditure is incurred when the recipient has expended funds to cover the cost. Upon further consideration and informed by an understanding of State, local, and tribal government practices, Treasury is clarifying that for a cost to be considered to have been incurred, performance or delivery must occur during the covered period but payment of funds need not be made during that time (though it is generally expected that this will take place within 90 days of a cost being incurred). For instance, in the case of a lease of equipment or other property, irrespective of when payment occurs, the cost of a lease payment shall be considered to have been incurred for the period of the lease that is within the covered period but not otherwise. Furthermore, in all cases it must be necessary that performance or delivery take place during the covered period. Thus the cost of a good or service received during the covered period will not be considered eligible under section 601(d) if there is no need for receipt until after the covered period has expired.

Goods delivered in the covered period need not be used during the covered period in all cases. For example, the cost of a good that must be delivered in December in order to be available for use in January could be covered using payments from the Fund. Additionally, the cost of goods purchased in bulk and delivered during the covered period may be covered using payments from the Fund if a portion of the goods is ordered for use in the covered period, the bulk purchase is consistent with the recipient's usual procurement policies and practices, and it is impractical to track and record when the items were used. A recipient may use payments from the Fund to purchase a durable good that is to be used during the current period and in subsequent periods if the acquisition in the covered period was necessary due to the public health emergency.

Given that it is not always possible to estimate with precision when a good or service will be needed, the touchstone in assessing the determination of need for a good or service during the covered period will be reasonableness at the time delivery or performance was sought, *e.g.*, the time of entry into a procurement contract specifying a time for delivery. Similarly, in recognition of the likelihood of supply chain disruptions and increased demand for certain goods and services during the COVID-19 public health emergency, if a recipient enters into a contract requiring the delivery of goods or performance of services by December 30, 2020, the failure of a vendor to complete delivery or services by December 30, 2020,

will not affect the ability of the recipient to use payments from the Fund to cover the cost of such goods or services if the delay is due to circumstances beyond the recipient's control.

This guidance applies in a like manner to costs of subrecipients. Thus, a grant or loan, for example, provided by a recipient using payments from the Fund must be used by the subrecipient only to purchase (or reimburse a purchase of) goods or services for which receipt both is needed within the covered period and occurs within the covered period. The direct recipient of payments from the Fund is ultimately responsible for compliance with this limitation on use of payments from the Fund.

Nonexclusive examples of eligible expenditures

Eligible expenditures include, but are not limited to, payment for:

1. Medical expenses such as:
    - COVID-19-related expenses of public hospitals, clinics, and similar facilities.
    - Expenses of establishing temporary public medical facilities and other measures to increase COVID-19 treatment capacity, including related construction costs.
    - Costs of providing COVID-19 testing, including serological testing.
    - Emergency medical response expenses, including emergency medical transportation, related to COVID-19.
    - Expenses for establishing and operating public telemedicine capabilities for COVID-19-related treatment.
2. Public health expenses such as:
    - Expenses for communication and enforcement by State, territorial, local, and Tribal governments of public health orders related to COVID-19.
    - Expenses for acquisition and distribution of medical and protective supplies, including sanitizing products and personal protective equipment, for medical personnel, police officers, social workers, child protection services, and child welfare officers, direct service providers for older adults and individuals with disabilities in community settings, and other public health or safety workers in connection with the COVID-19 public health emergency.
    - Expenses for disinfection of public areas and other facilities, *e.g.*, nursing homes, in response to the COVID-19 public health emergency.
    - Expenses for technical assistance to local authorities or other entities on mitigation of COVID-19-related threats to public health and safety.
    - Expenses for public safety measures undertaken in response to COVID-19.
    - Expenses for quarantining individuals.
3. Payroll expenses for public safety, public health, health care, human services, and similar employees whose services are substantially dedicated to mitigating or responding to the COVID-19 public health emergency.

4. Expenses of actions to facilitate compliance with COVID-19-related public health measures, such as:
    - Expenses for food delivery to residents, including, for example, senior citizens and other vulnerable populations, to enable compliance with COVID-19 public health precautions.
    - Expenses to facilitate distance learning, including technological improvements, in connection with school closings to enable compliance with COVID-19 precautions.
    - Expenses to improve telework capabilities for public employees to enable compliance with COVID-19 public health precautions.
    - Expenses of providing paid sick and paid family and medical leave to public employees to enable compliance with COVID-19 public health precautions.
    - COVID-19-related expenses of maintaining state prisons and county jails, including as relates to sanitation and improvement of social distancing measures, to enable compliance with COVID-19 public health precautions.
    - Expenses for care for homeless populations provided to mitigate COVID-19 effects and enable compliance with COVID-19 public health precautions.
5. Expenses associated with the provision of economic support in connection with the COVID-19 public health emergency, such as:
    - Expenditures related to the provision of grants to small businesses to reimburse the costs of business interruption caused by required closures.
    - Expenditures related to a State, territorial, local, or Tribal government payroll support program.
    - Unemployment insurance costs related to the COVID-19 public health emergency if such costs will not be reimbursed by the federal government pursuant to the CARES Act or otherwise.
6. Any other COVID-19-related expenses reasonably necessary to the function of government that satisfy the Fund's eligibility criteria.

Nonexclusive examples of ineligible expenditures[3]

The following is a list of examples of costs that would not be eligible expenditures of payments from the Fund.

1. Expenses for the State share of Medicaid.[4]
2. Damages covered by insurance.
3. Payroll or benefits expenses for employees whose work duties are not substantially dedicated to mitigating or responding to the COVID-19 public health emergency.

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[3] In addition, pursuant to section 5001(b) of the CARES Act, payments from the Fund may not be expended for an elective abortion or on research in which a human embryo is destroyed, discarded, or knowingly subjected to risk of injury or death. The prohibition on payment for abortions does not apply to an abortion if the pregnancy is the result of an act of rape or incest; or in the case where a woman suffers from a physical disorder, physical injury, or physical illness, including a life-endangering physical condition caused by or arising from the pregnancy itself, that would, as certified by a physician, place the woman in danger of death unless an abortion is performed. Furthermore, no government which receives payments from the Fund may discriminate against a health care entity on the basis that the entity does not provide, pay for, provide coverage of, or refer for abortions.

[4] *See* 42 C.F.R. § 433.51 and 45 C.F.R. § 75.306.

4. Expenses that have been or will be reimbursed under any federal program, such as the reimbursement by the federal government pursuant to the CARES Act of contributions by States to State unemployment funds.
5. Reimbursement to donors for donated items or services.
6. Workforce bonuses other than hazard pay or overtime.
7. Severance pay.
8. Legal settlements.

Supplemental Guidance on Use of Funds to Cover Payroll and Benefits of Public Employees

As discussed in the Guidance above, the CARES Act provides that payments from the Fund must be used only to cover costs that were not accounted for in the budget most recently approved as of March 27, 2020. As reflected in the Guidance and FAQs, Treasury has not interpreted this provision to limit eligible costs to those that are incremental increases above amounts previously budgeted. Rather, Treasury has interpreted this provision to exclude items that were already covered for their original use (or a substantially similar use). This guidance reflects the intent behind the Fund, which was not to provide general fiscal assistance to state governments but rather to assist them with COVID-19-related necessary expenditures. With respect to personnel expenses, though the Fund was not intended to be used to cover government payroll expenses generally, the Fund was intended to provide assistance to address increased expenses, such as the expense of hiring new personnel as needed to assist with the government's response to the public health emergency and to allow recipients facing budget pressures not to have to lay off or furlough employees who would be needed to assist with that purpose.

Substantially different use

As stated in the Guidance above, Treasury considers the requirement that payments from the Fund be used only to cover costs that were not accounted for in the budget most recently approved as of March 27, 2020, to be met if either (a) the cost cannot lawfully be funded using a line item, allotment, or allocation within that budget *or* (b) the cost is for a *substantially different use* from any expected use of funds in such a line item, allotment, or allocation.

Treasury has provided examples as to what would constitute a substantially different use. Treasury provided (in FAQ A.3) that costs incurred for a substantially different use would include, for example, the costs of redeploying educational support staff or faculty to develop online learning capabilities, such as through providing information technology support that is not part of the staff or faculty's ordinary responsibilities.

Substantially dedicated

Within this category of substantially different uses, as stated in the Guidance above, Treasury has included payroll and benefits expenses for public safety, public health, health care, human services, and similar employees whose services are *substantially dedicated* to mitigating or responding to the COVID-19 public health emergency. The *full amount* of payroll and benefits expenses of substantially dedicated employees may be covered using payments from the Fund. Treasury has not developed a precise definition of what "substantially dedicated" means given that there is not a precise way to define this term

across different employment types. The relevant unit of government should maintain documentation of the "substantially dedicated" conclusion with respect to its employees.

If an employee is not substantially dedicated to mitigating or responding to the COVID-19 public health emergency, his or her payroll and benefits expenses may not be covered *in full* with payments from the Fund. A *portion* of such expenses may be able to be covered, however, as discussed below.

Public health and public safety

In recognition of the particular importance of public health and public safety workers to State, local, and tribal government responses to the public health emergency, Treasury has provided, as an administrative accommodation, that a State, local, or tribal government may presume that public health and public safety employees meet the substantially dedicated test, unless the chief executive (or equivalent) of the relevant government determines that specific circumstances indicate otherwise. This means that, if this presumption applies, work performed by such employees is considered to be a substantially different use than accounted for in the most recently approved budget as of March 27, 2020. All costs of such employees may be covered using payments from the Fund for services provided during the period that begins on March 1, 2020, and ends on December 30, 2020.

In response to questions regarding which employees are within the scope of this accommodation, Treasury is supplementing this guidance to clarify that public safety employees would include police officers (including state police officers), sheriffs and deputy sheriffs, firefighters, emergency medical responders, correctional and detention officers, and those who directly support such employees such as dispatchers and supervisory personnel. Public health employees would include employees involved in providing medical and other health services to patients and supervisory personnel, including medical staff assigned to schools, prisons, and other such institutions, and other support services essential for patient care (*e.g.*, laboratory technicians) as well as employees of public health departments directly engaged in matters related to public health and related supervisory personnel.

Not substantially dedicated

As provided in FAQ A.47, a State, local, or tribal government may also track time spent by employees related to COVID-19 and apply Fund payments on that basis but would need to do so consistently within the relevant agency or department. This means, for example, that a government could cover payroll expenses allocated on an hourly basis to employees' time dedicated to mitigating or responding to the COVID-19 public health emergency. This result provides equitable treatment to governments that, for example, instead of having a few employees who are substantially dedicated to the public health emergency, have many employees who have a minority of their time dedicated to the public health emergency.

Covered benefits

Payroll and benefits of a substantially dedicated employee may be covered using payments from the Fund to the extent incurred between March 1 and December 30, 2020.

Payroll includes certain hazard pay and overtime, but not workforce bonuses. As discussed in FAQ A.29, hazard pay may be covered using payments from the Fund if it is provided for performing hazardous duty or work involving physical hardship that in each case is related to COVID-19. This means that, whereas payroll and benefits of an employee who is substantially dedicated to mitigating or responding to the COVID-19 public health emergency may generally be covered in full using payments from the Fund, hazard pay specifically may only be covered to the extent it is related to COVID-19. For example, a recipient may use payments from the Fund to cover hazard pay for a police officer coming in close

contact with members of the public to enforce public health or public safety orders, but across-the-board hazard pay for all members of a police department regardless of their duties would not be able to be covered with payments from the Fund. This position reflects the statutory intent discussed above: the Fund was intended to be used to help governments address the public health emergency both by providing funds for incremental expenses (such as hazard pay related to COVID-19) and to allow governments not to have to furlough or lay off employees needed to address the public health emergency but was not intended to provide across-the-board budget support (as would be the case if hazard pay regardless of its relation to COVID-19 or workforce bonuses were permitted to be covered using payments from the Fund).

Relatedly, both hazard pay and overtime pay for employees that are not substantially dedicated may only be covered using the Fund if the hazard pay and overtime pay is for COVID-19-related duties. As discussed above, governments may allocate payroll and benefits of such employees with respect to time worked on COVID-19-related matters.

Covered benefits include, but are not limited to, the costs of all types of leave (vacation, family-related, sick, military, bereavement, sabbatical, jury duty), employee insurance (health, life, dental, vision), retirement (pensions, 401(k)), unemployment benefit plans (federal and state), workers compensation insurance, and Federal Insurance Contributions Act (FICA) taxes (which includes Social Security and Medicare taxes).

Supplemental Guidance on Use of Funds to Cover Administrative Costs

General

Payments from the Fund are not administered as part of a traditional grant program and the provisions of the Uniform Guidance, 2 C.F.R. Part 200, that are applicable to indirect costs do not apply. Recipients may not apply their indirect costs rates to payments received from the Fund.

Recipients may, if they meet the conditions specified in the guidance for tracking time consistently across a department, use payments from the Fund to cover the portion of payroll and benefits of employees corresponding to time spent on administrative work necessary due to the COVID-19 public health emergency. (In other words, such costs would be eligible direct costs of the recipient). This includes, but is not limited to, costs related to disbursing payments from the Fund and managing new grant programs established using payments from the Fund.

As with any other costs to be covered using payments from the Fund, any such administrative costs must be incurred by December 30, 2020, with an exception for certain compliance costs as discussed below. Furthermore, as discussed in the Guidance above, as with any other cost, an administrative cost that has been or will be reimbursed under any federal program may not be covered with the Fund. For example, if an administrative cost is already being covered as a direct or indirect cost pursuant to another federal grant, the Fund may not be used to cover that cost.

Compliance costs related to the Fund

As previously stated in FAQ B.11, recipients are permitted to use payments from the Fund to cover the expenses of an audit conducted under the Single Audit Act, subject to the limitations set forth in 2 C.F.R. § 200.425. Pursuant to that provision of the Uniform Guidance, recipients and subrecipients subject to the Single Audit Act may use payments from the Fund to cover a reasonably proportionate share of the costs of audits attributable to the Fund.

To the extent a cost is incurred by December 30, 2020, for an eligible use consistent with section 601 of the Social Security Act and Treasury's guidance, a necessary administrative compliance expense that relates to such underlying cost may be incurred after December 30, 2020. Such an expense would include, for example, expenses incurred to comply with the Single Audit Act and reporting and recordkeeping requirements imposed by the Office of Inspector General. A recipient with such necessary administrative expenses, such as an ongoing audit continuing past December 30, 2020, that relates to Fund expenditures incurred during the covered period, must report to the Treasury Office of Inspector General by the quarter ending September 2021 an estimate of the amount of such necessary administrative expenses.

WHATCOM COUNTY CONTRACT INFORMATION SHEET

Whatcom County Contract No.

Originating Department:	Prosecuting Attorney's Office
Division/Program: *(i.e. Dept. Division and Program)*	6510 Prosecuting Attorney Admin
Contract or Grant Administrator:	Vanessa Martin
Contractor's / Agency Name:	Sea Mar Community Health Centers

Is this a New Contract? If not, is this an Amendment or Renewal to an Existing Contract? Yes ○ No ○
Yes ○ No ○ If Amendment or Renewal, (per WCC 3.08.100 (a)) Original Contract #: 202005001

Does contract require Council Approval? Yes ○ No ○ If No, include WCC: _____
Already approved? Council Approved Date: May 6, 2020 (Exclusions 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): 201911012 and K4513

Is this contract the result of a RFP or Bid process? Contract
Yes ○ No ○ If yes, RFP and Bid number(s): _____ Cost Center: 2622 and 2623

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.
- ☐ Goods and services provided due to an emergency
- ☐ Contract work is for less than $100,000.
- ☐ Contract for Commercial off the shelf items (COTS).
- ☐ Contract work is for less than 120 days.
- ☐ Work related subcontract less than $25,000.
- ☐ Interlocal Agreement (between Governments).
- ☐ Public Works - Local Agency/Federally Funded FHWA.

Contract Amount:(sum of original contract amount and any prior amendments):
$ 288,778.00

This Amendment Amount:
$ 470,793.00

Total Amended Amount:
$ 759,571.00

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 contract funds the oversight and administration of the LEAD Program and integration with the GRACE Program.

Term of Contract:	Expiration Date:

Contract Routing:

1. Prepared by: Vanessa Martin Date: 9/11/2020
2. Attorney signoff: Christopher Quinn Date:
3. AS Finance reviewed: Marianne Caldwell Date:
4. IT reviewed (if IT related): Date:
5. Contractor signed: Date:
6. Submitted to Exec.: Date:
7. Council approved (if necessary): Date:
8. Executive signed: Date:
9. Original to Council: Date:

Whatcom County

COUNTY COURTHOUSE
311 Grand Avenue, Ste #105
Bellingham, WA 98225-4038
(360) 778-5010

Agenda Bill Master Report

File Number: AB2020-452

File ID:	AB2020-452	**Version:**	1	**Status:**	Agenda Ready
File Created:	10/15/2020	**Entered by:**	JThomson@co.whatcom.wa.us		
Department:	Health Department	**File Type:**	Contract		
Assigned to:	Council Finance and Administrative Services Committee			**Final Action:**	
Agenda Date:	10/27/2020			**Enactment #:**	

Primary Contact Email: CHollins@co.whatcom.wa.us

TITLE FOR AGENDA ITEM:

Request authorization for the County Executive to enter into a contract between Whatcom County and Northwest Workforce Council to provide reimbursement of wages and benefits for eligible temporary employees working in various COVID-related positions, for a total estimated contract amount of $112,000

SUMMARY STATEMENT OR LEGAL NOTICE LANGUAGE:

See attachments

HISTORY OF LEGISLATIVE FILE

Date:	Acting Body:	Action:	Sent To:

Attachments: Memo to County Executive, Contract

WHATCOM COUNTY
Health Department

Erika Lautenbach, Director
Greg Stern, M.D., Health Officer

MEMORANDUM

TO: Satpal Sidhu, County Executive

FROM: Erika Lautenbach, Director

RE: Northwest Workforce Council – Disaster Relief Employment Contract

DATE: October 15, 2020

Attached is a contract between Whatcom County and Northwest Workforce Council for your review and signature.

- **Background and Purpose**

  Northwest Workforce Council (NWC) provides disaster-relief and humanitarian assistance employment to minimize the employment and economic impact of the COVID-19 pandemic. NWC certifies eligibility for services under the Workforce Innovation and Opportunity Act COVID-19 Disaster Recovery Subsidized Employment Program and the Health Department intends to temporarily employ eligible participants for various COVID-related positions including Nurses, Case/Contact Investigators, and testing site support staff.

- **Funding Amount and Source**

  NWC will reimburse Whatcom County for the total cost of wages and fringe benefits for approximately seven participants at a rate of $16,000 per participant, for a total contract amount not to exceed $112,000. These funds will be included in the 2020 – 2021 budgets. Council approval is required as funding exceeds $40,000.

Please contact Kathleen Roy at extension #6007 if you have any questions regarding this agreement.

Encl.

509 Girard Street
Bellingham, WA 98225-4005
360.778.6000 | FAX 360.778.6001
WhatcomCountyHealth
WhatcomCoHealth

Whatcom County HEALTH Department

1500 North State Street
Bellingham, WA 98225-4551
360.778.6100 | FAX 360.778.6101
www.whatcomcounty.us/health

	WHATCOM COUNTY CONTRACT INFORMATION SHEET	Whatcom County Contract No. ____

Originating Department:	85 Health
Division/Program: *(i.e. Dept. Division and Program)*	8560 Communicable Disease / 856010 Communicable Disease Admin
Contract or Grant Administrator:	Cindy Hollinsworth
Contractor's / Agency Name:	Northwest Workforce Council

Is this a New Contract?		If not, is this an Amendment or Renewal to an Existing Contract?	Yes ☐	No ☐
Yes ☒	No ☐	If Amendment or Renewal, (per WCC 3.08.100 (a)) Original Contract #:		

Does contract require Council Approval?	Yes ☒	No ☐	If No, include WCC:	
Already approved? Council Approved Date:			(Exclusions see: Whatcom County Codes 3.06.010, 3.08.090 and 3.08.100)	

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

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

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

Contract Amount:(sum of original contract amount and any prior amendments):	Council approval required for; all property leases, contracts or bid awards **exceeding $40,000**, and professional service contract amendments that have an increase greater than $10,000 or 10% of contract amount, whichever is greater, **except when*:***
Varies depending on number of participants employed.	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 contract provides reimbursement for employment of eligible disaster-relief and humanitarian assistance participants certified by the Northwest Workforce Council.

Term of Contract:	8 Months	Expiration Date:	06/30/2021

Contract Routing:				
	1. Prepared by:	JT	Date:	09/24/2020
	2. Attorney signoff:	RB	Date:	10/12/2020
	3. AS Finance reviewed:	M Caldwell	Date:	10/15/2020
	4. IT reviewed (if IT related):		Date:	
	5. Contractor approved:		Date:	
	6. Submitted to Exec.:		Date:	
	7. Council approved (if necessary):		Date:	
	8. Executive signed:		Date:	
	9. Original to Council:		Date:	

Northwest Workforce Council

PO Box 2009 (101 Prospect Street), Bellingham, WA 98227 - 360.676.3209 ● 2005 E. College Way, Mount Vernon, WA 98273 - 360.416.3600
265 NE Kettle St., Ste. 102, Oak Harbor, WA 98277 - 360.675.5966 ● PO Box 1696 (540 Guard Street #210), Friday Harbor, WA 98250 - 360.378.4662
- www.nwboard.org -

Disaster Relief Employment Contract

This contract by and between the Northwest Workforce Council hereinafter the **NWC**, and **Whatcom County** hereinafter called the **Employer,** is entered into for the purpose of providing disaster-relief employment and humanitarian assistance employment to minimize the employment and economic impact of the COVID-19 disasters in the disaster-declared area as defined in 20 CFR 687.110(b).

Authorized Employer Representative: Cindy Hollinsworth	Title: Communicable Disease & Epidemiology Manager
Business Name: Whatcom County Health Department	Phone: 360-778-6160
Mailing Address: 1500 N State Street	UBI #: 371010246
City, State, Zip Code: Bellingham, WA 98225	

STATEMENT OF WORK

The Employer agrees to hire , hereinafter called the Participant, who has been certified by the NWC to be eligible for services under Workforce Innovation and Opportunity Act (WIOA) COVID-19 Disaster Recovery Subsidized Employment program and has been assessed as appropriate for employment under this agreement.

The Employer shall furnish the necessary supervisory personnel and services and otherwise do all things necessary for or incidental to support the performance of the work set forth in Exhibit A - Job Description(s) attached hereto and incorporated herein.

If more than one (1) participant will be hired under this contract, please include:

1. The completed Job Description(s) for the positions they will be filling; and
2. Attachment 1, listing the positions they will be filling, names (if known), start dates (if known), and the Wage/salary rate and Fringe benefits rate.

PERIOD OF PERFORMANCE

This contract performance period shall commence on **October 28, 2020** and shall be completed on or before **June 30, 2021**.

The Employer shall not hire nor place a person in this employment position prior to the agreed upon starting date. The reimbursable employment shall be completed by the ending date as stated in the contract unless an extension has been applied for and approved by the NWC in writing.

TERMS AND CONDITIONS

All rights and obligations of the parties to this Contract shall be subject to and governed by the

Terms and Conditions attached to and contained in this Contract.

REIMBURSEMENT/PAYMENT SCHEDULE

The NWC agrees to reimburse the Employer the total cost of each Participant's wage and fringe benefit during the contract performance period for **seven** participants in the amount not to exceed **112,000**.

Wage/salary rate: **CCI/support staff – $17.62**
Nurse – $32.09
Nurse with Masters – $33.53

Fringe benefits rate: **Social Security – 7.65% of wages (6230)**
Unemployment – .26% (.0026) of wages (6269)
Workers Comp –
Nurse & Nurse with Masters: $.35/hour worked (6259)
CCI/support staff – $.25/hour worked
State PFM Leave – $.1467% (.001467) of wages

The Employer shall pay the Participant at the agreed upon wage/salary rate and benefits on the following payroll schedule: (CHECK ONE)

☐	Weekly	☒	Bi-Weekly	☐	Semi-Monthly	☐	Monthly

The Employer will not be reimbursed for any travel expenses.
The parties have agreed that the total compensation payable to the Employer, for satisfactorily accomplishing the work set forth in Exhibit A will not exceed $16,000.

BILLING PROCEDURE

Payments shall be made to the Employer on a cost reimbursement basis and will be paid by check. The Employer will provide reimbursement voucher stating the cost of paid participant wage & benefits request for reimbursement and any additional leveraged wage and benefit expenditures supporting the position. Proof of payment shall be attached to the reimbursement voucher such as payroll record copies.

Documentation of expenses may be submitted on a schedule determined by the Employer but no less often than quarterly. Each submission will clearly indicate that it is "FOR EXPENSES INCURRED IN PERFORMANCE UNDER CONTRACT NUMBER _____. Final submissions are due no later than July 15, 2021. Reimbursements shall be made within 30 days of submission.

No reimbursement will be made to Employer for work performed and training provided after the ending date of the Contract. A Contract Amendment must be signed by all parties extending length of the Contract before further reimbursement may be made.

Documentation of expenses shall be submitted to:

Northwest Workforce Development Council
PO Box 2009
Bellingham, WA 98227-2009
Attn: Fiscal

EMPLOYER FURTHER AGREES

1. To comply with Federal and State laws and local ordinances and all applicable business licensing, taxation, and insurance requirements;

2. To maintain all records pertinent to payroll, time and attendance, job duties, employment status, benefits, and training in sufficient detail to document reimbursement requests and compliance with the terms and conditions of this agreement and shall make such records available to the NWC, State and Federal WIOA representatives upon reasonable request. Such records will be maintained at: **311 Grand Avenue, Suite 107, Bellingham, WA 98225**.

DISPLACEMENT OF WORKERS

Employer certifies that this Position does not displace (including partial displacement such as a reduction in the hours of non-overtime work, wages, or employment benefits) a person in layoff status or a current employee. Yes: ☒ No: ☐

TERMINATION PROVISIONS

This contract shall terminate upon the earliest of: 1) the final date of the subsidized employment period, or 2) the final date of the participant's employment by the Employer. In lieu of these dates, the contract may be terminated immediately for: 1) non-performance, or 2) lack of funds, or 3) violations of WIOA, its implementing regulations, or the terms and conditions of this agreement.

Either party may terminate this agreement by giving written notice specifying the reasons for termination.

CONTRACT MANAGEMENT

The Council's Program Manager, his/her successor or designees shall provide the Employer the assistance and guidance necessary for the performance of this Contract. The Council's Program Manager or designee shall be responsible for the review and acceptance of the Employer's performance, deliverables, and expense submissions, and accepting any reports from the Employer.

ACCEPTANCE

The Council reserves the right to withhold reimbursement if the Council determines that job activities were not performed as described in Exhibit A – Job Description, or if any other

requirement of the contract is not met. If performance does not meet the requirements of the Contract, the Council shall immediately notify the Employer in writing of the nature of the defects and the method of remedy of those defects. The Employer will take timely action to remedy defects as to permit reimbursement of eligible expenses. Notwithstanding the other provisions of this Contract, the Council shall not unreasonably withhold reimbursement of the Employer.

CONFORMANCE

If any provision of this Contract is in conflict with or violates any statute or rule of law of the State of Washington, it is considered modified to conform to that statute or rule of law.

SEVERABILITY

If any provision of this Contract or any provision of any document incorporated by reference shall be held invalid, such invalidity shall not affect the other provisions of this contract which can be given effect without the invalid provision, and to this end the provisions of this contract as declared to be severable.

ORDER OF PRECEDENCE

In the event of an inconsistency in this Contract, unless otherwise provided herein, the inconsistency shall be resolved by giving precedence in the following order:

1) Applicable Federal and State Statutes and Regulations;
2) Those Terms and Conditions attached to and contained in the Contract;
3) The Statement of Work – Job Description attached hereto and incorporated herein; and
4) Any other provisions of the Contract whether incorporated by reference or otherwise.

ASSURANCES UNDER TITLE I OF WIOA

Employer assures that it will comply fully with the nondiscrimination and equal opportunity provisions of the following laws:

- Section 188 of the Workforce Innovation and Opportunity Act of 2014 (WIOA), which prohibits discrimination against all individuals in the United States on the basis of race, color, religion, sex (including pregnancy, childbirth and related medical conditions, transgender status, and gender identity), national origin (including limited English proficiency), age, disability, political affiliation or belief, and against beneficiaries on the basis of either citizenship/status or participation in any WIOA Title I-financially assisted program or activity;
- Title VI of the Civil Rights Act of 1964, as amended, which prohibits discrimination on the basis of race, color or national origin;
- Section 504 of the Rehabilitation Act of 1973, as amended, which prohibits discrimination against qualified individuals with disabilities; and
- The Age Discrimination Act of 1975, as amended, which prohibits discrimination on the basis of age; and
- Title IX of the Education Amendments of 1972, as amended, which prohibits discrimination on the basis of sex in educational programs.

DEBARMENT AND SUSPENSION

By executing this Contract, the Employer certifies to the Council that it is not debarred, suspended, or otherwise excluded from or ineligible for, participation in Federal Assistance programs under Executive Order 12549 "Debarment and Suspension." The Employer certifies that it will not contract with a subcontractor that is debarred or suspended.

LOBBYING

By executing this contract, the Employer certifies that no funds allocated under this contract will be used for political activity or be paid to any person for influencing or attempting to influence an officer or employee of a federal agency.

Further, the Employer certifies to the Council that funds allocated through this contract will not be used for the lobbying or the influencing of persons associated with the awarding of federal contracts and grants. The Employer also agrees to disclose any lobbying of federal officials undertaken with non-federal funds.

USE AND DISCLOSURE OF INFORMATION

The Employer shall use any private and confidential information provided under this contract solely for the purpose for which the information was disclosed. The Employer shall not disclose or misuse any private and confidential information under this contract unless the disclosure is authorized by law. The misuse or unauthorized release of private and confidential information shall subject Employer, its employees or agents to a civil penalty of five thousand dollars and other applicable sanctions under state and federal law.

ALL WRITINGS CONTAINED HEREIN

This Contract sets forth in full the entire agreement of the parties in relation to the subject matter hereof. Any other agreement, representation, or understandings, verbal or otherwise, relating to the professional services of the Employer or otherwise dealing in any manner with the subject matter of this Contract is hereby deemed to be null and void and of no force and effect whatsoever. This Contract may be waived, changed, modified, or amended only by written agreement executed by both of the parties hereto.

IN WITNESS WHEREOF, the parties have executed this Contract.

For Northwest Workforce Council:		**For Employer:**	
_____		_____	
Signature	Date	Signature	Date
Deputy Director		Director	
Title		Title	

DEPARTMENT APPROVAL

Approved by CH/JT 10/08/2020
Cindy Hollinsworth, Date
Communicable Disease & Epidemiology Manager

WHATCOM COUNTY

SATPAL SIDHU
County Executive

STATE OF WASHINGTON)
)
COUNTY OF WHATCOM)

On this _____day of _____, 2020, before me personally appeared Satpal Sidhu, to me known to be the Executive of Whatcom County and who executed the above instrument and who acknowledged to me the act of signing and sealing thereof.

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

My Commission expires:_____

APPROVED AS TO FORM

Approved by email RB/JT 10/12/2020
Royce Buckingham, Prosecuting Attorney Date

Northwest Workforce Council

PO Box 2009 (101 Prospect Street), Bellingham, WA 98227 - 360.676.1521 • 2005 E. College Way, Mount Vernon, WA 98273 - 360.416.3600
265 NE Kettle St., Ste. 102, Oak Harbor, WA 98277 - 360.675.5966 • PO Box 1696 (540 Guard Street #210), Friday Harbor, WA 98250 - 360.378.4662
- www.nwboard.org -

DISASTER RELIEF EMPLOYMENT CONTRACT
TERMS AND CONDITIONS

PARTIES TO THE CONTRACT WILL UPHOLD AND ABIDE BY THE FOLLOWING:

ACCOUNTING: Employers will keep records for the Participant (employee) which must include:

- Social Security Number
- Job Title and Job Duties Statement
- Copies of all Time Invoices
- Copies of all warning letters and other correspondence and or letters relating to the Participant
- Gross Pay and Fringe Benefits for each pay period
- Copy of the Disaster Relief Employment Contract

All Participant records are subject to audit and must be maintained for three (3) years beyond completion of contract.

ATTENDANCE RECORDS: Employer must maintain daily attendance records and report attendance to Northwest Workforce Council (NWC) with payroll system documentation.

BENEFITS: Employer shall provide the participant with:

- State Accident Insurance or its equivalent
- State Unemployment Insurance
- Any other Fringe Benefits required by law
- All Fringe Benefits provided other persons similarly employed by the Employer and to the same level and extent

CONCERNS/COMPLAINTS: Complaints arising from the terms of this contact shall first be informally negotiated between the complainant and the respondent. Bona fide Workforce Innovation and Opportunity Act (WIOA) Complaints shall be processed in accordance with the WIOA (Pub. L. 113-128, 20 CFR part 683, and NWC Policy 1012 – 1, Revision 3) compliant procedure. The NWC reserves the right to review any complaint arising from the terms of this contract. The Employer agrees to present any relevant documentation or records to the Contractor upon written request.

CONTRACT AMENDMENTS: Amendments or modifications to the Contract may be made when there is:

- A change in the ending date of the Contract
- An increase or decrease in the hours to be worked
- Wage change (see pay upgrades)
- Any change affecting total training reimbursement or maximum duration of the total contract

Amendments must be agreed to by both NWC and Employer and processed in writing prior to the stated change and will be affixed as an addendum to the Contract.

CORRECTIVE ACTION: Employer must issue a written notice to the Participant (employee) when a problem arises, other than extreme instances where immediate termination is warranted, e.g., theft, endangering others, etc.

The corrective action should state the problem(s) needing correction, corrective action which should be taken and the consequences if this action is not taken within a specified time. If possible, the Employer is asked to issue at least one (1) written warning prior to termination of the Participant. A NWC staff member is available at all times to help work out employment problems. A copy must be sent to the NWC and a copy placed in the Participant's file at the work site.

DISPLACEMENT OF WORKERS: No currently employed worker may be displaced by a Participant (including partial displacement such as a reduction in the hours of non-overtime work, wages, or employment benefits). No Participant shall be employed or job openings filled when any other individual is on the layoff from the same or any substantially equivalent job or when the Employer has terminated the employment of any regular employee or otherwise reduced its work force with the intention of filling the vacancy so created by hiring an On-The-Job Training Participant. No training position can be created which infringes upon the promotional opportunities of currently employed workers.

NONDISCRIMINATION: Employer assures that it will comply fully with the nondiscrimination and equal opportunity provisions of the following laws:

• Section 188 of the Workforce Innovation and Opportunity Act of 2014 (WIOA), which prohibits discrimination against all individuals in the United States on the basis of race, color, religion, sex (including pregnancy, childbirth and related medical conditions, transgender status, and gender identity), national origin (including limited English proficiency), age, disability, political affiliation or belief, and against beneficiaries on the basis of either citizenship/status or participation in any WIOA Title I-financially assisted program or activity;

- Title VI of the Civil Rights Act of 1964, as amended, which prohibits discrimination on the basis of race, color or national origin;

- Section 504 of the Rehabilitation Act of 1973, as amended, which prohibits discrimination against qualified individuals with disabilities; and

- The Age Discrimination Act of 1975, as amended, which prohibits discrimination on the basis of age; and

- Title IX of the Education Amendments of 1972, as amended, which prohibits discrimination on the basis of sex in educational programs.

Employer also assures that, as a recipient of WIOA Title I financial assistance, it will comply with 29 CFR part 38 and all other regulations implementing the laws listed above. This assurance applies to the Employer's operation of the WIOA Title I-financially assisted program or activity, and to all agreements Employer makes to carry out the WIOA Title I financially assisted program or activity. Employer understands that the United States has the right to seek judicial enforcement of this assurance.

FEDERAL / STATE LIABILITY: It is understood that the Federal Government, represented by the U.S. Department of Labor and the State of Washington are not a party hereto and that no legal liability on the part of the Federal Government or the State of Washington is implied under the terms and conditions of this contract.

HIRING: Employer shall make the final hiring decision from among eligible applicants referred by the NWC. **The Employer shall not begin the paid employment prior to the agreed upon starting date specified in the contract.**

MONITORING: NWC is required to contact Employer and Participant periodically to determine the effectiveness of the employment program. Employer agrees to maintain all records pertinent to payroll, time and attendance, job duties, employment status, benefits, and training in sufficient detail to document reimbursement requests and compliance with the terms and conditions of this agreement and shall make such records available to the NWC, State and Federal WIOA representatives upon reasonable request.

Funds which are spent in violation of the contract may be subject to repayment.

NEPOTISM: A potential Participant who is a member of the Employer's family is not eligible for subsidized Disaster Relief Employment. NWC may not refer an applicant who is related to anyone serving in an Administrative capacity with the NWC.

OVERTIME: The Employer shall pay all overtime which may become due and owing the Participant and agrees to comply with the Fair Labor Standards Act and the Washington

Minimum Wage Act (RCW 49.46)

PAY UPGRADE: The Employer will notify in writing the NWC prior to any pay upgrade so that the contract can be modified and approved prior to payment.

POLITICAL ACTIVITIES: No funds received from the NWC may be used to promote political activities or for lobbying.

REIMBURSEMENT: The maximum amount to be paid to the Employer by the NWC for disaster relief employment shall be for the full amount in the Contract of the wages/salary and benefits paid to a Participant by the Employer as recorded in payroll record copies attached to the reimbursement voucher. No reimbursement will be made to Employer for work performed after the ending date of the Contract. A Contract Amendment must be signed by all parties extending length of the Contract before further reimbursement may be made.

RELIGIOUS ACTIVITIES: No Participant may be employed in the construction, maintenance or operation of any facility used for sectarian instruction or religious worship.

SAFETY AND HEALTH STANDARDS: The Employer agrees to comply with appropriate safety and health standards as defined in the Federal Occupational and Health Safety Act (Public Law 91-596) and Washington Industrial Safety and Health Act (RCW 49.17) and rules and regulations adopted under its authority. The Employer also agrees to comply with the general requirements defined by the Department of Labor and Industries for the prevention of COVID-19 (www.lni.wa.gov/forms-publications/f414-164-000.pdf).

SUPPORTIVE SERVICES: Some limited funds may be available from the NWC to assist WIOA participants to qualify for employment which they would not otherwise be able to participate in. Consult the WC Staff for details.

TERMINATION OF CONTRACT: This Contract will terminate upon:

- The final date of the employment period;
- The expenditure of the total contract reimbursable amount; or
- The final date of the Participant's employment with the Employer, whichever is soonest

Contract may be terminated earlier by Employer or NWC, upon written notice due to:

- Failure of Participant to meet Employer requirements (see corrective action)
- Failure of Employer to comply with the Terms and Conditions of this contract
- Termination or reduction of WIOA program funding to NWC

The NWC may terminate any Contract in whole or in part, at any time before the ending date of the contract due to funding reductions or cost within the WIOA DG Disaster Relief Employment program. Contract will be terminated if Participant leaves the OJT position prior to ending date of the Contract. Participant has agreed to verification of eligibility information provided at intake and understands that immediate termination will occur if they are found to be ineligible.

UNIONS: No funds received under a subsidized Disaster Relief Employment Contract may be used to promote or discourage union organizing.

WAGES: No participant shall receive less than the Federal Minimum Wage as authorized by the Fair Labor Standards and its amendments. Participant shall be paid at the same rate as other persons similarly employed by Employer including periodic raises. Where raises affect reimbursement under this Contract, prior NWC approval is required.

Affected employers agree to abide by the Davis Bacon Act Section 143 (d): All laborers and mechanics employed by contractors or subcontractors in any construction, alteration, or regular repair, including painting and decorating, or projects, buildings and works which are federally assisted under this Act, shall be paid wages at rates not less than those prevailing on similar construction in the locality as determined by the Secretary in accordance with the Act of March 3, 1931 (40 USC 276a-276a-5), popularly known as the Davis-Bacon Act. The Secretary shall have, with respect to such labor standards, the authority and have, with respect to such labor standards, the authority and functions set forth in Reorganization Plan Numbered 14 of 1950 (15 F.R. 3176: 64 Stat. 1267) and Section 2 of the Act of June 1, 1934, as amended (49 Stat. 948, as amended;40 USC 276(c)). The provisions of this subsection shall not apply to a bona fide participant in a training program under this Act. The provisions of section 167 (a) (4) shall apply to such participants.

Whatcom County

COUNTY COURTHOUSE
311 Grand Avenue, Ste #105
Bellingham, WA 98225-4038
(360) 778-5010

Agenda Bill Master Report

File Number: AB2020-454

File ID:	AB2020-454	**Version:**	1	**Status:**	Agenda Ready
File Created:	10/16/2020	**Entered by:**	SDraper@co.whatcom.wa.us		
Department:	Public Works Department	**File Type:**	Contract		
Assigned to:	Council Finance and Administrative Services Committee			**Final Action:**	
Agenda Date:	10/27/2020			**Enactment #:**	

Primary Contact Email: sdraper@co.whatcom.wa.us

TITLE FOR AGENDA ITEM:

Request authorization for the County Executive to enter into a contract between Whatcom County and Elliott Bay Design Group for the purposes of providing engineering services for the annual dry dock for the Whatcom Chief Ferry

SUMMARY STATEMENT OR LEGAL NOTICE LANGUAGE:

See Memo

HISTORY OF LEGISLATIVE FILE

Date:	Acting Body:	Action:	Sent To:

Attachments: On Call Support for Lummi Island Ferry System

WHATCOM COUNTY
PUBLIC WORKS DEPARTMENT

Jon Hutchings
Director

EQUIPMENT SERVICES DIVISION
901 W. Smith Road
Bellingham, WA 98226-9610
Phone (360) 778-6400
Fax (360) 778-6401
Eric L. Schlehuber, Division Manager

MEMORANDUM

To: Brad Bennett, AS Finance Manager

Through: Jon Hutchings, Public Works Director

From: Eric L. Schlehuber, PW Equipment Services Manager

Date: September 28, 2020

Re: On Call Support for Lummi Island Ferry System Contract (Whatcom County Bid #20-01)
Elliott Bay Design Group, LLC

- **Requested Action**
  Enclosed are two (2) contract originals between Whatcom County Public Works and Elliott Bay Design Group, LLC (EBDG) in the amount of $60,000.00 for your review and signature.

- **Background and Purpose**
  This agreement is intended to secure the services of Elliott Bay Design Group, LLC for the purposes of providing engineering services for the annual dry dock for the Whatcom Chief Ferry along with the other on-call services as needed for the Lummi Island Ferry System during the year.

- **Funding Amount and Source**
  The funding source has been allocated in the 2020 - 2021 Budget process.

- **New Contract**
  This is a new contract requiring County Executive's approval.

- **Recommended Action**
  Please approve this contract and forward to the Executive and the Whatcom County Council for approval at the October 27, 2020 Whatcom County Council Meeting.

Please contact Eric L. Schlehuber at extension 6405 if you have any questions or concerns regarding the terms of this agreement.

Enclosures

WHATCOM COUNTY CONTRACT INFORMATION SHEET

Whatcom County Contract No. _____

Originating Department:	Public Works/Equipment Services Division
Division/Program: (i.e. Dept. Division and Program)	910/9090/909040
Contract or Grant Administrator:	Eric L. Schlehuber
Contractor's / Agency Name:	Elliot Bay Design Group, LLC

Is this a New Contract? Yes ☒ No ☐ If not, is this an Amendment or Renewal to an Existing Contract? Yes ☐ No ☐
If Amendment or Renewal, (per WCC 3.08.100 (a)) Original Contract #: _____

Does contract require Council Approval? Yes ☒ No ☐ If No, include WCC: _____
Already approved? Council Approved Date: _____
(Exclusions see: Whatcom County Codes 3.06.010, 3.08.090 and 3.08.100)

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

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

Is this contract the result of a RFP or Bid process?
Yes ☒ No ☐ If yes, RFP and Bid number(s): RFQ 20-01 Contract Cost Center: ~~501600~~ 501000

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):
$ **60,000.00**
This Amendment Amount:
$ **0.00**
Total Amended Amount:
$ **60,000.00**

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: Request authorization for the County Executive to enter into a contract between Whatcom County and Elliot Bay Design Group, LLC to provide engineering services for the annual dry dock of the Whatcom Chief Ferry along with other on-call services as needed for the Lummi Island Ferry System.

Term of Contract:	1 year with three (3) 1-year extensions; this contract is for year one.	Expiration Date:	November 30, 2021

Contract Routing:

1. Prepared by:	T.Iddings	Date: 09/24/2020
2. Attorney signoff:	C.Quinn per email	Date: 10/02/2020
3. AS Finance reviewed:	M Caldwell	Date: 10/02/2020
4. IT reviewed (if IT related):		Date:
5. Contractor signed:		Date:
6. Submitted to Exec.:		Date:
7. Council approved (if necessary):		Date:
8. Executive signed:		Date:
9. Original to Council:		Date:

Whatcom County Contract No.

_____

CONTRACT FOR SERVICES FOR ON-CALL SUPPORT FOR LUMMI ISLAND FERRY SYSTEM BETWEEN WHATCOM COUNTY AND ELLIOTT BAY DESIGN GROUP, LLC

Elliott Bay Design Group, LLC, 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 9,
Exhibit "A" (Scope of Work), pp. 10,
Exhibit "B" (Compensation), pp. 11,
Exhibit "C" (Certificate of Insurance), pp. 12 to 27,
Exhibit "D" (Title VI Assurances), pp. 28,
Exhibit "E" (Contractor Declaration), pp. 29.

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 December, 2020, and shall, unless terminated or renewed as elsewhere provided in the Agreement, terminate on the 30th day of November, 2021. The term shall be as stated regardless of the date of signature.

The general purpose or objective of this Agreement is to provide engineering services for the annual dry dock of the Whatcom Chief Ferry along with other on-call services as needed for the Lummi Island System, 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 $60,000.00 USD. 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, Whatcom County and Elliott Bay Design Group, LLC have executed this Amendment on the date and year below written.

DATED this 7 day of Oct, 2020.

CONTRACTOR:

ELLIOTT BAY DESIGN GROUP, LLC

_____

Brian King, President

STATE OF WASHINGTON)
) ss.
COUNTY OF KING)

On this 7th day of October, 2020, before me appeared Brian King, to me known to be the President of Elliott Bay Design Group, LLC, and who executed the above instrument and who acknowledged to me the act of signing and sealing thereof.

JACKIE LEE Commission Expires 10-28-2022 NOTARY PUBLIC License Number 175529 STATE OF WASHINGTON

_____

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

Seattle, WA. My commission expires 10/28/2022.

WHATCOM COUNTY:
Recommended for Approval:

10/15/20

Jon Hutchings
Public Works Director

Date

Approved as to form:

Approved Via Email - C/Q - S.D. 10/15/20

Christopher Quinn, Senior Prosecuting Attorney

Date

Approved:
Accepted by Whatcom County:

By: _____
Satpal Singh Sidhu, Whatcom County Executive

STATE OF WASHINGTON)
) ss.
COUNTY OF WHATCOM)

On this _____ day of _____, 2020, before me appeared Satpal Singh Sidhu, to me known to be the Executive of Whatcom County and who executed the above instrument and who acknowledged to me the act of signing and sealing thereof.

_____

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

_____. My commission expires _____.

CONTRACTOR INFORMATION

Elliott Bay Design Group, LLC

Brian King, President

Address:
5305 Shilshole Avenue NW, Suite 100
Seattle, Washington 98107

Mailing Address:
5305 Shilshole Avenue NW, Suite 100
Seattle, Washington 98107

Contact Name: David Turner
Contact Phone: (206) 782-3082
Contact Fax: (206) 782-3449
Contact Email: dturner@edbg.com

GENERAL CONDITIONS

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

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 and materials provided by Contractor prior to or after the term of this contract shall be provided 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 thirty days prior to expiration, for a period of up to one year at a time for one additional one-year term, and for a total of no longer than four years on this contract. The option for extension shall be considered to be automatic, unless one party to the Agreement opts to terminate the Agreement. The minimum period of notification of intent to terminate the Agreement prior to the otherwise automatic extension shall be no less than 90 days prior to the current contract expiration date.

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 provision of the materials 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 material called for has been fully supplied. 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 obtaining the materials, including all increased costs for procuring them, 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, payments 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 materials 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 on a Schedule C, and has a tax account with the State of Washington Department of Revenue for payment of all sales and use and Business and Occupation taxes collected by the State of Washington.

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

30.2 Assignment and Subcontracting:

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

30.3 No Guarantee of Employment:

The performance of all or part of this contract by the Contractor shall not operate to vest any employment rights whatsoever and shall not be deemed to guarantee any employment of the Contractor or any employee of the Contractor or any subcontractor or any employee of any subcontractor by the County at the present time or in the future.

31.1 Ownership of Items Produced:

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

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 commercial general liability insurance with the following minimums:

Property Damage - $500,000.00 per occurrence;
General Liability & Bodily injury - $1,000,000.00 per occurrence.

A certificate of such insurance that also identifies the County as an additional insured, is attached hereto as Exhibit "C". The Contractor's insurance shall be primary and non-contributory and shall waive subrogation against the County, its employees, and its agents. The County's insurance shall not serve as a source of contribution.

In addition, the Contractor shall carry and provide proof of a standard errors and omissions policy for not less than $1,000,000.00 coverage against exposure to professional liability. If the professional liability insurance is a claims made policy, and if the Contractor discontinues coverage either during the term of this contract or within three years of completion, the Contractor agrees to purchase tail coverage for a minimum of three years from the completion date of this contract or any amendment to this contract.

34.2 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, to the extent 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, sexual orientation, age, marital status, 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, sexual orientation, age, marital status, 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:

Eric L. Schlehuber, Division Manager
Whatcom County Public Works
Equipment Services Division
901 West Smith Road
Bellingham, WA 98226-9610

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:
Contractor certifies that it has fully met the responsibility criteria required of public works contractors under RCW 39.04.350 (1), which include: (a) having a certificate of registration in compliance with RCW 18.27; (b) having a current state unified business identifier number; (c) if applicable, having industrial insurance coverage for its employees working in Washington as required in Title 51 RCW, an employment security department number as required in Title 50 RCW, and a state excise tax registration number as required in Title 82 RCW; and (d) not being disqualified from bidding on any public works contract under RCW 39.06.010 or 39.12.065 (3).

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 "General Service Administration List of Parties Excluded from Federal Procurement or Non-procurement Programs" is available to research this information at http://epls.arnet.gov/.

38.3 E-Verify: Not Applicable

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

40.1 Modifications:

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

40.2 Contractor Commitments, Warranties and Representations: Not Applicable

41.1 Severability:

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

41.2 Waiver:

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

42.1 Disputes:

a. General:

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

b. Notice of Potential Claims:

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

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

d. Arbitration: Not Applicable

e. Limitation of Liability:
The cumulative liability of the Contractor shall be limited to the total insurance proceeds paid on behalf of or to Elliott Bay Design Group, LLC by Elliott Bay Design Group, LLC insurers in settlement or satisfaction of County's claims under the terms and conditions of Elliott Bay Design Group, LLC insurance policies applicable thereto (excluding fees, costs and expenses of investigations, claims, adjustments, defense and appeal). In no event shall the Contractor be liable for any lost profits, business interruption, lost data, or for any indirect, incidental, special, consequential, exemplary or punitive damages.

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)

During the term of this Agreement, the County may call upon the Contractor to perform specific professional services related to engineering on an on-call basis for the Lummi Island Ferry System, including the Whatcom Chief Ferry.

The Contractor shall provide technical services related to engineering on an on-call basis. The County shall issue task orders for specific assignments under this agreement. The task orders shall define the scope of the task, the nature of products and deliverables, and the allowable expenses to be billed for that task in accordance with Exhibit "B" (Compensation). Only those expenses specifically approved by the County in a task order shall be compensable under this Agreement.

The County makes no expressed or implied guarantee as to the minimum amount of expenditures that shall be requested and approved under this Agreement.

EXHIBIT "B"
(COMPENSATION)

As consideration for services provided pursuant to Exhibit "A" (Scope of Work), the County agrees to compensate the Contractor according to the hourly rates (inclusive of overhead and fee) provided below in the compensation summary. Other reasonable direct expenses incurred in the course of performing the duties herein, shall be reimbursed at the cost or rate listed below. Any work performed prior to the effective date of this contract or continuing after the completion date of same, unless approved in writing, will be at the Contractor's expense.

Charges for services provided by Elliott Bay Design Group, LLC will be invoiced on the basis of the following schedule of fees for personnel spending time directly attributable to the project unless a stipulated amount is so indicated in the proposal or service agreement (see Item A & B). The total amount to be paid by the County to the Contractor for all tasks performed hereunder shall not exceed $60,000.00. Current rates are as follows:

1. PERSONNEL	RATE	
Principal	$	225.00/hour
Senior Naval Architect/Senior Marine Engineer	$	195.00/hour
Naval Architect/Marine Engineer 1	$	155.00/hour
Naval Architect/Marine Engineer 2	$	135.00/hour
Naval Architect/Marine Engineer 3	$	125.00/hour
Naval Architect/Marine Engineer 4	$	105.00/hour
Designer 1	$	125.00/hour
Designer 2	$	105.00/hour
Designer 3	$	90.00/hour
Technician (Administration)	$	80.00/hour
Intern	$	65.00/hour

Evening, weekend, and holiday hours may be subject to additional charges.

2. EXPENSES	RATE	
Reproduction	$	Cost + 10%
Postage	$	Cost + 10%
Travel	$	Cost + 10%
Mileage	$	Federal Rate
Computer:		
Usage	$	5.00/hour
Analytical Software	$	25.00/hour
Analytical Processing	$	80.00/hour
Library Fee	$	500.00

10% Handling Charge will be added to all expenses.

Term: Net 30 Days.

EXHIBIT "C"
(CERTIFICATE OF INSURANCE)

See attached Certificate of Liability Insurance.

Client#: 329913 ELLIOBAY

ACORD™ CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY) 12/02/2019

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

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

PRODUCER USI Insurance Services NW PR 601 Union Street, Suite 1000 Seattle, WA 98101	CONTACT NAME: Please See Below: PHONE (A/C, No, Ext): 206 441-6300 FAX (A/C, No): 610-362-8530 E-MAIL ADDRESS: Seattle.PLCertRequest@usi.com

INSURER(S) AFFORDING COVERAGE	NAIC #
INSURER A : Charter Oak Fire Insurance Company	25615
INSURER B : Travelers Indemnity Co of America	25666
INSURER C : Alaska National Insurance Company	38733
INSURER D : Travelers Casualty and Surety Company	19038
INSURER E : XL Specialty Insurance Company	37885
INSURER F :	

INSURED
Elliott Bay Design Group LLC
EBDG, Inc.
5305 Shilshole Avenue NW, Suite 100
Seattle, WA 98107

COVERAGES **CERTIFICATE NUMBER:** **REVISION NUMBER:**

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

INSR LTR	TYPE OF INSURANCE	ADDL INSR	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS	
A	X COMMERCIAL GENERAL LIABILITY CLAIMS-MADE X OCCUR X WA Stop Gap GEN'L AGGREGATE LIMIT APPLIES PER: POLICY X PRO-JECT LOC OTHER:	X	X	6804H9528141947	12/01/2019	12/01/2020	EACH OCCURRENCE DAMAGE TO RENTED PREMISES (Ea occurrence) MED EXP (Any one person) PERSONAL & ADV INJURY GENERAL AGGREGATE PRODUCTS - COMP/OP AGG Stop Gap/EL	$2,000,000 $1,000,000 $10,000 $2,000,000 $4,000,000 $4,000,000 $1,000,000
B	AUTOMOBILE LIABILITY X ANY AUTO OWNED AUTOS ONLY X SCHEDULED AUTOS X HIRED AUTOS ONLY X NON-OWNED AUTOS ONLY	X	X	BA1B92719319GRP	12/01/2019	12/01/2020	COMBINED SINGLE LIMIT (Ea accident) BODILY INJURY (Per person) BODILY INJURY (Per accident) PROPERTY DAMAGE (Per accident)	$1,000,000 $ $ $ $
B	X UMBRELLA LIAB X OCCUR EXCESS LIAB CLAIMS-MADE DED X RETENTION $10,000	X	X	CUP1B9268661947 (Follow Form)	12/01/2019	12/01/2020	EACH OCCURRENCE AGGREGATE	$4,000,000 $4,000,000 $
C D	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? Y/N N (Mandatory in NH) N/A If yes, describe under DESCRIPTION OF OPERATIONS below		X X	19LWU09486 WA USL&H UB8J16406A1947G AK CA FL LA NV NY	12/01/2019 12/01/2019 OR + USL&H	12/01/2020 12/01/2020	X PER STATUTE OTH-ER E.L. EACH ACCIDENT E.L. DISEASE - EA EMPLOYEE E.L. DISEASE - POLICY LIMIT	$1,000,000 $1,000,000 $1,000,000
E	Professional Liability Incl: Pollution		X	DPR9952222	12/01/2019	12/01/2020	$2,000,000 per claim $2,000,000 annl aggr.	

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

RE: RFQ #17-1. The General Liability policy includes an automatic Additional Insured endorsement that provides Additional Insured status to the Certificate Holder, its agents, and its insurer, only when there is a written contract that requires such status, and only with regard to work performed on behalf of the
(See Attached Descriptions)

CERTIFICATE HOLDER

Whatcom County Public Works
Attn: Eric Schlehuber
901 W Smith Road
Bellingham, WA 98226-0000

CANCELLATION

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE

Jean A. Ryan

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DESCRIPTIONS (Continued from Page 1)

named insured. The General Liability policy contains a special endorsement with Primary and Noncontributory wording, when required by written contract. The General Liability policy includes a Waiver of Subrogation endorsement in favor of Additional Insureds as referenced above.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

BLANKET ADDITIONAL INSURED (ARCHITECTS, ENGINEERS AND SURVEYORS)

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

1. The following is added to **SECTION II – WHO IS AN INSURED**:

   Any person or organization that you agree in a "written contract requiring insurance" to include as an additional insured on this Coverage Part, but:

   a. Only with respect to liability for "bodily injury", "property damage" or "personal injury"; and

   b. If, and only to the extent that, the injury or damage is caused by acts or omissions of you or your subcontractor in the performance of "your work" to which the "written contract requiring insurance" applies, or in connection with premises owned by or rented to you.

   The person or organization does not qualify as an additional insured:

   c. With respect to the independent acts or omissions of such person or organization; or

   d. For "bodily injury", "property damage" or "personal injury" for which such person or organization has assumed liability in a contract or agreement.

   The insurance provided to such additional insured is limited as follows:

   e. This insurance does not apply on any basis to any person or organization for which coverage as an additional insured specifically is added by another endorsement to this Coverage Part.

   f. This insurance does not apply to the rendering of or failure to render any "professional services".

   g. In the event that the Limits of Insurance of the Coverage Part shown in the Declarations exceed the limits of liability required by the "written contract requiring insurance", the insurance provided to the additional insured shall be limited to the limits of liability required by that "written contract requiring insurance". This endorsement does not increase the limits of insurance described in Section **III** – Limits Of Insurance.

   h. This insurance does not apply to "bodily injury" or "property damage" caused by "your work" and included in the "products-completed operations hazard" unless the "written contract requiring insurance" specifically requires you to provide such coverage for that additional insured, and then the insurance provided to the additional insured applies only to such "bodily injury" or "property damage" that occurs before the end of the period of time for which the "written contract requiring insurance" requires you to provide such coverage or the end of the policy period, whichever is earlier.

2. The following is added to Paragraph **4.a.** of **SECTION IV – COMMERCIAL GENERAL LIABILITY CONDITIONS**:

   The insurance provided to the additional insured is excess over any valid and collectible other insurance, whether primary, excess, contingent or on any other basis, that is available to the additional insured for a loss we cover. However, if you specifically agree in the "written contract requiring insurance" that this insurance provided to the additional insured under this Coverage Part must apply on a primary basis or a primary and non-contributory basis, this insurance is primary to other insurance available to the additional insured which covers that person or organizations as a named insured for such loss, and we will not share with the other insurance, provided that:

   (1) The "bodily injury" or "property damage" for which coverage is sought occurs; and

   (2) The "personal injury" for which coverage is sought arises out of an offense committed;

   after you have signed that "written contract requiring insurance". But this insurance provided to the additional insured still is excess over valid and collectible other insurance, whether primary, excess, contingent or on any other basis, that is available to the additional insured when that person or organization is an additional insured under any other insurance.

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3. The following is added to Paragraph **8.**, **Transfer Of Rights Of Recovery Against Others To Us**, of **SECTION IV – COMMERCIAL GENERAL LIABILITY CONDITIONS**:

   We waive any right of recovery we may have against any person or organization because of payments we make for "bodily injury", "property damage" or "personal injury" arising out of "your work" performed by you, or on your behalf, done under a "written contract requiring insurance" with that person or organization. We waive this right only where you have agreed to do so as part of the "written contract requiring insurance" with such person or organization signed by you before, and in effect when, the "bodily injury" or "property damage" occurs, or the "personal injury" offense is committed.

4. The following definition is added to the **DEFINITIONS** Section:

   "Written contract requiring insurance" means that part of any written contract under which you are required to include a person or organization as an additional insured on this Coverage Part, provided that the "bodily injury" and "property damage" occurs and the "personal injury" is caused by an offense committed:

   a. After you have signed that written contract;

   b. While that part of the written contract is in effect; and

   c. Before the end of the policy period.

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TABLE OF CONTENTS

COMMERCIAL GENERAL LIABILITY COVERAGE FORM CG T1 00 02 19

SECTION I – COVERAGES — Beginning on Page

Coverage A –
Bodily Injury and Property Damage Liability — Insuring Agreement 1
Exclusions 2

Coverage B –
Personal and Advertising Injury Liability — Insuring Agreement 6
Exclusions 6

Coverage C –
Medical Payments — Insuring Agreement 9
Exclusions 9

Supplementary Payments 10

SECTION II – WHO IS AN INSURED 11

SECTION III – LIMITS OF INSURANCE 13

SECTION IV – COMMERCIAL GENERAL LIABILITY CONDITIONS 13

Bankruptcy 13
Duties In The Event Of Occurrence, Offense, Claim Or Suit 13
Legal Action Against Us 14
Other Insurance 15
Premium Audit 16
Representations 16
Separation Of Insureds 16
Transfer Of Rights Of Recovery Against Others To Us 16
When We Do Not Renew 16

SECTION V – DEFINITIONS 16

venture or limited liability company that is not shown as a Named Insured in the Declarations. This paragraph does not apply to any such partnership, joint venture or limited liability company that otherwise qualifies as an insured under Section **II** – Who Is An Insured.

SECTION III – LIMITS OF INSURANCE

1. The Limits of Insurance shown in the Declarations and the rules below fix the most we will pay regardless of the number of:
   a. Insureds;
   b. Claims made or "suits" brought; or
   c. Persons or organizations making claims or bringing "suits".
2. The General Aggregate Limit is the most we will pay for the sum of:
   a. Medical expenses under Coverage **C**;
   b. Damages under Coverage **A**, except damages because of "bodily injury" or "property damage" included in the "products-completed operations hazard"; and
   c. Damages under Coverage **B**.
3. The Products-Completed Operations Aggregate Limit is the most we will pay under Coverage **A** for damages because of "bodily injury" and "property damage" included in the "products-completed operations hazard".
4. Subject to Paragraph **2.** above, the Personal And Advertising Injury Limit is the most we will pay under Coverage **B** for the sum of all damages because of all "personal injury" and "advertising injury" sustained by any one person or organization.
5. Subject to Paragraph **2.** or **3.** above, whichever applies, the Each Occurrence Limit is the most we will pay for the sum of:
   a. Damages under Coverage **A**; and
   b. Medical expenses under Coverage **C**;

   because of all "bodily injury" and "property damage" arising out of any one "occurrence".

   For the purposes of determining the applicable Each Occurrence Limit, all related acts or omissions committed in providing or failing to provide first aid or "Good Samaritan services" to any one person will be deemed to be one "occurrence".
6. Subject to Paragraph **5.** above, the Damage To Premises Rented To You Limit is the most we will pay under Coverage **A** for damages because of "premises damage" to any one premises. The Damage To Premises Rented To You Limit will be:
   a. The amount shown for the Damage To Premises Rented To You Limit in the Declarations of this Coverage Part; or
   b. $300,000 if no amount is shown for the Damage To Premises Rented To You Limit in the Declarations of this Coverage Part.
7. Subject to Paragraph **5.** above, the Medical Expense Limit is the most we will pay under Coverage **C** for all medical expenses because of "bodily injury" sustained by any one person.

The Limits of Insurance of this Coverage Part apply separately to each consecutive annual period and to any remaining period of less than 12 months, starting with the beginning of the policy period shown in the Declarations, unless the policy period is extended after issuance for an additional period of less than 12 months. In that case, the additional period will be deemed part of the last preceding period for purposes of determining the Limits of Insurance.

SECTION IV – COMMERCIAL GENERAL LIABILITY CONDITIONS

1. **Bankruptcy**

   Bankruptcy or insolvency of the insured or of the insured's estate will not relieve us of our obligations under this Coverage Part.
2. **Duties In The Event Of Occurrence, Offense, Claim Or Suit**
   a. You must see to it that we are notified as soon as practicable of an "occurrence" or an offense which may result in a claim. To the extent possible, notice should include:
      (1) How, when and where the "occurrence" or offense took place;
      (2) The names and addresses of any injured persons and witnesses; and
      (3) The nature and location of any injury or damage arising out of the "occurrence" or offense.
   b. If a claim is made or "suit" is brought against any insured, you must:
      (1) Immediately record the specifics of the claim or "suit" and the date received; and
      (2) Notify us as soon as practicable.

      You must see to it that we receive written notice of the claim or "suit" as soon as practicable.
   c. You and any other involved insured must:
      (1) Immediately send us copies of any demands, notices, summonses or legal papers received in connection with the claim or "suit";

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(2) Authorize us to obtain records and other information;

(3) Cooperate with us in the investigation or settlement of the claim or defense against the "suit"; and

(4) Assist us, upon our request, in the enforcement of any right against any person or organization which may be liable to the insured because of injury or damage to which this insurance may also apply.

d. No insured will, except at that insured's own cost, voluntarily make a payment, assume any obligation, or incur any expense, other than for first aid, without our consent.

e. The following provisions apply to Paragraph **a.** above, but only for purposes of the insurance provided under this Coverage Part to you or any insured listed in Paragraph **1.** or **2.** of Section **II** – Who Is An Insured:

(1) Notice to us of such "occurrence" or offense must be given as soon as practicable only after the "occurrence" or offense is known to you (if you are an individual), any of your partners or members who is an individual (if you are a partnership or joint venture), any of your managers who is an individual (if you are a limited liability company), any of your "executive officers" or directors (if you are an organization other than a partnership, joint venture, or limited liability company), any of your trustees who is an individual (if you are a trust) or any "employee" authorized by you to give notice of an "occurrence" or offense.

(2) If you are a partnership, joint venture, limited liability company or trust, and none of your partners, joint venture members, managers or trustees are individuals, notice to us of such "occurrence" or offense must be given as soon as practicable only after the "occurrence" or offense is known by:

(a) Any individual who is:

(i) A partner or member of any partnership or joint venture;

(ii) A manager of any limited liability company;

(iii) An executive officer or director of any other organization; or

(iv) A trustee of any trust;

that is your partner, joint venture member, manager or trustee; or

(b) Any employee authorized by such partnership, joint venture, limited liability company, trust or other organization to give notice of an "occurrence" or offense.

(3) Notice to us of such "occurrence" or offense will be deemed to be given as soon as practicable if it is given in good faith as soon as practicable to your workers' compensation insurer. This applies only if you subsequently give notice to us of the "occurrence" or offense as soon as practicable after any of the persons described in Paragraph **e.(1)** or **(2)** above discovers that the "occurrence" or offense may result in sums to which the insurance provided under this Coverage Part may apply.

However, if this policy includes an endorsement that provides limited coverage for "bodily injury" or "property damage" or pollution costs arising out of a discharge, release or escape of "pollutants" which contains a requirement that the discharge, release or escape of "pollutants" must be reported to us within a specific number of days after its abrupt commencement, this Paragraph **e.** does not affect that requirement.

3. Legal Action Against Us

No person or organization has a right under this Coverage Part:

a. To join us as a party or otherwise bring us into a "suit" asking for damages from an insured; or

b. To sue us on this Coverage Part unless all of its terms have been fully complied with.

A person or organization may sue us to recover on an agreed settlement or on a final judgment against an insured; but we will not be liable for damages that are not payable under the terms of this Coverage Part or that are in excess of the applicable limit of insurance. An agreed settlement means a settlement and release of liability signed by us, the insured, and the claimant or the claimant's legal representative.

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4. Other Insurance

If valid and collectible other insurance is available to the insured for a loss we cover under Coverages **A** or **B** of this Coverage Part, our obligations are limited as described in Paragraphs **a.** and **b.** below.

As used anywhere in this Coverage Part, other insurance means insurance, or the funding of losses, that is provided by, through or on behalf of:

(i) Another insurance company;

(ii) Us or any of our affiliated insurance companies, except when the Non cumulation of Each Occurrence Limit provision of Paragraph **5.** of Section **III** – Limits Of Insurance or the Non cumulation of Personal and Advertising Injury Limit provision of Paragraph **4.** of Section **III** – Limits of Insurance applies because the Amendment – Non Cumulation Of Each Occurrence Limit Of Liability And Non Cumulation Of Personal And Advertising Injury Limit endorsement is included in this policy;

(iii) Any risk retention group; or

(iv) Any self-insurance method or program, in which case the insured will be deemed to be the provider of other insurance.

Other insurance does not include umbrella insurance, or excess insurance, that was bought specifically to apply in excess of the Limits of Insurance shown in the Declarations of this Coverage Part.

As used anywhere in this Coverage Part, other insurer means a provider of other insurance. As used in Paragraph **c.** below, insurer means a provider of insurance.

a. Primary Insurance

This insurance is primary except when Paragraph **b.** below applies. If this insurance is primary, our obligations are not affected unless any of the other insurance is also primary. Then, we will share with all that other insurance by the method described in Paragraph **c.** below, except when Paragraph **d.** below applies.

b. Excess Insurance

(1) This insurance is excess over:

(a) Any of the other insurance, whether primary, excess, contingent or on any other basis:

(i) That is Fire, Extended Coverage, Builder's Risk, Installation Risk or similar coverage for "your work";

(ii) That is insurance for "premises damage";

(iii) If the loss arises out of the maintenance or use of aircraft, "autos" or watercraft to the extent not subject to any exclusion in this Coverage Part that applies to aircraft, "autos" or watercraft;

(iv) That is insurance available to a premises owner, manager or lessor that qualifies as an insured under Paragraph **4.** of Section **II** – Who Is An Insured, except when Paragraph **d.** below applies; or

(v) That is insurance available to an equipment lessor that qualifies as an insured under Paragraph **5.** of Section **II** – Who Is An Insured, except when Paragraph **d.** below applies.

(b) Any of the other insurance, whether primary, excess, contingent or on any other basis, that is available to the insured when the insured is an additional insured, or is any other insured that does not qualify as a named insured, under such other insurance.

(2) When this insurance is excess, we will have no duty under Coverages **A** or **B** to defend the insured against any "suit" if any other insurer has a duty to defend the insured against that "suit". If no other insurer defends, we will undertake to do so, but we will be entitled to the insured's rights against all those other insurers.

(3) When this insurance is excess over other insurance, we will pay only our share of the amount of the loss, if any, that exceeds the sum of:

(a) The total amount that all such other insurance would pay for the loss in the absence of this insurance; and

(b) The total of all deductible and self-insured amounts under all that other insurance.

(4) We will share the remaining loss, if any, with any other insurance that is not described in this Excess Insurance provision and was not bought specifically to apply in excess of the Limits of Insurance shown in the Declarations of this Coverage Part.

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c. Method Of Sharing

If all of the other insurance permits contribution by equal shares, we will follow this method also. Under this approach each insurer contributes equal amounts until it has paid its applicable limit of insurance or none of the loss remains, whichever comes first.

If any of the other insurance does not permit contribution by equal shares, we will contribute by limits. Under this method, each insurer's share is based on the ratio of its applicable limit of insurance to the total applicable limits of insurance of all insurers.

d. Primary And Non-Contributory Insurance If Required By Written Contract

If you specifically agree in a written contract or agreement that the insurance afforded to an insured under this Coverage Part must apply on a primary basis, or a primary and non-contributory basis, this insurance is primary to other insurance that is available to such insured which covers such insured as a named insured, and we will not share with that other insurance, provided that:

(1) The "bodily injury" or "property damage" for which coverage is sought occurs; and

(2) The "personal and advertising injury" for which coverage is sought is caused by an offense that is committed;

subsequent to the signing of that contract or agreement by you.

5. Premium Audit

a. We will compute all premiums for this Coverage Part in accordance with our rules and rates.

b. Premium shown in this Coverage Part as advance premium is a deposit premium only. At the close of each audit period we will compute the earned premium for that period and send notice to the first Named Insured. The due date for audit and retrospective premiums is the date shown as the due date on the bill. If the sum of the advance and audit premiums paid for the policy period is greater than the earned premium, we will return the excess to the first Named Insured.

c. The first Named Insured must keep records of the information we need for premium computation, and send us copies at such times as we may request.

6. Representations

By accepting this policy, you agree:

a. The statements in the Declarations are accurate and complete;

b. Those statements are based upon representations you made to us; and

c. We have issued this policy in reliance upon your representations.

The unintentional omission of, or unintentional error in, any information provided by you which we relied upon in issuing this policy will not prejudice your rights under this insurance. However, this provision does not affect our right to collect additional premium or to exercise our rights of cancellation or nonrenewal in accordance with applicable insurance laws or regulations.

7. Separation Of Insureds

Except with respect to the Limits of Insurance, and any rights or duties specifically assigned in this Coverage Part to the first Named Insured, this insurance applies:

a. As if each Named Insured were the only Named Insured; and

b. Separately to each insured against whom claim is made or "suit" is brought.

8. Transfer Of Rights Of Recovery Against Others To Us

If the insured has rights to recover all or part of any payment we have made under this Coverage Part, those rights are transferred to us. The insured must do nothing after loss to impair them. At our request, the insured will bring "suit" or transfer those rights to us and help us enforce them.

9. When We Do Not Renew

If we decide not to renew this Coverage Part, we will mail or deliver to the first Named Insured shown in the Declarations written notice of the nonrenewal not less than 30 days before the expiration date.

If notice is mailed, proof of mailing will be sufficient proof of notice.

SECTION V – DEFINITIONS

1. "Advertisement" means a notice that is broadcast or published to the general public or specific market segments about your goods, products or services for the purpose of attracting customers or supporters. For the purposes of this definition:

a. Notices that are published include material placed on the Internet or on similar electronic means of communication; and

b. Regarding websites, only that part of a website that is about your goods, products or services for the purposes of attracting customers or supporters is considered an advertisement.

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THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

XTEND ENDORSEMENT FOR ARCHITECTS, ENGINEERS AND SURVEYORS

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

GENERAL DESCRIPTION OF COVERAGE – This endorsement broadens coverage. However, coverage for any injury, damage or medical expenses described in any of the provisions of this endorsement may be excluded or limited by another endorsement to this Coverage Part, and these coverage broadening provisions do not apply to the extent that coverage is excluded or limited by such an endorsement. The following listing is a general coverage description only. Read all the provisions of this endorsement and the rest of your policy carefully to determine rights, duties, and what is and is not covered.

A. Non-Owned Watercraft – 75 Feet Long Or Less

B. Who Is An Insured – Unnamed Subsidiaries

C. Who Is An Insured – Retired Partners, Members, Directors And Employees

D. Who Is An Insured – Employees And Volunteer Workers – Bodily Injury To Co-Employees, Co-Volunteer Workers And Retired Partners, Members, Directors And Employees

E. Who Is An Insured – Newly Acquired Or Formed Limited Liability Companies

F. Blanket Additional Insured – Controlling Interest

G. Blanket Additional Insured – Mortgagees, Assignees, Successors Or Receivers

H. Blanket Additional Insured – Governmental Entities – Permits Or Authorizations Relating To Premises

I. Blanket Additional Insured – Governmental Entities – Permits Or Authorizations Relating To Operations

J. Incidental Medical Malpractice

K. Medical Payments – Increased Limit

L. Amendment Of Excess Insurance Condition – Professional Liability

M. Blanket Waiver Of Subrogation – When Required By Written Contract Or Agreement

N. Contractual Liability – Railroads

PROVISIONS

A. NON-OWNED WATERCRAFT – 75 FEET LONG OR LESS

1. The following replaces Paragraph **(2)** of Exclusion **g., Aircraft, Auto Or Watercraft**, in Paragraph **2.** of **SECTION I – COVERAGES – COVERAGE A – BODILY INJURY AND PROPERTY DAMAGE LIABILITY**:

   (2) A watercraft you do not own that is:

   (a) 75 feet long or less; and

   (b) Not being used to carry any person or property for a charge;

2. The following replaces Paragraph **2.e.** of **SECTION II – WHO IS AN INSURED**:

   e. Any person or organization that, with your express or implied consent, either uses or is responsible for the use of a watercraft that you do not own that is:

   (1) 75 feet long or less; and

   (2) Not being used to carry any person or property for a charge;

B. WHO IS AN INSURED – UNNAMED SUBSIDIARIES

The following is added to **SECTION II – WHO IS AN INSURED**:

Any of your subsidiaries, other than a partnership or joint venture, that is not shown as a Named Insured in the Declarations is a Named Insured if:

a. You are the sole owner of, or maintain an ownership interest of more than 50% in, such subsidiary on the first day of the policy period; and

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b. Such subsidiary is not an insured under similar other insurance.

No such subsidiary is an insured for "bodily injury" or "property damage" that occurred, or "personal and advertising injury" caused by an offense committed:

a. Before you maintained an ownership interest of more than 50% in such subsidiary; or

b. After the date, if any, during the policy period that you no longer maintain an ownership interest of more than 50% in such subsidiary.

For purposes of Paragraph **1.** of Section **II** – Who Is An Insured, each such subsidiary will be deemed to be designated in the Declarations as:

a. A limited liability company;

b. An organization other than a partnership, joint venture or limited liability company; or

c. A trust;

as indicated in its name or the documents that govern its structure.

C. WHO IS AN INSURED – RETIRED PARTNERS, MEMBERS, DIRECTORS AND EMPLOYEES

The following is added to Paragraph **2.** of **SECTION II – WHO IS AN INSURED**:

Any person who is your retired partner, member, director or "employee" that is performing services for you under your direct supervision, but only for acts within the scope of their employment by you or while performing duties related to the conduct of your business. However, no such retired partner, member, director or "employee" is an insured for:

(1) "Bodily injury":

(a) To you, to your current partners or members (if you are a partnership or joint venture), to your current members (if you are a limited liability company) or to your current directors;

(b) To the spouse, child, parent, brother or sister of that current partner, member or director as a consequence of Paragraph **(1)(a)** above;

(c) For which there is any obligation to share damages with or repay someone else who must pay damages because of the injury described in Paragraph **(1)(a)** or **(b)** above; or

(d) Arising out of his or her providing or failing to provide professional health care services.

Unless you are in the business or occupation of providing professional health care services, Paragraphs **(1)(a)**, **(b)**, **(c)** and **(d)** above do not apply to "bodily injury" arising out of providing or failing to provide first aid or "Good Samaritan services" by any of your retired partners, members, directors or "employees", other than a doctor. Any such retired partners, members, directors or "employees" providing or failing to provide first aid or "Good Samaritan services" during their work hours for you will be deemed to be acting within the scope of their employment by you or performing duties related to the conduct of your business.

(2) "Personal injury":

(a) To you, to your current or retired partners or members (if you are a partnership or joint venture), to your current or retired members (if you are a limited liability company), to your other current or retired directors or "employees" while in the course of his or her employment or performing duties related to the conduct of your business, or to your other "volunteer workers" while performing duties related to the conduct of your business;

(b) To the spouse, child, parent, brother or sister of that current or retired partner, member, director, "employee" or "volunteer worker" as a consequence of Paragraph **(2)(a)** above;

(c) For which there is any obligation to share damages with or repay someone else who must pay damages because of the injury described in Paragraph **(2)(a)** or **(b)** above; or

(d) Arising out of his or her providing or failing to provide professional health care services.

(3) "Property damage" to property:

(a) Owned, occupied or used by; or

(b) Rented to, in the care, custody or control of, or over which physical control is being exercised for any purpose by;

you, any of your retired partners, members or directors, your current or retired "employees" or "volunteer workers", any current partner or member (if you are a partnership or joint venture), or any current member (if you are a limited liability company) or current director.

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D. WHO IS AN INSURED – EMPLOYEES AND VOLUNTEER WORKERS – BODILY INJURY TO CO-EMPLOYEES, CO-VOLUNTEER WORKERS AND RETIRED PARTNERS, MEMBERS, DIRECTORS AND EMPLOYEES

The following is added to Paragraph **2.a.(1)** of **SECTION II – WHO IS AN INSURED**:

Paragraphs **(1)(a)**, **(b)** and **(c)** above do not apply to "bodily injury" to a current or retired co-"employee" while in the course of the co-"employee's" employment by you or performing duties related to the conduct of your business, or to "bodily injury" to your other "volunteer workers" or retired partners, members or directors while performing duties related to the conduct of your business.

E. WHO IS AN INSURED – NEWLY ACQUIRED OR FORMED LIMITED LIABILITY COMPANIES

The following replaces Paragraph **3.** of **SECTION II – WHO IS AN INSURED**:

3. Any organization you newly acquire or form, other than a partnership or joint venture, and of which you are the sole owner or in which you maintain an ownership interest of more than 50%, will qualify as a Named Insured if there is no other similar insurance available to that organization. However:

a. Coverage under this provision is afforded only:

(1) Until the 180th day after you acquire or form the organization or the end of the policy period, whichever is earlier, if you do not report such organization in writing to us within 180 days after you acquire or form it; or

(2) Until the end of the policy period, when that date is later than 180 days after you acquire or form such organization, if you report such organization in writing to us within 180 days after you acquire or form it;

b. Coverage **A** does not apply to "bodily injury" or "property damage" that occurred before you acquired or formed the organization; and

c. Coverage **B** does not apply to "personal and advertising injury" arising out of an offense committed before you acquired or formed the organization.

For the purposes of Paragraph **1.** of Section **II** – Who Is An Insured, each such organization will be deemed to be designated in the Declarations as:

a. A limited liability company;

b. An organization other than a partnership, joint venture or limited liability company; or

c. A trust;

as indicated in its name or the documents that govern its structure.

F. BLANKET ADDITIONAL INSURED – CONTROLLING INTEREST

1. The following is added to **SECTION II – WHO IS AN INSURED**:

Any person or organization that has financial control of you is an insured with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" that arises out of:

a. Such financial control; or

b. Such person's or organization's ownership, maintenance or use of premises leased to or occupied by you.

The insurance provided to such person or organization does not apply to structural alterations, new construction or demolition operations performed by or on behalf of such person or organization.

2. The following is added to Paragraph **4.** of **SECTIO N II – WHO IS AN INSURED**:

This paragraph does not apply to any premises owner, manager or lessor that has financial control of you.

G. BLANKET ADDITIONAL INSURED – MORTGAGEES, ASSIGNEES, SUCCESSORS OR RECEIVERS

The following is added to **SECTION II – WHO IS AN INSURED**:

Any person or organization that is a mortgagee, assignee, successor or receiver and that you have agreed in a written contract or agreement to include as an additional insured on this Coverage Part is an insured, but only with respect to its liability as mortgagee, assignee, successor or receiver for "bodily injury", "property damage" or "personal and advertising injury" that:

a. Is "bodily injury" or "property damage" that occurs, or is "personal and advertising injury" caused by an offense that is committed,

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subsequent to the signing of that contract or agreement; and

b. Arises out of the ownership, maintenance or use of the premises for which that mortgagee, assignee, successor or receiver is required under that contract or agreement to be included as an additional insured on this Coverage Part.

The insurance provided to such mortgagee, assignee, successor or receiver is subject to the following provisions:

a. The limits of insurance provided to such mortgagee, assignee, successor or receiver will be the minimum limits that you agreed to provide in the written contract or agreement, or the limits shown in the Declarations, whichever are less.

b. The insurance provided to such person or organization does not apply to:

(1) Any "bodily injury" or "property damage" that occurs, or any "personal and advertising injury" caused by an offense that is committed, after such contract or agreement is no longer in effect; or

(2) Any "bodily injury", "property damage" or "personal and advertising injury" arising out of any structural alterations, new construction or demolition operations performed by or on behalf of such mortgagee, assignee, successor or receiver.

H. BLANKET ADDITIONAL INSURED – GOVERNMENTAL ENTITIES – PERMITS OR AUTHORIZATIONS RELATING TO PREMISES

The following is added to **SECTION II – WHO IS AN INSURED**:

Any governmental entity that has issued a permit or authorization with respect to premises owned or occupied by, or rented or loaned to, you and that you are required by any ordinance, law, building code or written contract or agreement to include as an additional insured on this Coverage Part is an insured, but only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" arising out of the existence, ownership, use, maintenance, repair, construction, erection or removal of any of the following for which that governmental entity has issued such permit or authorization: advertising signs, awnings, canopies, cellar entrances, coal holes, driveways, manholes, marquees, hoist away openings, sidewalk vaults, elevators, street banners or decorations.

I. BLANKET ADDITIONAL INSURED – GOVERNMENTAL ENTITIES – PERMITS OR AUTHORIZATIONS RELATING TO OPERATIONS

The following is added to **SECTION II – WHO IS AN INSURED**:

Any governmental entity that has issued a permit or authorization with respect to operations performed by you or on your behalf and that you are required by any ordinance, law, building code or written contract or agreement to include as an additional insured on this Coverage Part is an insured, but only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" arising out of such operations.

The insurance provided to such governmental entity does not apply to:

a. Any "bodily injury", "property damage" or "personal and advertising injury" arising out of operations performed for the governmental entity; or

b. Any "bodily injury" or "property damage" included in the "products-completed operations hazard".

J. INCIDENTAL MEDICAL MALPRACTICE

1. The following replaces Paragraph **b.** of the definition of "occurrence" in the **DEFINITIONS** Section:

b. An act or omission committed in providing or failing to provide "incidental medical services", first aid or "Good Samaritan services" to a person, unless you are in the business or occupation of providing professional health care services.

2. The following replaces the last paragraph of Paragraph **2.a.(1)** of **SECTION II – WHO IS AN INSURED**:

Unless you are in the business or occupation of providing professional health care services, Paragraphs **(1)(a)**, **(b)**, **(c)** and **(d)** above do not apply to "bodily injury" arising out of providing or failing to provide:

(a) "Incidental medical services" by any of your "employees" who is a nurse, nurse assistant, emergency medical technician, paramedic, athletic trainer, audiologist, dietician, nutritionist,

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occupational therapist or occupational therapy assistant, physical therapist or speech-language pathologist; or

(b) First aid or "Good Samaritan services" by any of your "employees" or "volunteer workers", other than an employed or volunteer doctor. Any such "employees" or "volunteer workers" providing or failing to provide first aid or "Good Samaritan services" during their work hours for you will be deemed to be acting within the scope of their employment by you or performing duties related to the conduct of your business.

3. The following replaces the last sentence of Paragraph **5.** of **SECTION III – LIMITS OF INSURANCE**:

For the purposes of determining the applicable Each Occurrence Limit, all related acts or omissions committed in providing or failing to provide "incidental medical services", first aid or "Good Samaritan services" to any one person will be deemed to be one "occurrence".

4. The following exclusion is added to Paragraph **2.**, **Exclusions**, of **SECTION I – COVERAGES – COVERAGE A – BODILY INJURY AND PROPERTY DAMAGE LIABILITY**:

Sale Of Pharmaceuticals

"Bodily injury" or "property damage" arising out of the violation of a penal statute or ordinance relating to the sale of pharmaceuticals committed by, or with the knowledge or consent of the insured.

5. The following is added to the **DEFINITIONS** Section:

"Incidental medical services" means:

a. Medical, surgical, dental, laboratory, x-ray or nursing service or treatment, advice or instruction, or the related furnishing of food or beverages; or

b. The furnishing or dispensing of drugs or medical, dental, or surgical supplies or appliances.

6. The following is added to Paragraph **4.b.**, **Excess Insurance**, of **SECTION IV – COMMERCIAL GENERAL LIABILITY CONDITIONS**:

This insurance is excess over any valid and collectible other insurance, whether primary, excess, contingent or on any other basis, that is available to any of your "employees" for "bodily injury" that arises out of providing or failing to provide "incidental medical services" to any person to the extent not subject to Paragraph **2.a.(1)** of Section **II** – Who Is An Insured.

K. MEDICAL PAYMENTS – INCREASED LIMIT

The following replaces Paragraph **7.** of **SECTION III – LIMITS OF INSURANCE**:

7. Subject to Paragraph **5.** above, the Medical Expense Limit is the most we will pay under Coverage **C** for all medical expenses because of "bodily injury" sustained by any one person, and will be the higher of:

a. $10,000; or

b. The amount shown in the Declarations of this Coverage Part for Medical Expense Limit.

L. AMENDMENT OF EXCESS INSURANCE CONDITION – PROFESSIONAL LIABILITY

The following is added to Paragraph **4.b.**, **Excess Insurance**, of **SECTION IV – COMMERCIAL GENERAL LIABILITY CONDITIONS**:

This insurance is excess over any of the other insurance, whether primary, excess, contingent or on any other basis, that is Professional Liability or similar coverage, to the extent the loss is not subject to the professional services exclusion of Coverage **A** or Coverage **B**.

M. BLANKET WAIVER OF SUBROGATION – WHEN REQUIRED BY WRITTEN CONTRACT OR AGREEMENT

The following is added to Paragraph **8.**, **Transfer Of Rights Of Recovery Against Others To Us**, of **SECTION IV – COMMERCIAL GENERAL LIABILITY CONDITIONS**:

If the insured has agreed in a written contract or agreement to waive that insured's right of recovery against any person or organization, we waive our right of recovery against such person or organization, but only for payments we make because of:

a. "Bodily injury" or "property damage" that occurs; or

b. "Personal and advertising injury" caused by an offense that is committed;

subsequent to the signing of that contract or agreement.

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N. CONTRACTUAL LIABILITY – RAILROADS

1. The following replaces Paragraph **c.** of the definition of "insured contract" in the **DEFINITIONS** Section:

   c. Any easement or license agreement;

2. Paragraph **f.(1)** of the definition of "insured contract" in the **DEFINITIONS** Section is deleted.

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EXHIBIT "D"
(TITLE VI ASSURANCES)

During the performance of this contract, the Contractor, for itself, its assignees, and successors in interest agrees as follows:

1. Compliance with Regulations:
   The Contractor shall comply with the Regulations relative to non-discrimination in Federally assisted programs of the Agency, Title 49, Code of Federal Regulations, Part 21, as they may be amended from time to time (hereinafter referred to as the "Regulations"), which are herein incorporated by reference and made a part of this contract.

2. Nondiscrimination:
   The Contractor, with regard to the work performed during the contract, shall not discriminate on the grounds of race, color, sex, or national origin in the selection and retention of subcontractors, including procurement of materials and leases of equipment. The Contractor shall not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the Regulations, including employment practices when the contract covers a program set forth in Appendix B of the Regulations.

3. Solicitations for Subcontractors, including Procurement of Materials and Equipment:
   In all solicitations either by competitive bidding or negotiations made by the Contractor for work to be performed under a subcontract, including procurement of materials or leases of equipment, each potential subcontractor or supplier shall be notified by the Contractor of the Contractor's obligations under the contract and the Regulations relative to nondiscrimination on the grounds of race, color, sex or national origin.

4. Information and Reports:
   The Contractor shall provide all information and reports required by the Regulations or directives issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the Agency, State or Federal Highway Administration (FHWA) to be pertinent to ascertain compliance with such Regulations, orders and instructions. Where any information required of a Contractor is in the exclusive possession of another who fails or refuses to furnish this information, the Contractor shall so certify to the Agency, State or the FHWA as appropriate, and shall set forth what efforts it has made to obtain the information.

5. Sanctions for Noncompliance:
   In the event of the Contractor's noncompliance with the nondiscrimination provisions of this contract, the Agency shall impose such contract sanctions as it, the State or the FHWA may determine to be appropriate, including, but not limited to:
   a. Withholding of payments to the Contractor under the contract until the Contractor complies, and/or;
   b. Cancellation, termination, or suspension of the contract, in whole or in part.

6. Incorporation of Provisions:
   The Contractor shall include the provisions of paragraphs (1) through (6) in every subcontract, including procurement of materials and leases of equipment, unless exempt by the Regulations, or directives issued pursuant thereto. The Contractor shall take such action with respect to any subcontractor or procurement as the Agency, State or FHWA may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, however, that in the event a Contractor becomes involved in, or is threatened with, litigation with a subcontractor or supplier as a result of such direction, the Contractor may request the Agency and the State enter into such litigation to protect the interest of the Agency and the State and, in addition, the Contractor may request the United States to enter into such litigation to protect the interests of the United States.

EXHIBIT "E"
(CONTRACTOR DECLARATION)

ATTACHMENT D
Whatcom County Contractor's Declaration Form

I. CONTRACTOR INFORMATION

Contractor Name:	Elliott Bay Design Group, LLC	Phone:	(206) 782-3082
Contact Person:	Brian King, President	Fax:	(206) 782-3449
Address:	5305 Shilshole Avenue NW, Suite 100 Seattle, WA 98107		

II. E-VERIFY ENROLLMENT (check one or more boxes)
Contractors with funded contracts of $100,000 or more must be enrolled in E-Verify system. Subcontract is $25,000 or higher.
www.uscis.gov/e-verify

☐ *Contractor is enrolled in E-Verify*

☑ *Contractor is exempt from this requirement because:*

- ☑ *Contract (grant) is less than $100,000.*
- ☐ *Contract is for commercial off the shelf items (COTS).*
- ☐ *Contract work is for less than 120 days.*
- ☐ *Contract work is all performed outside of the U.S.*
- ☐ *Subcontract is for less than $25,000.*

I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct, and that I am authorized ~~to bind this entity~~ contractually.

BS
Signature

Brian King
Name

Oct 7, 2020
Date

President, Elliott Bay Design Group
Title

Whatcom County

COUNTY COURTHOUSE
311 Grand Avenue, Ste #105
Bellingham, WA 98225-4038
(360) 778-5010

Agenda Bill Master Report

File Number: AB2020-456

File ID:	AB2020-456	**Version:**	1	**Status:**	Agenda Ready
File Created:	10/18/2020	**Entered by:**	THelms@co.whatcom.wa.us		
Department:	County Executive's Office	**File Type:**	Contract		
Assigned to:	Council Finance and Administrative Services Committee			**Final Action:**	
Agenda Date:	10/27/2020			**Enactment #:**	

Primary Contact Email: Tschroed@co.whatcom.wa.us

TITLE FOR AGENDA ITEM:

Request authorization for the County Executive to enter into a contract amendment between Whatcom County and Lynden School District to increase the allocation of CARES Act funding by $100,000 in an amount not to exceed $230,000

SUMMARY STATEMENT OR LEGAL NOTICE LANGUAGE:

See attached

HISTORY OF LEGISLATIVE FILE

Date:	Acting Body:	Action:	Sent To:

Attachments: Contract Amendment, Routing Form

Whatcom County Contract No.

202009043-1

Amendment No. 1
Whatcom County Contract No. 202009043
CONTRACT BETWEEN WHATCOM COUNTY AND
Lynden School District

THIS AMENDMENT is to the Contract between Whatcom County and Lynden School District, dated September 30, 2020 and designated "Whatcom County Contract No.202009043". In consideration of the mutual benefits to be derived, the parties agree to the following:

This Amendment increases the maximum consideration by $100,000 to a total consideration of $ 230,000 .

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: September 17, 2020, regardless of the date of signature.

IN WITNESS WHEREOF, Whatcom County and Lynden School District have executed this Amendment on the date and year below written.

DATED this _____ day of _____, 20__.

Each signatory below to this Contract warrants that he/she is the authorized agent of the respective party; and that he/she has the authority to enter into the contract and to bind the party thereto.

CONTRACTOR:

Lynden School District #504

_____
Dusty Gulles, IT Director

Lynden School District #502
516 Main Street
Lynden, WA 98264

WHATCOM COUNTY:
Recommended for Approval:

_____
Department Supervisor Date

Approved as to form:

_____
Prosecuting Attorney Date

Approved:
Accepted for Whatcom County:

By: _____
Satpal Singh Sidhu, Whatcom County Executive

WHATCOM COUNTY CONTRACT INFORMATION SHEET

Whatcom County Contract No.

Originating Department:	Prosecuting Attorney's Office
Division/Program: *(i.e. Dept. Division and Program)*	6510 Prosecuting Attorney Admin
Contract or Grant Administrator:	Vanessa Martin
Contractor's / Agency Name:	Sea Mar Community Health Centers

Is this a New Contract? If not, is this an Amendment or Renewal to an Existing Contract? Yes ○ No ○
Yes ○ No ○ If Amendment or Renewal, (per WCC 3.08.100 (a)) Original Contract #: 202005001

Does contract require Council Approval? Yes ○ No ○ If No, include WCC: _____
Already approved? Council Approved Date: May 6, 2020 (Exclusions 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): 201911012 and K4513

Is this contract the result of a RFP or Bid process? Contract
Yes ○ No ○ If yes, RFP and Bid number(s): _____ Cost Center: 2622 and 2623

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.
- ☐ Goods and services provided due to an emergency
- ☐ Contract work is for less than $100,000.
- ☐ Contract for Commercial off the shelf items (COTS).
- ☐ Contract work is for less than 120 days.
- ☐ Work related subcontract less than $25,000.
- ☐ Interlocal Agreement (between Governments).
- ☐ Public Works - Local Agency/Federally Funded FHWA.

Contract Amount:(sum of original contract amount and any prior amendments):
$ 288,778.00

This Amendment Amount:
$ 470,793.00

Total Amended Amount:
$ 759,571.00

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 contract funds the oversight and administration of the LEAD Program and integration with the GRACE Program.

Term of Contract:	Expiration Date:

Contract Routing:

1. Prepared by: Vanessa Martin Date: 9/11/2020
2. Attorney signoff: Christopher Quinn Date:
3. AS Finance reviewed: Marianne Caldwell Date:
4. IT reviewed (if IT related): Date:
5. Contractor signed: Date:
6. Submitted to Exec.: Date:
7. Council approved (if necessary): Date:
8. Executive signed: Date:
9. Original to Council: Date:

Whatcom County

COUNTY COURTHOUSE
311 Grand Avenue, Ste #105
Bellingham, WA 98225-4038
(360) 778-5010

Agenda Bill Master Report

File Number: AB2020-457

File ID:	AB2020-457	**Version:**	1	**Status:**	Agenda Ready
File Created:	10/18/2020	**Entered by:**	THelms@co.whatcom.wa.us		
Department:	County Executive's Office	**File Type:**	Contract		
Assigned to:	Council Finance and Administrative Services Committee			**Final Action:**	
Agenda Date:	10/27/2020			**Enactment #:**	

Primary Contact Email: Tschroed@co.whatcom.wa.us

TITLE FOR AGENDA ITEM:

Request authorization for the County Executive to enter into a contract amendment between Whatcom County and Blaine School District to increase the allocation of CARES Act Funding by $100,000 in an amount not to exceed $230,000

SUMMARY STATEMENT OR LEGAL NOTICE LANGUAGE:

See attached

HISTORY OF LEGISLATIVE FILE

Date:	Acting Body:	Action:	Sent To:

Attachments: Contract Amendment, Routing Form

Whatcom County Contract No.

202009044-1

Amendment No. 1
Whatcom County Contract No. 202009044
CONTRACT BETWEEN WHATCOM COUNTY AND
Blaine School District

THIS AMENDMENT is to the Contract between Whatcom County and Blaine School District, dated September 30, 2020 and designated "Whatcom County Contract No.202009044". In consideration of the mutual benefits to be derived, the parties agree to the following:

This Amendment increases the maximum consideration by $100,000 to a total consideration of $ 230,000 .

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: September 17, 2020, regardless of the date of signature.

IN WITNESS WHEREOF, Whatcom County and Blaine School District have executed this Amendment on the date and year below written.

DATED this _____ day of _____, 20__.

Each signatory below to this Contract warrants that he/she is the authorized agent of the respective party; and that he/she has the authority to enter into the contract and to bind the party thereto.

CONTRACTOR:

Blaine School District #503

_____
Dr. Christopher Granger

Blaine School District #503
765 "H" Street
Blaine, WA 98230
cgranger@blainesd.org

WHATCOM COUNTY:
Recommended for Approval:

_____
Department Supervisor Date

Approved as to form:

_____
Prosecuting Attorney Date

Approved:
Accepted for Whatcom County:

By: _____
Satpal Singh Sidhu, Whatcom County Executive

WHATCOM COUNTY CONTRACT INFORMATION SHEET

Whatcom County Contract No.

Originating Department:	Prosecuting Attorney's Office
Division/Program: *(i.e. Dept. Division and Program)*	6510 Prosecuting Attorney Admin
Contract or Grant Administrator:	Vanessa Martin
Contractor's / Agency Name:	Sea Mar Community Health Centers

Is this a New Contract? If not, is this an Amendment or Renewal to an Existing Contract? Yes ○ No ○
Yes ○ No ○ If Amendment or Renewal, (per WCC 3.08.100 (a)) Original Contract #: 202005001

Does contract require Council Approval? Yes ○ No ○ If No, include WCC: _____
Already approved? Council Approved Date: May 6, 2020 (Exclusions 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): 201911012 and K4513

Is this contract the result of a RFP or Bid process? Contract
Yes ○ No ○ If yes, RFP and Bid number(s): _____ Cost Center: 2622 and 2623

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.
- ☐ Goods and services provided due to an emergency
- ☐ Contract work is for less than $100,000.
- ☐ Contract for Commercial off the shelf items (COTS).
- ☐ Contract work is for less than 120 days.
- ☐ Work related subcontract less than $25,000.
- ☐ Interlocal Agreement (between Governments).
- ☐ Public Works - Local Agency/Federally Funded FHWA.

Contract Amount:(sum of original contract amount and any prior amendments):
$ 288,778.00

This Amendment Amount:
$ 470,793.00

Total Amended Amount:
$ 759,571.00

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 contract funds the oversight and administration of the LEAD Program and integration with the GRACE Program.

Term of Contract:	Expiration Date:

Contract Routing:

1. Prepared by: Vanessa Martin Date: 9/11/2020
2. Attorney signoff: Christopher Quinn Date:
3. AS Finance reviewed: Marianne Caldwell Date:
4. IT reviewed (if IT related): Date:
5. Contractor signed: Date:
6. Submitted to Exec.: Date:
7. Council approved (if necessary): Date:
8. Executive signed: Date:
9. Original to Council: Date:

Whatcom County

COUNTY COURTHOUSE
311 Grand Avenue, Ste #105
Bellingham, WA 98225-4038
(360) 778-5010

Agenda Bill Master Report

File Number: AB2020-458

File ID:	AB2020-458	**Version:**	1	**Status:**	Agenda Ready
File Created:	10/18/2020	**Entered by:**	THelms@co.whatcom.wa.us		
Department:	County Executive's Office	**File Type:**	Contract		
Assigned to:	Council Finance and Administrative Services Committee			**Final Action:**	
Agenda Date:	10/27/2020			**Enactment #:**	

Primary Contact Email: Tschroed@co.whatcom.wa.us

TITLE FOR AGENDA ITEM:

Request authorization for the County Executive to enter into a contract amendment between Whatcom County and Ferndale School District to increase the allocation of CARES Act funding by $100,000 in amount not to exceed $230,000

SUMMARY STATEMENT OR LEGAL NOTICE LANGUAGE:

See attached

HISTORY OF LEGISLATIVE FILE

Date:	Acting Body:	Action:	Sent To:

Attachments: Contract Amendment, Routing Form

Whatcom County Contract No.

202009042-1

Amendment No. 1
Whatcom County Contract No. 202009042
CONTRACT BETWEEN WHATCOM COUNTY AND
Ferndale School District

THIS AMENDMENT is to the Contract between Whatcom County and Ferndale School District, dated September 30, 2020 and designated "Whatcom County Contract No.202009042". In consideration of the mutual benefits to be derived, the parties agree to the following:

This Amendment increases the maximum consideration by $100,000 to a total consideration of $ 230,000 .

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: September 17, 2020, regardless of the date of signature.

IN WITNESS WHEREOF, Whatcom County and Ferndale School District have executed this Amendment on the date and year below written.

DATED this _____ day of _____, 20__.

Each signatory below to this Contract warrants that he/she is the authorized agent of the respective party; and that he/she has the authority to enter into the contract and to bind the party thereto.

CONTRACTOR:

Ferndale School District #502

_____
Mark Deebach, Assistant Superintendent

Ferndale School District #502
6041 Vista Drive
Ferndale, WA 98248
mark.deebach@ferndalesd.org

WHATCOM COUNTY:
Recommended for Approval:

_____
Department Supervisor Date

Approved as to form:

_____
Prosecuting Attorney Date

Approved:
Accepted for Whatcom County:

By: _____
Satpal Singh Sidhu, Whatcom County Executive

WHATCOM COUNTY CONTRACT INFORMATION SHEET

Whatcom County Contract No.

Originating Department:	Prosecuting Attorney's Office
Division/Program: *(i.e. Dept. Division and Program)*	6510 Prosecuting Attorney Admin
Contract or Grant Administrator:	Vanessa Martin
Contractor's / Agency Name:	Sea Mar Community Health Centers

Is this a New Contract? If not, is this an Amendment or Renewal to an Existing Contract? Yes ○ No ○
Yes ○ No ○ If Amendment or Renewal, (per WCC 3.08.100 (a)) Original Contract #: 202005001

Does contract require Council Approval? Yes ○ No ○ If No, include WCC: _____
Already approved? Council Approved Date: May 6, 2020 (Exclusions 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): 201911012 and K4513

Is this contract the result of a RFP or Bid process? Contract
Yes ○ No ○ If yes, RFP and Bid number(s): _____ Cost Center: 2622 and 2623

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.
- ☐ Goods and services provided due to an emergency
- ☐ Contract work is for less than $100,000.
- ☐ Contract for Commercial off the shelf items (COTS).
- ☐ Contract work is for less than 120 days.
- ☐ Work related subcontract less than $25,000.
- ☐ Interlocal Agreement (between Governments).
- ☐ Public Works - Local Agency/Federally Funded FHWA.

Contract Amount:(sum of original contract amount and any prior amendments):
$ 288,778.00

This Amendment Amount:
$ 470,793.00

Total Amended Amount:
$ 759,571.00

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 contract funds the oversight and administration of the LEAD Program and integration with the GRACE Program.

Term of Contract:	Expiration Date:

Contract Routing:

1. Prepared by: Vanessa Martin Date: 9/11/2020
2. Attorney signoff: Christopher Quinn Date:
3. AS Finance reviewed: Marianne Caldwell Date:
4. IT reviewed (if IT related): Date:
5. Contractor signed: Date:
6. Submitted to Exec.: Date:
7. Council approved (if necessary): Date:
8. Executive signed: Date:
9. Original to Council: Date:

Whatcom County

COUNTY COURTHOUSE
311 Grand Avenue, Ste #105
Bellingham, WA 98225-4038
(360) 778-5010

Agenda Bill Master Report

File Number: AB2020-459

File ID:	AB2020-459	**Version:**	1	**Status:**	Agenda Ready
File Created:	10/18/2020	**Entered by:**	THelms@co.whatcom.wa.us		
Department:	County Executive's Office	**File Type:**	Contract		
Assigned to:	Council Finance and Administrative Services Committee			**Final Action:**	
Agenda Date:	10/27/2020			**Enactment #:**	

Primary Contact Email: Tschroed@co.whatcom.wa.us

TITLE FOR AGENDA ITEM:

Request authorization for the County Executive to enter into a contract amendment between Whatcom County and Meridian School District to increase the allocation of CARES Act funding by $100,000 in an amount not to exceed $230,000

SUMMARY STATEMENT OR LEGAL NOTICE LANGUAGE:

See attached

HISTORY OF LEGISLATIVE FILE

Date:	Acting Body:	Action:	Sent To:

Attachments: Contract Amendment, Routing Form

Whatcom County Contract No.

202009039-1

Amendment No. 1
Whatcom County Contract No. 202009039
CONTRACT BETWEEN WHATCOM COUNTY AND
Meridian School District

THIS AMENDMENT is to the Contract between Whatcom County and Meridian School District, dated September 30, 2020 and designated "Whatcom County Contract No.202009039". In consideration of the mutual benefits to be derived, the parties agree to the following:

This Amendment increases the maximum consideration by $100,000 to a total consideration of $ 230,000 .

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: September 17, 2020, regardless of the date of signature.

IN WITNESS WHEREOF, Whatcom County and Meridian School District have executed this Amendment on the date and year below written.

DATED this _____ day of _____, 20__.

Each signatory below to this Contract warrants that he/she is the authorized agent of the respective party; and that he/she has the authority to enter into the contract and to bind the party thereto.

CONTRACTOR:

Meridian School District #505

_____
James Everett, Superintendent

Meridian School District #505
214 W. Laurel Road
Bellingham, WA 98226

WHATCOM COUNTY:
Recommended for Approval:

_____
Department Supervisor Date

Approved as to form:

_____
Prosecuting Attorney Date

Approved:
Accepted for Whatcom County:

By: _____
Satpal Singh Sidhu, Whatcom County Executive

WHATCOM COUNTY CONTRACT INFORMATION SHEET

Whatcom County Contract No.

Originating Department:	Prosecuting Attorney's Office
Division/Program: *(i.e. Dept. Division and Program)*	6510 Prosecuting Attorney Admin
Contract or Grant Administrator:	Vanessa Martin
Contractor's / Agency Name:	Sea Mar Community Health Centers

Is this a New Contract? If not, is this an Amendment or Renewal to an Existing Contract? Yes ○ No ○
Yes ○ No ○ If Amendment or Renewal, (per WCC 3.08.100 (a)) Original Contract #: 202005001

Does contract require Council Approval? Yes ○ No ○ If No, include WCC: _____
Already approved? Council Approved Date: May 6, 2020 (Exclusions 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): 201911012 and K4513

Is this contract the result of a RFP or Bid process? Contract
Yes ○ No ○ If yes, RFP and Bid number(s): _____ Cost Center: 2622 and 2623

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.
- ☐ Goods and services provided due to an emergency
- ☐ Contract work is for less than $100,000.
- ☐ Contract for Commercial off the shelf items (COTS).
- ☐ Contract work is for less than 120 days.
- ☐ Work related subcontract less than $25,000.
- ☐ Interlocal Agreement (between Governments).
- ☐ Public Works - Local Agency/Federally Funded FHWA.

Contract Amount:(sum of original contract amount and any prior amendments):
$ 288,778.00

This Amendment Amount:
$ 470,793.00

Total Amended Amount:
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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 contract funds the oversight and administration of the LEAD Program and integration with the GRACE Program.

Term of Contract:	Expiration Date:

Contract Routing:

1. Prepared by: Vanessa Martin Date: 9/11/2020
2. Attorney signoff: Christopher Quinn Date:
3. AS Finance reviewed: Marianne Caldwell Date:
4. IT reviewed (if IT related): Date:
5. Contractor signed: Date:
6. Submitted to Exec.: Date:
7. Council approved (if necessary): Date:
8. Executive signed: Date:
9. Original to Council: Date:

Whatcom County

COUNTY COURTHOUSE
311 Grand Avenue, Ste #105
Bellingham, WA 98225-4038
(360) 778-5010

Agenda Bill Master Report

File Number: AB2020-460

File ID:	AB2020-460	**Version:**	1	**Status:**	Agenda Ready
File Created:	10/18/2020	**Entered by:**	THelms@co.whatcom.wa.us		
Department:	County Executive's Office	**File Type:**	Interlocal		
Assigned to:	Council Finance and Administrative Services Committee			**Final Action:**	
Agenda Date:	10/27/2020			**Enactment #:**	

Primary Contact Email: Mhilley@co.whatcom.wa.us

TITLE FOR AGENDA ITEM:

Request authorization for the County Executive to enter into an interlocal agreement between Whatcom County and North Whatcom Fire and Rescue for the cost of two students to participate in the paramedic training program in an amount not to exceed $232,436.88

SUMMARY STATEMENT OR LEGAL NOTICE LANGUAGE:

See Attached

HISTORY OF LEGISLATIVE FILE

Date:	Acting Body:	Action:	Sent To:

Attachments: Interlocal, Routing Form

Whatcom County Contract

202010018

INTERLOCAL AGREEMENT FOR PARAMEDIC TRAINING

This Interlocal Agreement for Paramedic Student Training ("Agreement") is made and entered into this day by and between the COUNTY OF WHATCOM, a municipal corporation, hereinafter referred to as the 'County' and WHATCOM COUNTY FIRE PROTECTION DISTRICT #21 D/B/A NORTH WHATCOM FIRE AND RESCUE, a municipal corporation, hereinafter referred to as 'NWFR.' The County and NWFR are the only parties to this Agreement and may be referred to collectively as "Parties" hereinafter.

RECITALS

WHEREAS, the Parties consider it to be in the best interest of the citizens they serve to explore and collaborate wherever feasible to improve efficiency and service delivery; and

WHEREAS, the County is the governmental entity that assumes responsibility to ensure a unified administration and integrated operation of ALS services on a county-wide basis; and

WHEREAS, the Parties desire to enter into this Agreement for the payment of paramedic student training as provided herein; and

WHEREAS, the Parties are authorized, pursuant to Chapter 39.34 of the Revised Code of Washington, to enter into this Agreement to allow the Parties to cooperate with each other to provide high-quality services to the public in the most efficient manner possible.

NOW, THEREFORE, in consideration of the mutual promises, covenants, and terms hereinafter set forth and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

TERMS

1. OBLIGATIONS OF THE PARTIES.

The goal of the Parties is to work cooperatively with each other as well as the EOB and TAB to facilitate coordinated county-wide Advanced Life Support services and training. Each party's responsibilities in furtherance of this goal are identified as follows:

NWFR

a) NWFR shall recommend two (2) students who have tested for the paramedic training program to participate in the 2020 paramedic training program through the Bellingham Fire Department from January 9, 2020 through the completion of the training program, which is anticipated to be on or about October 30, 2020, depending on class progress, and consistent with the annual Training Budget. Upon graduation, Paramedics will be assigned to work Advanced Life Support Units in Whatcom County per the interlocal agreement between NWFR and BFD.

b) The Paramedic Students shall agree to serve at least (5) five years as a Firefighter/Paramedic in Whatcom County or reimburse the County for training expenses in a form acceptable to the Parties.

COUNTY

a) The County, as the administrator of the county-wide EMS system, shall be responsible for making Paramedic Training available to all countywide Fire Agencies and Departments.

b) The County shall pay the Paramedic Training Student wages to NWFR as outlined in the Exhibit "A", Budget. Individual student costs for tuition, books, labs and other learning materials will be invoiced to the County by the ALS providers.

2. IMPRACTICABILITY AND FORCE MAJEURE.

Neither the County nor NWFR shall be required to perform any obligation to the extent the performance or the provision of such becomes impracticable as a result of a cause or causes outside of the reasonable control of the County or NWFR, or to the extent the performance of such requires the County or NWFR to violate applicable laws, rules or regulations or result in the breach of any license, permit or applicable contract. The obligations of the County and NWFR under this Agreement are subject to conditions of force majeure, including an act of God, act of a public enemy, war, revolution, riot, or any other cause which is not reasonably within the control of the County or NWFR.

3. COMPENSATION AND METHOD OF PAYMENT

As consideration for the costs associated with the Paramedic Training Program as set forth in this Agreement, the County shall reimburse NWFR upon receipt of eligible costs associated with the Paramedic Training Program as defined in this Section and further described in Exhibit A, Budget.

The County agrees to reimburse NWFR up to total of $103,000 for each NWFR paramedic student participating in the paramedic training consistent with Exhibit A, 2020 Paramedic Training Budget. NWFR will provide quarterly paramedic training activity reports upon request. NWFR shall submit written claims on a monthly basis for reimbursement. Claims will be supported by payroll summaries identifying employee, hours worked and amount of compensation. The County will reimburse up to $103,000 of payroll costs per student. Training supplies including books, labs, equipment and learning management software for each paramedic student are provided through the county funded program cost. The County reimbursements will be within 30 days of receipt of an accurate and complete monthly claim. Monthly claims are to be submitted to the County Executive Office.

4. CONTRACT REOPENER

a. The Parties may mutually agree to re-open the contract for renegotiation of any of its terms based on changed circumstances.

b. Upon thirty (30) days' notice, this Agreement will be reopened at either the County's request or NWFR request if substantial changes in the means, methods, or scope of services identified in Exhibit "A" that have significant financial implications. The scope of the reopener shall be limited to addressing the financial implications and the specific request that raises financial implications.

5. EFFECTIVE DATE, DURATION, WITHDRAWAL AND TERMINATION

This Agreement shall be effective on date of signature by all Parties, and shall apply retroactively to January 1, 2020 for the purposes as described above and shall continue through and including February 28, 2021.

The Parties covenant to work cooperatively and in good faith under the terms and conditions expressed herein after one party has given the other parties a written notice of termination.

6. COMPLIANCE WITH THE HEALTH INSURANCE PORTABILITY ACCOUNTABILITY ACT OF 1996 (HIPAA)

The Parties agree that protected health information shall be used and maintained in order to ensure compliance with HIPAA. The ALS Service Providers and Fire Departments shall also

comply with all applicable provisions of the Health Information Technology for Economic and Clinical Health Act.

7. COMPLIANCE WITH LAWS

The Parties, in performance of this Agreement, agree to comply with all applicable local, State and/or Federal laws and ordinances, including standards for licensing, certification and operation of facilities, programs and accreditation, and licensing of individuals and any other standards or criteria as described in this Agreement to assure quality of services.

8. NON·DISCRIMINATION IN EMPLOYMENT AND SERVICES

The Parties are equal opportunity employers. The Parties agree that they shall not discriminate against any employee or applicant on the grounds of race, color, religion, sex, sexual orientation, national origin, creed, marital status, age, veteran status, or the presence of any disability; provided that the prohibition against discrimination in employment because of disability shall not apply if the particular disability prevents the particular worker involved from performing the occupational requirements of the job. The Parties shall take such action with respect to this Agreement as may be required to ensure full compliance with state and federal law. The Parties shall not, on the grounds of race, color, sex, sexual orientation, religion, national origin, creed, marital status, age, veteran status or the presence of any disability deny any individual any services or other benefits provided under this Agreement.

9. RELATIONSHIP OF PARTIES

The Parties hereto recognize and agree that they are independent governmental entities. Except as expressly provided for herein, nothing in the Agreement shall be construed to limit the discretion of the governing bodies of each party.

Neither party shall assume any liability for the direct payment of any salary, wages or other compensation of any type to any of the other party's personnel performing services hereunder. No agent, employee or other representative of the Parties shall be deemed to be an employee of the other party for any reason. This Agreement shall not be construed or interpreted such that either party hereto is held to be an agent of the other party.

10. DISPUTE RESOLUTION, JURISDICTION, AND VENUE

a. In the event of a dispute between the Parties arising from this Agreement or any obligations hereunder, the dispute shall first be referred to the operational officers or representatives designated by the Parties to have the responsibility of administering this Agreement. Said officers or representatives shall meet as soon as possible, and in any event the initial meeting shall be held within thirty (30) days of either Party's request for a meeting to resolve the dispute. The Parties covenant to make a good faith attempt to resolve the dispute at this meeting.

b. In the event that the Parties are unable to resolve any dispute arising under this Agreement, or other dispute or disagreement arising from the implementation of the terms of the Agreement, the Parties agree that mediation will be a condition precedent to any litigation. The Parties agree to jointly select a mediator. If the Parties are unable to agree upon a mediator, the Parties shall jointly obtain a list of five (5) mediators from a reputable non-Whatcom County dispute resolution organization and alternately strike mediators on that list until one remains. The Parties agree to share equally in the cost of mediation.

c. In the event that mediation is unsuccessful and litigation ensues, each Party shall bear its own costs and expenses. The venue for any dispute related to this Agreement shall be Whatcom County, Washington. This Agreement has been and shall be construed as having been made and delivered within the State of Washington and it is agreed by each party hereto that this Agreement shall be governed by the laws of the State of Washington, both as to interpretation and performance.

11. POLITICAL ACTIVITY PROHIBITED

None of the funds, materials, property or services provided directly or indirectly under this Agreement shall be used for the purpose of assisting a campaign for election of any person to any office or for the promotion of or opposition to any ballot proposition.

12. INDEMNIFICATION; HOLD HARMLESS

All services to be rendered or performed by each Party under this Agreement shall be performed or rendered entirely at each Party's own risk, as to third-party claims based on such services. Each Party ("Indemnifying Party") expressly agrees to indemnify and hold harmless each other Party and all of its officers, agents, employees ("Indemnified Party"), from any and all liability, loss or damage including reasonable costs of defense that the Indemnified Party may suffer as a result of claims, demands, actions, or damages to any and all persons or property, costs or judgments

against the Indemnified Party or any person which result from or arise out of the services performed by the Indemnifying Party under this Agreement; provided, that no Party is entitled to the protection of this section when the liability at issue has resulted exclusively from the errors or omissions of such Party, its officers, agents, or employees.

13. SEVERABILITY

a. It is understood and agreed by the Parties hereto that if any part, term or provision of this Agreement is held by the courts to be illegal, the validity of the remaining provisions shall not be affected, and the rights and obligations of the Parties shall be construed and enforced as if this Agreement did not contain the particular provision held to be invalid.

b. If it should appear that any provision hereof is in conflict with a statute of the State of Washington, said provision which may conflict therewith shall be deemed modified to conform to such statutory provision. If there is a judicial finding of illegality or conflict as set forth in this Section, and such finding materially frustrates either Party's intent with respect to this Agreement, the Party disadvantaged by the finding may cause this Agreement to be reopened for negotiation, with 60 days advance written notice. The negotiation shall be limited to reinstating the Parties to their respective positions as if the finding had not occurred.

14. ENTIRE AGREEMENT

The Parties agree that this Agreement is the complete expression of the terms hereto and any oral representations or understandings not incorporated herein are excluded. Further, any modification of this Agreement shall be in writing and signed by all Parties. All Parties recognize time is of the essence in the performance of the provision of this Agreement. It is also agreed by the Parties that the forgiveness of the non-performance of any provision of this Agreement does not constitute a waiver of the provisions of this Agreement. The Parties agree that this Agreement supersedes any previous agreement between the Parties regarding the services and obligations set forth herein.

15. NOTICES

All notices, demands, requests, consents and approvals which may, or are required to, be given by any party to any other party hereunder, shall be in writing and shall be deemed to have been duly given when delivered personally, sent by facsimile, sent by a nationally recognized overnight

delivery service, or if mailed or deposited in the United States mail and sent by registered or certified mail, return receipt requested, postage prepaid to:

WHATCOM COUNTY
c/o COUNTY EXECUTIVE
311 GRAND AVENUE
BELLINGHAM, WASHINGTON 98225

NORTH WHATCOM FIRE & RESCUE
c/o FIRE CHIEF
4142 BRITTON LOOP ROAD
BELLINGHAM, WASHINGTON 98226

16. ASSIGNMENT

The County shall not assign any portion of this Agreement. NWFR shall not assign any portion of this Agreement without the written consent of the County, which, to the extent practical, shall be sought in writing by NWFR not less than forty-five (45) days prior to the date of any proposed assignment. The County agrees that it will not unreasonably withhold such consent.

17. RECORDING

A copy of this Agreement shall be filed with the Whatcom County Auditor or posted on the website of either Party.

18. NO BENEFIT TO THIRD PARTIES

This Agreement is entered into for the benefit of the Parties and shall confer no benefits, direct or implied, on any third persons. Nothing herein shall be construed as creating an exception to the Public Duty Doctrine.

19. NEUTRAL AUTHORSHIP

Each of the provisions of this Agreement has been reviewed and negotiated directly between the Parties, and represents the combined work product of all Parties hereto. No presumption or other rules of construction which would interpret the provisions of this Agreement in favor of or against the Party preparing the same shall be applicable in connection with the construction or interpretation of any of the provisions of this Agreement.

20. COUNTERPARTS

This Agreement may be executed in any number of counterparts, and each such counterpart hereof shall be deemed to be an original instrument, but all such counterparts together shall constitute but one agreement.

Executed this ____ day of _____, 2020, for WHATCOM COUNTY.

_____
Satpal Sidhu, County Executive

Approved as to form:

_____
County Civil Deputy Prosecuting Attorney

Executed this ____ day of _____, 2020, for North Whatcom Fire & Rescue.

_____
Fire Chief Jason Vanderveen

EXHIBIT A

BUDGET

2020 Paramedic Training Budget						
Individual Paramedic Student Costs						
Student wage	**Per Student**			**Students**		
Student wage	$103,000	Preceptor, class & patient contact hrs.	$ 206,000	2		
			$ 206,000			
Sick Leave Cashout		When transferred to Bellingham Fire Dept.				
Student 1			$9,550			
Student 2			$16,886			
			$26,436.88	2		
		GRAND TOTAL	**$232,436.88**			

WHATCOM COUNTY CONTRACT INFORMATION SHEET

Whatcom County Contract No. _____

Originating Department:	Executive Office
Division/Program: *(i.e. Dept. Division and Program)*	Emergency Medical Services (EMS)
Contract or Grant Administrator:	M. Hilley
Contractor's / Agency Name:	North Whatcom Fire Authority

Is this a New Contract? Yes ☒ No ☐ If not, is this an Amendment or Renewal to an Existing Contract? Yes ☐ No ☐
If Amendment or Renewal, (per WCC 3.08.100 (a)) Original Contract #: _____

Does contract require Council Approval? Yes ☒ No ☐ If No, include WCC: _____
Already approved? Council Approved Date: (Exclusions see: Whatcom County Codes 3.06.010, 3.08.090 and 3.08.100)

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

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

Is this contract the result of a RFP or Bid process?
Yes ☐ No ☒ If yes, RFP and Bid number(s): _____ Contract Cost Center: 130100

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):
$ 232,436.88

This Amendment Amount:
$ _____

Total Amended Amount:
$ _____

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

1. Exercising an option contained in a contract previously approved by the council.
2. Contract is for design, construction, r-o-w acquisition, 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 Agreement allows for the reimbursement of the EMT-Paramedic Training Program ("Program") costs for the two NWFA students.

Term of Contract: February 1, 2019	Expiration Date: May 1, 2020

Contract Routing:

1. Prepared by:	Mike Hilley	Date: 01/31/19
2. Attorney signoff:	Christopher Quinn	Date: 10/15/2020
3. AS Finance reviewed:	Bbennett	Date: 10/19/2020
4. IT reviewed (if IT related):		Date:
5. Contractor signed:		Date:
6. Submitted to Exec.:		Date:
7. Council approved (if necessary):		Date:
8. Executive signed:		Date:
9. Original to Council:		Date:

Whatcom County

COUNTY COURTHOUSE
311 Grand Avenue, Ste #105
Bellingham, WA 98225-4038
(360) 778-5010

Agenda Bill Master Report

File Number: AB2020-461

File ID:	AB2020-461	**Version:**	1	**Status:**	Agenda Ready
File Created:	10/18/2020	**Entered by:**	THelms@co.whatcom.wa.us		
Department:	County Executive's Office	**File Type:**	Contract		
Assigned to:	Council Finance and Administrative Services Committee			**Final Action:**	
Agenda Date:	10/27/2020			**Enactment #:**	

Primary Contact Email: Tschroed@co.whatcom.wa.us

TITLE FOR AGENDA ITEM:

Request authorization for the County Executive to enter into a contract amendment between Whatcom County and Mount Baker School District to increase the allocation of CARES Act funding by $100,000 in an amount not to exceed $230,000

SUMMARY STATEMENT OR LEGAL NOTICE LANGUAGE:

See attached contract amendment

HISTORY OF LEGISLATIVE FILE

Date:	Acting Body:	Action:	Sent To:

Attachments: Contract Amendment, Routing Form

Whatcom County Contract No.

202009041-1

Amendment No. 1
Whatcom County Contract No. 202009041
CONTRACT BETWEEN WHATCOM COUNTY AND
Mt. Baker School District

THIS AMENDMENT is to the Contract between Whatcom County and Mt. Baker School District, dated September 30, 2020 and designated "Whatcom County Contract No.202009041". In consideration of the mutual benefits to be derived, the parties agree to the following:

This Amendment increases the maximum consideration by $100,000 to a total consideration of $ 230,000 .

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: September 17, 2020, regardless of the date of signature.

IN WITNESS WHEREOF, Whatcom County and Mt. Baker School District have executed this Amendment on the date and year below written.

DATED this _____ day of _____, 20__.

Each signatory below to this Contract warrants that he/she is the authorized agent of the respective party; and that he/she has the authority to enter into the contract and to bind the party thereto.

CONTRACTOR:

Mt. Baker School District

_____
Mary Sewright, Superintendent

Mt. Baker School District
P.O. Box 95
Deming, WA 98244

WHATCOM COUNTY:
Recommended for Approval:

_____
Department Supervisor Date

Approved as to form:

_____
Prosecuting Attorney Date

Approved:
Accepted for Whatcom County:

By: _____
Satpal Singh Sidhu, Whatcom County Executive

WHATCOM COUNTY CONTRACT INFORMATION SHEET

Whatcom County Contract No.

Originating Department:	Prosecuting Attorney's Office
Division/Program: *(i.e. Dept. Division and Program)*	6510 Prosecuting Attorney Admin
Contract or Grant Administrator:	Vanessa Martin
Contractor's / Agency Name:	Sea Mar Community Health Centers

Is this a New Contract? If not, is this an Amendment or Renewal to an Existing Contract? Yes ○ No ○
Yes ○ No ○ If Amendment or Renewal, (per WCC 3.08.100 (a)) Original Contract #: 202005001

Does contract require Council Approval? Yes ○ No ○ If No, include WCC: _____
Already approved? Council Approved Date: May 6, 2020 (Exclusions 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): 201911012 and K4513

Is this contract the result of a RFP or Bid process? Contract
Yes ○ No ○ If yes, RFP and Bid number(s): _____ Cost Center: 2622 and 2623

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.
- ☐ Goods and services provided due to an emergency
- ☐ Contract work is for less than $100,000.
- ☐ Contract for Commercial off the shelf items (COTS).
- ☐ Contract work is for less than 120 days.
- ☐ Work related subcontract less than $25,000.
- ☐ Interlocal Agreement (between Governments).
- ☐ Public Works - Local Agency/Federally Funded FHWA.

Contract Amount:(sum of original contract amount and any prior amendments):
$ 288,778.00

This Amendment Amount:
$ 470,793.00

Total Amended Amount:
$ 759,571.00

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 contract funds the oversight and administration of the LEAD Program and integration with the GRACE Program.

Term of Contract:	Expiration Date:

Contract Routing:

1. Prepared by: Vanessa Martin Date: 9/11/2020
2. Attorney signoff: Christopher Quinn Date:
3. AS Finance reviewed: Marianne Caldwell Date:
4. IT reviewed (if IT related): Date:
5. Contractor signed: Date:
6. Submitted to Exec.: Date:
7. Council approved (if necessary): Date:
8. Executive signed: Date:
9. Original to Council: Date:

Whatcom County

COUNTY COURTHOUSE
311 Grand Avenue, Ste #105
Bellingham, WA 98225-4038
(360) 778-5010

Agenda Bill Master Report

File Number: AB2020-462

File ID:	AB2020-462	**Version:**	1	**Status:**	Agenda Ready
File Created:	10/18/2020	**Entered by:**	THelms@co.whatcom.wa.us		
Department:	County Executive's Office	**File Type:**	Contract		
Assigned to:	Council Finance and Administrative Services Committee			**Final Action:**	
Agenda Date:				**Enactment #:**	

Primary Contact Email: Tschroed@co.whatcom.wa.us

TITLE FOR AGENDA ITEM:

Request authorization for the County Executive to enter into a contract amendment between Whatcom County and Nooksack Valley School District to increase the CARES Act funding allocation by $100,000 in an amount not to exceed $230,000

SUMMARY STATEMENT OR LEGAL NOTICE LANGUAGE:

See attached

HISTORY OF LEGISLATIVE FILE

Date:	Acting Body:	Action:	Sent To:

Attachments: Contract Amendment, Routing Form

Whatcom County Contract No.

202009040-1

Amendment No. 1
Whatcom County Contract No. 202009040
CONTRACT BETWEEN WHATCOM COUNTY AND
Nooksack Valley School District

THIS AMENDMENT is to the Contract between Whatcom County and Nooksack Valley School District, dated September 30, 2020 and designated "Whatcom County Contract No.202009040". In consideration of the mutual benefits to be derived, the parties agree to the following:

This Amendment increases the maximum consideration by $100,000 to a total consideration of $ 230,000 .

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: September 17, 2020, regardless of the date of signature.

IN WITNESS WHEREOF, Whatcom County and Nooksack Valley School District have executed this Amendment on the date and year below written.

DATED this _____ day of _____, 20__.

Each signatory below to this Contract warrants that he/she is the authorized agent of the respective party; and that he/she has the authority to enter into the contract and to bind the party thereto.

CONTRACTOR:

Nooksack Valley School District #506

_____
Mark Johnson, Superintendent

Nooksack Valley School District
3326 E. Badger Road
Everson, WA 982474
Mark.johnson@nv.k12.wa.us

WHATCOM COUNTY:
Recommended for Approval:

_____
Department Supervisor Date

Approved as to form:

_____
Prosecuting Attorney Date

Approved:
Accepted for Whatcom County:

By: _____
Satpal Singh Sidhu, Whatcom County Executive

WHATCOM COUNTY CONTRACT INFORMATION SHEET

Whatcom County Contract No.

Originating Department:	Prosecuting Attorney's Office
Division/Program: *(i.e. Dept. Division and Program)*	6510 Prosecuting Attorney Admin
Contract or Grant Administrator:	Vanessa Martin
Contractor's / Agency Name:	Sea Mar Community Health Centers

Is this a New Contract? If not, is this an Amendment or Renewal to an Existing Contract? Yes ○ No ○
Yes ○ No ○ If Amendment or Renewal, (per WCC 3.08.100 (a)) Original Contract #: 202005001

Does contract require Council Approval? Yes ○ No ○ If No, include WCC: _____
Already approved? Council Approved Date: May 6, 2020 (Exclusions 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): 201911012 and K4513

Is this contract the result of a RFP or Bid process? Contract
Yes ○ No ○ If yes, RFP and Bid number(s): _____ Cost Center: 2622 and 2623

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.
- ☐ Goods and services provided due to an emergency
- ☐ Contract work is for less than $100,000.
- ☐ Contract for Commercial off the shelf items (COTS).
- ☐ Contract work is for less than 120 days.
- ☐ Work related subcontract less than $25,000.
- ☐ Interlocal Agreement (between Governments).
- ☐ Public Works - Local Agency/Federally Funded FHWA.

Contract Amount:(sum of original contract amount and any prior amendments):
$ 288,778.00

This Amendment Amount:
$ 470,793.00

Total Amended Amount:
$ 759,571.00

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 contract funds the oversight and administration of the LEAD Program and integration with the GRACE Program.

Term of Contract:	Expiration Date:

Contract Routing:

1. Prepared by: Vanessa Martin Date: 9/11/2020
2. Attorney signoff: Christopher Quinn Date:
3. AS Finance reviewed: Marianne Caldwell Date:
4. IT reviewed (if IT related): Date:
5. Contractor signed: Date:
6. Submitted to Exec.: Date:
7. Council approved (if necessary): Date:
8. Executive signed: Date:
9. Original to Council: Date:

Whatcom County

COUNTY COURTHOUSE
311 Grand Avenue, Ste #105
Bellingham, WA 98225-4038
(360) 778-5010

Agenda Bill Master Report

File Number: AB2020-467

File ID:	AB2020-467	**Version:**	1	**Status:**	Agenda Ready
File Created:	10/20/2020	**Entered by:**	CHalka@co.whatcom.wa.us		
Department:	Council Office	**File Type:**	Contract		
Assigned to:	Council Finance and Administrative Services Committee			**Final Action:**	
Agenda Date:	10/27/2020			**Enactment #:**	

Primary Contact Email: chalka@co.whatcom.wa.us

TITLE FOR AGENDA ITEM:

Request authorization for the County Executive to enter into a contract between Whatcom County and Michael Bobbink for hearing examiner services

SUMMARY STATEMENT OR LEGAL NOTICE LANGUAGE:

Request authorization for the County Executive to enter into a contract between Whatcom County and Michael Bobbink for hearing examiner services

HISTORY OF LEGISLATIVE FILE

Date:	Acting Body:	Action:	Sent To:

Attachments: Memo, Contract Amendment #1

COUNTY COURTHOUSE
311 Grand Avenue, Suite #105
Bellingham, WA 98225-4038
(360) 778-5010

CLERK OF THE COUNCIL
Dana Brown-Davis, C.M.C.

MEMORANDUM

TO: Satpal Sidhu, County Executive

FROM: Cathy Halka, Legislative Analyst

RE: Amend contract for Hearing Examiner Services

DATE: October 15, 2020

Enclosed are two (2) originals of a contract amendment between Whatcom County and Michel Bobbink for your review and signature.

- Background and Purpose

Michael Bobbink has been providing hearing examiner services to Whatcom County for over 25 years. Last year, Michael Bobbink was the sole responder to a Request for Proposals (RFP #19-70) and was selected to provide services to the County. The 2019 contract (#201911034) allows for one year contract renewals for a total of no more than three years.

- Funding Amount and Source

The Council budget includes funding for this contract amendment.

- Differences from Previous Contract

The contract amendment is the same as previous years with a couple changes. The annual contract amount has been reduced by 5% from $97,661.65 to $92,778.57. The timeframe of the contract has been extended through December 31, 2021.

Please contact Cathy Halka at extension 5019, if you have any questions or concerns regarding the terms of this agreement.

Encl.

Whatcom County Contract No.
201911034-1

Amendment No. 1
Whatcom County Contract No. 201911034
CONTRACT BETWEEN WHATCOM COUNTY AND
Michael Bobbink

THIS AMENDMENT is to the Contract between Whatcom County and Michael Bobbink, dated December 4, 2019 and designated "Whatcom County Contract No. 201911034". In consideration of the mutual benefits to be derived, the parties agree to the following:

This Amendment extends the term of this Agreement through December 31, 2021, and increases the maximum consideration by $92,778.57 to a total consideration of $190,440.22 .

This Amendment also adds the following to the Scope of Work, Exhibit A:

> If the Hearing Examiner Coordinator position becomes vacant during the term of this agreement, preparation of written recommendations and decisions, including any clerical services associated with preparation, shall become the responsibility of the Contractor.

Finally, Exhibit B is amended as shown in the attached Exhibit B.

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: January 1, 2021, regardless of the date of signature.

IN WITNESS WHEREOF, Whatcom County and Michael Bobbink have executed this Amendment on the date and year below written.

DATED this 19th day of October, 2020.

CONTRACTOR:

MICHAEL BOBBINK

Michael Bobbink
MICHAEL BOBBINK

STATE OF WASHINGTON)
) ss.
COUNTY OF WHATCOM)

On this 19th day of October, 2020, before me personally appeared Michael Bobbink to me known to be the owner of Hearing Examiner Services and who executed the above instrument and who acknowledged to me the act of signing and sealing thereof.

JENNIFER SCHNEIDER NOTARY PUBLIC 209749 COMMISSION EXPIRES 9-19-23 STATE OF WASHINGTON

NOTARY PUBLIC in and for the State of Washington,
Jennifer Schneider printed name,
residing at Everson, WA.
My commission expires 9/19/23

Last edited 01/22/2020

WHATCOM COUNTY:

Recommended for Approval:



Department Supervisor Date

Approved as to form:

Karen Frakes (by email) 10/16/2020

Prosecuting Attorney Date

Approved:
Accepted for Whatcom County:

By: _____
Satpal Singh Sidhu, Whatcom County Executive

STATE OF WASHINGTON)
) ss
COUNTY OF WHATCOM)

On this _____ day of _____, 20____, before me personally appeared Satpal Singh Sidhu, 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,
_____, printed name.
residing at _____. My commission expires _____.

CONTRACTOR INFORMATION:

MICHAEL BOBBINK
528 CLARK ROAD
BELLINGHAM, WA 98225

Contact Name: Michael Bobbink
Contact Phone: 360-220-1134
Contact FAX:
Contact Email: mbobbink@live.com

Last edited 01/22/2020

EXHIBIT B
(COMPENSATION)

In consideration of the services performed under the terms if this contract, the contractor shall be paid Seven Thousand Seven Hundred Thirty-One and Fifty-Five Cents ($7,731.55) per month for a total not to exceed Ninety-Two Thousand Seven Hundred Seventy-Eight and Fifty-Seven Cents ($92,778.57) to the end of the contract date of December 31, 2021.

Billing Procedures: The contractor shall submit written claims on a monthly basis for reimbursement of services provided unless otherwise approved in writing by the County. It is agreed that the contractor shall be paid for his services within 30 days of receipt of the monthly claim and upon determination of accuracy. Monthly claims are to be submitted to the Clerk of the Council.

Whatcom County

COUNTY COURTHOUSE
311 Grand Avenue, Ste #105
Bellingham, WA 98225-4038
(360) 778-5010

Agenda Bill Master Report

File Number: AB2020-464

File ID:	AB2020-464	**Version:**	1	**Status:**	Agenda Ready
File Created:	10/19/2020	**Entered by:**	SWinger@co.whatcom.wa.us		
Department:	Finance Division	**File Type:**	Bid Award		
Assigned to:	Council Finance and Administrative Services Committee			**Final Action:**	
Agenda Date:	10/27/2020			**Enactment #:**	

Primary Contact Email: swinger@co.whatcom.wa.us

TITLE FOR AGENDA ITEM:

Request approval for the County Executive to award Bid #20-61 for the purchase of furnishings for the Lighthouse Mission Ministries Base Camp to Norix Group, Inc., in an amount not to exceed $329,645.45

SUMMARY STATEMENT OR LEGAL NOTICE LANGUAGE:

Per WCC 3.08.100(A), the Health Department requests approval for the County Executive to award Bid #20-61 for the purchase of lift-deck beds with underbed storage and mattresses to the lowest responsive bidder, Norix Group, Inc., in an amount not to exceed $329,645.45. Funding was appropriated on two approved Supplementals: Supplemental #8, Ordinance #2020-012 (Commerce COVID Emergency Housing grant will cover $250,000.00) and Supplemental #18, Ordinance #2020-049 (Commerce Shelter grant will cover $79,641.45)

HISTORY OF LEGISLATIVE FILE

Date:	Acting Body:	Action:	Sent To:

Attachments: 20-61 Staff Memo.pdf

WHATCOM COUNTY
ADMINISTRATIVE SERVICES

FINANCE/ACCOUNTING
Whatcom County Courthouse
311 Grand Avenue, Suite #503
Bellingham WA 98225-4082
Brad Bennett, Finance Manager

DATE: October 19, 2020

TO: Tyler Schroeder, Director of Administrative Services

FROM: Brad Bennett, AS Finance Manager

SUBJECT: Award of Bid #20-61, Furnishings for the Lighthouse Mission Ministries Base Camp

Background

Bids were duly advertised for the supply of furnishings for the Lighthouse Mission Ministries Base Camp. Two responses were received to Bid #20-61 on Tuesday, October 6, 2020. The Invitation to Bid included supply of chairs, but the Health Department is opting not to purchase the chairs at this time. The table below details the bids received, bud does not include the cost of the chairs:

Vendor	Base Bid	Sales Tax	Total Bid Amount
Norix Group, Inc.	$ 303,258.00	$ 26,383.45	$ 329,641.45
Ecologic Industries, LLC	$ 84,200.00	$ 7,325.40	$ 91,525.40

The Health Department requests approval to award Bid #20-61 to vendor is Norix Group, Inc, located in West Chicago, Illinois. While Norix Group was not the lowest bid, it was the only responsive bid that met the specifications of Bid #20-61, which included underbed locker storage. The total cost for this purchase, including delivery and sales tax, is $329,641.45.

Funding

This was not a planned purchase, but is part of the response to the COVID-19 pandemic response. Funding is provided in the Homeless Housing Fund, through two grant sources. The Commerce COVID Emergency Housing grant (ASR #2020-3039, Ordinance #2020-012) will be used to cover $250,000.00 towards the cost of furniture. The Commerce Shelter Grant (ASR #2020-3107, Ordinance #2020-049) will cover the remaining $79,641.45. I concur with this request.

AS Finance Manager

Approved as recommended:

Director of Administrative Services

Date of Council Action_____

WHATCOM COUNTY
Health Department

Erika Lautenbach, Director
Greg Stern, M.D., Health Officer

MEMORANDUM

TO: Brad Bennett, AS Finance Manager

FROM: Anne Deacon, Human Services Manager, Health Department

DATE: 10/19/2020

RE: Bid 20-61, Furnishing for Lighthouse Mission Ministries Base Camp

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- **Requested Action**
  The Health Department's Human Services Division requests approval to purchase 200 lift deck beds and 200 mattresses for those beds to be used by the Lighthouse Mission Ministries Base Camp shelter for the amount of $329,641.45, including sales tax.

- **Background and Purpose**
  Whatcom County Health Department has worked in partnership with the City of Bellingham and Lighthouse Mission to mitigate the spread of COVID 19 among those experiencing homelessness in the community. Base Camp operated by Lighthouse Mission Ministries was relocated to provide a place to sleep for 200 individuals experiencing homelessness on a nightly basis. Beds are needed in this space for those individuals to sleep, as well as storage space to hygienically and safely secure belongings. Mattresses for the beds are also needed and should provide enhanced hygiene and resistance to viruses.

  Whatcom County Health Department recommends the purchase of beds with built in storage as well as mattresses recommended by Norix Grp, Inc.

  While 2 vendors submitted bids for purchasing, Norix Grp, met the general requirements of the material specifications. Norix did not provide the lowest bid, but they did meet the specifications of providing storage locker space underneath the beds. Having space underneath the beds means more individuals will be able to sleep in the facility while still allowing for necessary social distancing and secure, hygienic storage of belongings.

  The submitted bids also included information on chairs as requested by in the invitation to bid, but chairs will not be purchased at this time. The amounts listed below are updated without the costs of chairs included.

Vendor	Base Bid	Sales Tax (rate%)	Total Bid Amount
Norix Grp, Inc.	$ 303,258.00	$ 26,383.45 (8.7%)	$ 329,641.45
Ecologic Industries, LLC	$ 84,200.00	$ 7,325.40 (8.7%)	$ 91,525.40

- **Funding Amount and Source**

This purchase was not budgeted during the current year budget process as it is a response to COVID-19. Funding is provided in the Homeless Housing Fund, through two grant sources. The Commerce COVID Emergency Housing grant (ASR #2020-3039, Ordinance #2020-012) will be used to cover $250,000.00 towards the cost of furniture. The Commerce Shelter Grant (ASR #2020-3107, Ordinance #2020-049) will cover the remaining $79,641.45.

- **Recommendation**

Please approve this purchase and forward to the Executive and County Council for approval at the October, 27, 2020 meeting, per WCC 3.08.100.

Please contact Anne Deacon 360-778-6054 if you have any questions or concerns regarding the terms of this award.

Whatcom County

COUNTY COURTHOUSE
311 Grand Avenue, Ste #105
Bellingham, WA 98225-4038
(360) 778-5010

Agenda Bill Master Report

File Number: AB2020-473

File ID:	AB2020-473	**Version:**	1	**Status:**	Agenda Ready
File Created:	10/21/2020	**Entered by:**	JThomson@co.whatcom.wa.us		
Department:	Health Department	**File Type:**	Interlocal		
Assigned to:	Council Finance and Administrative Services Committee			**Final Action:**	
Agenda Date:	10/27/2020			**Enactment #:**	

Primary Contact Email: ADeacon@co.whatcom.wa.us

TITLE FOR AGENDA ITEM:

Request authorization for the County Executive to enter into an Interlocal Agreement amendment between Whatcom County and City of Bellingham for a cost sharing related to the COVID-19 health crisis

SUMMARY STATEMENT OR LEGAL NOTICE LANGUAGE:

See attachments

HISTORY OF LEGISLATIVE FILE

Date:	Acting Body:	Action:	Sent To:

Attachments: Amended and Restated Addendum No. 1.pdf, Original Interlocal Agreement #202006008

Amended and Restated ADDENDUM No. 1
To The Interlocal Cost Sharing Agreement Related To Covid-19 Health Crisis
Between Whatcom County and the City of Bellingham

Project: Relocate the Drop-in Center from Bellingham High School to another location to reduce the opportunities to spread COVID-19.

Need: In response to COVID-19 and related state proclamations, as well as to address the needs of a vulnerable population, the Lighthouse Mission Ministries (LMM) relocated its Drop-In Center (DIC) on Friday, March 20. In partnership with the Bellingham School District, the DIC is temporarily housed on the Bellingham High School Campus through August 9, 2020.

The School District needed the building for fall 2020, so another location was required. If the Drop-in Center in Old Town were used, approximately 110 people would no longer have been served and would have become unsheltered.

Relocation to a larger facility is consistent with guidance from the U.S. Centers for Disease Control and state and local Health Department guidelines for social (physical) distancing. People without homes do not have the ability to create the social distancing required when they are seeking shelter.

By moving the Drop-In Center to a larger facility, guests are able to maintain physical and social distance which is necessary to reduce opportunities to spread COVID-19. This not only benefits vulnerable individuals but protects the health of the entire community.

It is expected that COVID-19 will remain in our communities for quite some time. Until there is a vaccine, it is unlikely that the DIC in Old Town will be suitable for congregate living at this scale. LMM has plans to build a new facility to replace its inadequate DIC in Old Town. The City and County secured a location that serves the community during the COVID emergency and serves the community while LMM pursues a capital campaign to replace its Old Town facility.

Cooperation, Roles and Responsibilities: This is a cooperative effort. The roles and responsibilities of the City and County are set forth below. For context, LMM's and Whatcom Unified Command's responsibilities are outlined as well. The roles and responsibilities outlined below may be revised by agreement of the Whatcom County Executive and the Mayor of the City of Bellingham.

Project: The DIC requires approximately 15,000 square feet of enclosed buildings with additional outdoor space. Two options that were explored include: 1) lease an existing building; or 2) lease land or use City/County land and purchase or lease a modular building. The City leased 1530 Cornwall Avenue for this purpose.

Deadline: The Use Agreement with Bellingham School District expired August 10, 2020. The District preferred the DIC exit the building in July for additional time to prepare the school for a restart. The DIC was relocated to 1530 Cornwall Avenue on July 17, 2020.

Project Management: The Parties will undertake the roles and responsibilities with respect to the project as set forth in the following table.

	Whatcom County	City of Bellingham	Lighthouse Mission	WUC
Alternative Site Evaluation & Submit Letter to CE & Mayor stating continued need for alternative shelter			Support	Lead
Lease Negotiations	Support	Lead	Support	
Sub-Lease Negotiations		Lead	Lead	
Tenant Improvements*	Support	Lead	Support – Specify Needs	
Furnishings		Lead	Support – Specify Products	Support - Minor
Staffing, Supplies, etc.			Lead	
Communications Plan (until LMM DIC becomes operational)	Support	Lead	Support	Support (WCHD)
Permitting	Minor Support	Lead	Support	

* This task would include purchasing or leasing of a modular building if not feasible to lease an existing building, as noted in Option 2.

Cost Sharing: The City and Whatcom County agree to cost sharing for this project as set forth in the tables below. The funding commitments by the Parties are limited to the not-to-exceed amounts ("NTE") set forth in the top row. However, the NTE may be revised by agreement of the Whatcom County Executive and the Mayor of the City of Bellingham in the event additional grant funds become available for this purpose and that have been authorized by the County Council or City Council for such use. The commitment by the Lighthouse Mission is provided for information and context.

The approximate cost of this project to the Parties is $1.5 Million. Since the original Addendum was authorized, Whatcom County has received additional State and Federal funding for homeless services. This additional funding allows Whatcom County to contribute more funding to this project, decreasing the need to utilize as much Bellingham CARES Act funds.

	Whatcom County NTE $1,000,000	City of Bellingham NTE $500,000	Lighthouse Mission ~ 2.2 M
Lease & NNN	X (1st 3 Years Commerce Grant)		Final Year
Utilities			X
Damage/Maintenance		X	X
Site Improvements	X	X	
Site Furnishings	X	X	X
Operations			100%

Contract Coversheet

Contract: C2000406

Amendment: N/A

Supplier	Department	Originator
Whatcom County	Office of The Ma	Alison Henshaw

Classification	Project Name	Project Manager
Interlocal Agreement	Cost Sharing Agreement re COVID 19 Health Crisis	

Original Amount	Maximum Amount	Amendment Change
$0.00	$0.00	$0.00

Type	Structure	Agreement Type
NF - Non-Financial	ST - Standard	NONFIN - Non-Financial Contract

Termination Date	Amended Termination Date	Compliance Type
12/31/2020		

Retainage %	Retainage Comments

Renewal Date	Renewal Notes

6/12/20 Finance
6/12/20 Scan

Additional Contract Notes: Rush! Please return to Legal, once signed + scanned.

Thanks, Julie Steele

Contacts:

↓

Must be signed by today.

DocuSign Envelope ID: 531E9FB6-AC1E-4246-B9A2-9DB2B6F7C127

CITY OF BELLINGHAM
CONTRACT # C2000406

Whatcom County Contract #
202006008

INTERLOCAL COST SHARING AGREEMENT RELATED TO COVID-19 HEALTH CRISIS

This Agreement is made and entered into on this 11 day of June 2020, between Whatcom County ("County") and the City of Bellingham ("City"), both municipal corporations of the State of Washington located in Whatcom County, for cost sharing related to the COVID-19 health crisis. Hereinafter, the County and the City may be referred to as "Parties," collectively, or as a "Party," individually.

RECITALS

WHEREAS, the County and City enter into this Agreement pursuant to and as authorized by the Interlocal Cooperation Act (Chapter 39.34 RCW);

WHEREAS, on February 29, 2020, the Governor of the State of Washington proclaimed that a State of Emergency exists in all counties in the State of Washington due to the outbreak of novel coronavirus (COVID-19);

WHEREAS, on March 10, 2020, the Whatcom County Executive declared a Whatcom County public health emergency due to the spread of COVID-19 in the community;

WHEREAS, on March 12, 2020, the Mayor of the City of Bellingham issued a Proclamation of Local Emergency as a result of COVID-19;

WHEREAS, the ongoing risk to public safety, health, and welfare posed by COVID-19 across Whatcom County requires the continued unified response by local governments to minimize the wide-ranging impacts of COVID-19 in our communities;

WHEREAS, Whatcom Unified Command is primarily responsible for providing the coordinated County-wide response to the COVID health crisis;

WHEREAS, the City Mayor, the County Executive, and County Sheriff jointly share executive authority over Unified Command;

WHEREAS, to date Whatcom Unified Command has deployed substantial financial resources in response to COVID. Expenditures have included but are not limited to establishing isolation and quarantine housing in Bellingham, procuring and supplying PPE county-wide, securing on-call COVID-related transportation (Cabulance) service, providing temporary shelter, meals, and services for vulnerable members of the community, and providing direct assistance to nursing and long-term care facilities suffering the disproportionate impacts of COVID;

WHEREAS, it is expected that such COVID-related expenditures will continue in the coming months;

WHEREAS, to date the Parties have cooperated in maximizing and prioritizing their resources to respond to the community's most pressing needs consistent with their respective governmental obligations and functions;

WHEREAS, cost and revenue sharing between the City and the County during this emergency is necessary to ensure the most effective and cost-efficient response to the COVID emergency County-wide;

WHEREAS, the continued cooperation between the City and County is essential to the ongoing protection of public health and safety in the Bellingham and throughout Whatcom County;

WHEREAS, to the extent reasonably practicable, the City and the County are committed to identifying and jointly pre-approving those COVID-related expenditures that may be subject to cost-sharing under this Agreement prior to incurring such expense;

WHEREAS, the Parties, as independent governmental entities, have received or anticipate receiving revenue from state and federal sources including a Washington State of Department of Commerce COVID-19 Outbreak Emergency Housing Grant; FEMA Public Assistance Program; and the CARES Act and are committed to seeking and utilizing additional funds from all available sources;

WHEREAS, the City and County are also committed, however, to sharing those COVID-related costs that will not be reimbursed or covered by state or federal funding sources, as appropriate and under the terms of this Agreement;

WHEREAS, the Parties agree that a cost and revenue sharing agreement will promote and maximize the public health, safety, and welfare of their residents;

WHEREAS, the City and the County have currently identified a specific action item requiring joint cooperation and cost sharing at this time; and

WHEREAS, the Parties currently seek to establish a cost sharing agreement for the needed replacement shelter as further articulated in Addendum No. 1 to this Agreement.

NOW, THEREFORE, and in consideration of the mutual promises and covenants contained herein the Parties agree as follows:

1. PURPOSE OF AGREEMENT. The purpose of this Agreement is to provide for ongoing joint cooperation to implement COVID-19 response action items and to formalize the cost and revenue sharing related to such action items. As of the date of this Agreement, the Parties have identified the immediate need to relocate the shelter currently housed at Bellingham High School. The terms of this specific joint action item and the related cost sharing are set forth in Addendum No. 1, which is attached hereto and incorporated into this Agreement. It is anticipated that future responsive action items may also require joint cooperation and cost and revenue sharing during the health crisis and the recovery period. Therefore, the Parties hereby commit to work in good faith toward establishing joint cooperation and cost and revenue sharing agreements specific to additional action items and expenditures, the terms of which will be memorialized as addenda to this Agreement.

2. JOINT ACTION ITEMS AND LIMITATIONS. Specific action items that the Parties deem appropriate for cost and revenue sharing will be established through addenda to this Agreement. Any addenda shall include the total cost committed by each Party for the action item, the allocation of costs to each Party, and the roles and responsibilities assigned to each Party related to the action item. The Whatcom County Executive and the Mayor of the City of Bellingham may agree to cost or revenue sharing by the Parties for additional action items other than the replacement shelter site referenced in Addendum No. 1; provided, however, that any such agreement must be reduced to a written addendum to this Agreement and executed by the Executive and the Mayor. Any cost sharing that is (1) beyond the not-to-exceed costs for the replacement shelter set forth in Addendum No. 1 or (2) exceeding any spending thresholds set by the Parties' respective councils through their budgeting processes must be approved by the County Council and the City Council. The Parties agree to establish and maintain appropriate budget spending threshold to satisfy the funding commitments set forth in Addendum No. 1.

3. COST SHARING WITH LOCAL FUNDS. The City and the County have each identified up to $250,000 in local funds for the purpose of cost sharing in those costs that are incurred in the unified response to the COVID health crisis and which are not eligible for state, federal, or other non-local funding ("uncovered expenditures"). The Parties commit to work in good faith to identify and reach agreement regarding uncovered expenditures appropriate for cost sharing under this Section. Cost sharing for such uncovered expenditures shall be subject to the same process set forth in Section 2, including the need for an addendum to this Agreement to identify specific

obligations, and the County Executive and Mayor are hereby authorized to execute such addenda. Each Party's specific financial obligation related to an uncovered expenditure, including contribution percentage, will be identified in the applicable cost sharing addenda.

4. INVOICES AND PAYMENTS. On a monthly basis, each Party will endeavor to bill the other Party, with an invoice and supporting documentation, to prove expenses incurred for any cost sharing subject to this Agreement. Payment shall be made within 30 days following receipt of the invoice.

5. REPORTING. At the request of either the County or the City, the responding Party shall prepare and provide to the requesting Party a report showing revenue and expenses related to the COVID-19 health crisis, including cost shared by the Parties to this Agreement.

6. ASSETS. The ownership and disposition of any assets acquired by either Party through expenditures for which cost sharing has occurred under this Agreement, if any exist, shall be set forth in the applicable addenda.

7. EFFECTIVE DATE, DURATION AND TERMINATION. The County and City agree that this Agreement shall be effective as of the date it is executed and shall continue in effect as long as needed to effectuate the cost sharing contemplated in this Agreement. When the cost sharing contemplated herein is complete, this Agreement shall automatically terminate.

8. NOTICES. Any notices or actions required as a result of this contract shall be directed to the following:

WHATCOM COUNTY EXECUTIVE'S OFFICE
311 GRAND AVENUE, SUITE 108
BELLINGHAM, WA 98225

CITY OF BELLINGHAM MAYOR'S OFFICE
210 LOTTIE STREET
BELLINGHAM, WA 98225

9. COMPLIANCE WITH LAWS. The Parties, in performance of this Agreement, agree to comply with all applicable local, State and/or Federal laws and ordinances.

10. RELATIONSHIP OF PARTIES. The Parties hereto recognize and agree that they are independent governmental entities and that this Agreement does not establish a separate entity. Except as expressly provided for herein, nothing in the Agreement shall be construed to limit the discretion of the governing bodies of each party. Neither party shall assume any liability for the direct payment of any salary, wages or other compensation of any type to any of the other party's personnel performing services hereunder. No agent, employee or other representative of the Parties shall be deemed to be an employee of the other party for any reason. This Agreement shall not be construed or interpreted such that either party hereto is held to be an agent of the other party.

11. DISPUTE RESOLUTION. In the event of a dispute between the Parties arising from this Agreement or any obligations hereunder, the dispute shall first be referred to the operational officers or representatives designated by the Parties to have the responsibility of administering this Agreement. Said officers or representatives shall meet as soon as possible, and in any event the initial meeting shall be held within thirty (30) days of either Party's request for a meeting to resolve the dispute. The Parties covenant to make a good faith attempt to resolve the dispute at this meeting. In the event that the Parties are unable to resolve any dispute arising under this Agreement, or other dispute or disagreement arising from the implementation of the terms of the Agreement, the Parties agree that mediation will be a condition precedent to arbitration. The Parties agree to jointly select a mediator. In the event that mediation is unsuccessful the Parties agree to submit the matter to arbitration. Each Party shall bear its own costs and expenses related to dispute resolution.

12. SEVERABILITY. It is understood and agreed by the Parties hereto that if any part, term, or provision of this Agreement is held by the courts to be illegal, the validity of the remaining provisions shall not be affected, and the rights and obligations of the Parties shall be construed and enforced as if this Agreement did not contain the particular provision held to be invalid.

13. ENTIRE AGREEMENT. The Parties agree that this Agreement is the complete expression of the terms hereto and any oral representations or understandings not incorporated herein are excluded. Further, any modification of this Agreement shall be in writing and signed by both Parties. Both Parties recognize time is of the essence in the performance of the provision of this Agreement. The Parties agree that this Agreement supersedes any previous agreement between the Parties regarding the services and obligations set forth herein.

15. FURTHER ACTS. Each Party agrees to perform any further acts and execute and deliver any further documents that may be reasonably necessary to carry out the provisions and intent of this Agreement. The Parties recognize that additional written agreements may be necessary prior to implementation of any specific action item.

Executed this ____ day of _____, 2020 for WHATCOM COUNTY.

DocuSigned by:
Satpal Singh Sidhu 6/10/2020
7373A1E2A59A4FD...
Satpal Sidhu, County Executive

Approved as to form:

DocuSigned by:
Chris Quinn 6/10/2020
EC466EF5C88B4FD...
Civil Deputy Prosecuting Attorney

Executed this 11 day of June, 2020, for CITY OF BELLINGHAM.

Seth Fleetwood, Mayor

Attest:

Andrew Asbjornsen, Finance Director

Approved as to form:

City Attorney

DocuSign Envelope ID: 531E9FB6-AC1E-4246-B9A2-9DB2B6F7C127

ADDENDUM No. 1
To The Interlocal Cost Sharing Agreement Related To Covid-19 Health Crisis
Between Whatcom County and the City of Bellingham

Project: Relocate the Drop-in Center from Bellingham High School to another location to reduce the opportunities to spread COVID-19.

Need: In response to COVID-19 and related state proclamations, as well as to address the needs of a vulnerable population, the Lighthouse Mission Ministries (LMM) relocated its Drop-In Center (DIC) on Friday, March 20. In partnership with the Bellingham School District, the DIC is temporarily housed on the Bellingham High School Campus through August 9, 2020.

The School District needs the building this coming fall, so another location is required. If the Drop-in Center in Old Town were used, approximately 110 people would no longer be served and would likely become unsheltered.

Relocation to a larger facility is consistent with guidance from the U.S. Centers for Disease Control and state and local Health Department guidelines for social (physical) distancing. People without homes do not have the ability to create the social distancing required when they are seeking shelter.

By moving the Drop-In Center to a larger facility, guests will be able to maintain physical and social distance which is necessary to reduce opportunities to spread COVID-19. This not only benefits vulnerable individuals but protects the health of the entire community.

It is expected that COVID-19 will remain in our communities for quite some time. Until there is a vaccine, it is unlikely that the DIC in Old Town will be suitable for congregate living. LMM has plans to build a new facility to replace its inadequate DIC in Old Town. Ideally, the City and County will secure a location that serves the community during the COVID emergency and serves the community while LMM pursues a capital campaign to replace its Old Town facility.

Cooperation, Roles and Responsibilities: This is a cooperative effort. The roles and responsibilities of the City and County are set forth below. For context, LMM's and Whatcom Unified Command's responsibilities are outlined as well. The roles and responsibilities outlined below may be revised by agreement of the Whatcom County Executive and the Mayor of the City of Bellingham.

Options: The DIC requires approximately 15,000 square feet of enclosed buildings with additional outdoor space. Two options that are being explored: 1) lease an existing building; or 2) lease land or use City/County land and purchase or lease a modular building. Given the tight timeline, leasing and existing building is preferred.

Deadline: The Use Agreement with Bellingham School District expires August 10, 2020. The District prefers the DIC exit the building in July for additional time to prepare the school for a restart.

Project Management: The Parties will undertake the roles and responsibilities with respect to the project as set forth in the following table.

	Whatcom County	City of Bellingham	Lighthouse Mission	WUC
Alternative Site Evaluation & Submit Letter to CE & Mayor stating continued need for alternative shelter			Support	Lead
Lease Negotiations	Support	Lead	Support	
Sub-Lease Negotiations		Lead	Lead	
Tenant Improvements*	Support	Lead	Support – Specify Needs	
Furnishings		Lead	Support – Specify Products	Support - Minor
Staffing, Supplies, etc.			Lead	
Communications Plan (until LMM DIC becomes operational)	Support	Lead	Support	Support (WCHD)
Permitting	Minor Support	Lead	Support	

* This task would include purchasing or leasing of a modular building if not feasible to lease an existing building, as noted in Option 2.

Cost Sharing: The City and Whatcom County agree to cost sharing for this project as set forth in the tables below. The funding commitments by the Parties are limited to the not-to-exceed amounts ("NTE") set forth in the top row. The commitment by the Lighthouse Mission is provided for information and context.

Option 1: This option will involve the lease of an existing building and is the preferred option. The approximate cost of this project to the Parties is $1.5 Million.

	Whatcom County NTE $800,000 (DOC Balance)	City of Bellingham NTE $700,000	Lighthouse Mission ~ 2.2 M
Lease & NNN	First 3 Years Commerce Grant		Final Year
Utilities	Through 9/2020 Commerce Grant		Oct 2020 – lease term
Damage/Maintenance			100%
Site Improvements	Commerce Grant	CARES ACT and/or Housing Levy	
Site Furnishings	Commerce Grant	CARES ACT and/or Housing Levy	Available at OT DIC
Operations			100%

Option 2: This option will involve the lease of land or us of land owned by the City or the County and will also require installation of a modular unit. The approximate cost of this project to the Parties is $2.5 Million.

	Whatcom County NTE $1.8 M	**City of Bellingham NTE $700k**	**Lighthouse Mission**
Lease Land & Purchase or Lease Modular	Commerce Grant, may need CARES ACT	CARES ACT, Local Housing Levy	Balance (depends on cost to City and County)
Utilities			Depends on balance remaining from City and County Not to Exceed Amounts.
Damage/Maintenance			100%
Site Improvements	Commerce Grant, may need CARES Act	CARES ACT	
Site Furnishings			Available at OT DIC
Operations			100%

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WHATCOM COUNTY CONTRACT INFORMATION SHEET

Whatcom County Contract No.
202006008

Originating Department:	Executive Office
Division/Program: *(i.e. Dept. Division and Program)*	COVID-19
Contract or Grant Administrator:	Tyler Schroeder, Deputy Executive
Contractor's / Agency Name:	City of Bellingham

Is this a New Contract? Yes ◉ No ○ If not, is this an Amendment or Renewal to an Existing Contract? Yes ○ No ◉
If Amendment or Renewal, (per WCC 3.08.100 (a)) Original Contract #: _____

Does contract require Council Approval? Yes ◉ No ○ If No, include WCC: _____
Already approved? Council Approved Date: 06/02/2020 (Exclusions see: Whatcom County Codes 3.06.010, 3.08.090 and 3.08.100)

Is this a grant agreement?
Yes ○ No ◉ If yes, grantor agency contract number(s): _____ CFDA#: _____

Is this contract grant funded?
Yes ○ No ◉ If yes, Whatcom County grant contract number(s): _____

Is this contract the result of a RFP or Bid process?
Yes ○ No ◉ If yes, RFP and Bid number(s): _____ Contract Cost Center: 134100

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):
$ _____

This Amendment Amount:
$ _____

Total Amended Amount:
$ _____

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

1. Exercising an option contained in a contract previously approved by the council.
2. Contract is for design, construction, r-o-w acquisition, 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:

Cost sharing agreement between Whatcom County and the City of Bellingham for costs related to the COVID-19 health crisis.

Term of Contract: As long as necessary to affectuate the cost sharing	Expiration Date: when cost sharing is complete

Contract Routing:

1. Prepared by: T. Schroeder Date: 05/27/20
2. Attorney signoff: C. Quinn Date: 05/28/20
3. AS Finance reviewed: B.Bennett Date: 05/29/20
4. IT reviewed (if IT related): _____ Date: _____
5. Contractor signed: _____ Date: _____
6. Submitted to Exec.: _____ Date: _____
7. Council approved (if necessary): _____ Date: _____
8. Executive signed: _____ Date: _____
9. Original to Council: _____ Date: _____

Whatcom County

COUNTY COURTHOUSE
311 Grand Avenue, Ste #105
Bellingham, WA 98225-4038
(360) 778-5010

Agenda Bill Master Report

File Number: AB2020-439

File ID:	AB2020-439	**Version:**	1	**Status:**	Held In Committee
File Created:	10/06/2020	**Entered by:**	DBrown@co.whatcom.wa.us		
Department:	Council Office	**File Type:**	Discussion		
Assigned to:	Council Public Works & Health Committee			**Final Action:**	
Agenda Date:	10/27/2020			**Enactment #:**	

Primary Contact Email: DBrown@co.whatcom.wa.us

TITLE FOR AGENDA ITEM:

Discussion regarding a proposed ordinance amending the Whatcom County Code to create a Whatcom County Child and Family Well-Being Task Force

SUMMARY STATEMENT OR LEGAL NOTICE LANGUAGE:

Discussion regarding a proposed ordinance amending the Whatcom County Code to create a Whatcom County Child and Family Well-Being Task Force

HISTORY OF LEGISLATIVE FILE

Date:	Acting Body:	Action:	Sent To:
10/13/2020	Council Public Works & Health Committee	HELD IN COMMITTEE	Council Public Works & Health Committee

Attachments: Proposed Ordinance, Approved amendments 10.13.2020

PROPOSED BY: _____
INTRODUCTION DATE: OCTOBER 13, 2020

ORDINANCE ESTABLISHING WHATCOM COUNTY CODE 2.106 AND CREATING A WHATCOM COUNTY CHILD AND FAMILY WELL-BEING TASK FORCE

WHEREAS, in April 2019, the County Health Board adopted Resolution 2019-020 affirming commitment to Whatcom County's Young Children and Families; and

WHEREAS, in February 2020, the County Health Board officially adopted a child and family action plan entitled: "Whatcom Working Towards Well-being: An Action Plan for County Government" (Action Plan); and

WHEREAS, the Action Plan calls for the development of an ordinance to create a county task force, or other official county committee, with high level staffing and resources to ensure that diverse community partners are informed, coordinated and included in the implementation of the action plan, make additional recommendations, and regularly report progress to County Council and County Executive; and

WHEREAS, the Action Plan recommends using the County Incarceration Prevention and Reduction Task Force as a model, including representatives from government, community organizations, and families; and

WHEREAS, the Action Plan also specifies that the task force will focus on tracking and furthering progress of community efforts to achieve the desired results for children and families;

NOW, THEREFORE, BE IT ORDAINED by the Whatcom County Council that Whatcom County Code Chapter 2.106 is hereby established, creating a Whatcom County Child and Family Well-being Task Force as outlined in Exhibit A to this ordinance.

BE IT FURTHER ORDAINED that the initial tasks to be accomplished by the Task Force are as follows:

A. Develop processes and procedures to ensure that all work of the Task Force is embedded in principles of:
   a. Equity, with specific attention to racial equity
   b. Family engagement
   c. Results-based approaches

B. Develop recommendations for County infrastructure to promote child and family wellbeing
   a. Clarify scope and purpose of infrastructure
   b. Identify and evaluate infrastructure models such as a County Office of Child and Family Well-being
   c. Recommend funding approaches to build and sustain infrastructure

d. Recommend policies and practices that increase accountability to parents, caregivers, and stakeholders from under-represented communities in county committees and workgroups.
e. Propose strategies to adopt trauma-informed practices across County government, including staff training and development

C. Develop recommendations for adoption of a "children and families first" approach for County policy and funding decisions across all departments

a. Recommend policy and program review process
b. Recommend ways to fully integrate parents, caregivers, and stakeholders from underrepresented communities in county committees and workgroups, including compensation for time
c. Recommend processes to ensure consideration and prioritization of child and family needs in county funding decisions

D. Develop recommendations to promote shared governmental and community accountability for child and family results

a. Review results approaches in other communities and recommend strategies for County adoption
b. Identify mechanisms for government and community stakeholders to agree on and work together toward desired results, including identification of key strategies and actions
c. Identify mechanisms to track and share progress on key indicators aligned with desired results

E. Develop recommendations for coordination and enhancement of existing county initiatives focused on issues impacting young children and their families

a. Review existing County initiatives and groups focused on issues such as racial equity, housing, behavioral health, economic development, and incarceration prevention, and recommend ways to incorporate focus on young children and their families into these initiatives and groups.
b. Review existing community initiatives addressing high priority concerns such as child/family homelessness, lack of access to affordable child care and early learning opportunities, and need for child/family behavioral health supports and identify opportunities for additional County support and coordination.

F. Develop recommendations for new, or enhancement of existing, funding streams to support child and family programs and services that are aligned with desired results

a. Recommend scope and process of fiscal analysis
b. Review and recommend options for new or enhanced funding streams

BE IT FINALLY ORDAINED that the initial work of the Task Force for the above tasks shall be accomplished and reported to the County Council and County Executive in the following phases:

PHASE I – Establish Task Force processes and procedures. Clarify goals and metrics. Establish processes for shared accountability for results. Evaluate and recommend infrastructure model for County adoption. Propose scope and approach for County fiscal

analysis to identify existing and potential funding streams for child and family programs. Review and identify existing child and family serving collaborative resources and initiatives, and infrastructure. Recommend strategies to fill the gaps identified. Deliver the initial Phase I report by June 1, 2021

PHASE II -- Develop and establish methods to increase and stabilize funding streams for child and family programs, services, and infrastructure. Deliver the initial Phase II report as completed no later than March 2022

.

PHASE III – Develop specific operational plans and budgets leading to implementation of appropriate programs, services and infrastructure. Include details on assignment of responsibilities, and projected outcomes anticipated. Deliver the initial Phase III report with sufficient details to proceed with programs and infrastructure no later than October 1, 2022.

ADOPTED this ____ day of _____, 2020.

WHATCOM COUNTY COUNCIL
WHATCOM COUNTY, WASHINGTON

ATTEST:

_____
Dana Brown-Davis, Clerk of the Council

_____
Barry Buchanan, Council Chair

WHATCOM COUNTY EXECUTIVE
WHATCOM COUNTY,

APPROVED AS TO FORM:
WASHINGTON

_____
Civil Deputy Prosecutor

_____
Satpal Sidhu
County Executive

( ) Approved ( ) Denied

Date Signed: _____

EXHIBIT A

Chapter 2.106

CHILD AND FAMILY WELL-BEING TASK FORCE

Sections:

2.106.010 Established
2.106.020 Purpose
2.106.030 Function
2.106.040 Permanent Members
2.106.050 Additional Appointed Members
2.106.060 Term of Office
2.106.070 Organization – Meetings
2.106.080 Staff and Funding Support
2.106.090 Reporting

2.106.010 Established

There is hereby established a Whatcom County Child and Family Well-being Task Force.

2.106.020 Purpose

The purpose of the Whatcom County Child and Family Well-being Task Force is to continually review Whatcom governmental impact on children and families and make specific recommendations for improvements for all departments

2.106.030 Function

The Task Force will consider input from diverse families throughout Whatcom County and evidence-based and promising practices and report on and make recommendations to County Council, Executive, and other appropriate officials regarding implementation of recommendations in the Whatcom Working Toward Well-being: An Action Plan for County Government (Action Plan) as adopted on February 4, 2020.

2.106.040 Permanent Members

Members of the Child and Family Well-being Task Force shall include the following 15 designated officials or their representative:

A. Three representatives from families selected by Generations Forward Family Council
B. One representative from Whatcom Early Learning Alliance
C. One representative from Whatcom Taking Action for Children/Youth with Special Health Needs
D. One representative from School Superintendents (selected by Superintendents)
E. One representative from DCYF (Child Welfare)-local office
F. One representative from the Whatcom County Health Department (selected by Health Director)
G. One representative from Public Health Advisory Board (selected by PHAB)
H. One member of the Whatcom County Council/Health Board
I. Whatcom County Executive or alternate
J. One representative from City of Bellingham
K. One representative from small cities (selected by small cities)
L. One representative from Lummi Nation (selected by Lummi Nation)
M. One representative from Nooksack Tribe (selected by Nooksack Tribe)

2.106.050 Additional Appointed Members
In addition to officials designated above, the Child and Family Well-being Task Force shall include the following 10-15 members appointed by the Whatcom County Council:

- Community Members from Under-Represented Communities: Hispanic/Latino, American Indian/Alaska Native, Black/African American, Immigrant, Rural (up to 5 members)
- Community Action
- Non-Profit Housing and Social Services
- Child Care/Early Learning
- Higher Education
- Health Care Agency (serving young children and families)
- Behavioral Health Agency (serving young children and families)
- Philanthropy
- Private business or corporation

2.106.060 Term of Office
The term of office for appointed members shall be two years; members may apply for membership renewal only once. Appointment of members shall comply with Chapter 2.03 WCC.

2.106.070 Organization — Meetings.

A. Meetings of the task force shall be open and accessible to the public and shall be subject to the Open Public Meetings Act.
B. At every meeting, the task force will schedule an open session to take public comment.
C. Written records of meetings, resolutions, research, findings and recommendations shall be kept and such records shall be submitted to county staff and shall be made public, including posting on the county website.
D. The task force shall adopt its own rules and procedures for the conduct of business.
E. The task force shall elect co-chairs (including at least one representing family perspective) from among its members who shall preside at its meetings.
F. The task force shall determine its meeting schedule and agenda, but shall meet at least quarterly.
G. The task force may form and appoint ad hoc committees to work on specific issues, so long as at least two committee members are also members of each ad hoc committee.

2.106.080 Staff and Funding Support
The Task Force will have full support from the Council, the County Executive's Office, Health Department staff, and locally delivered paid consultant assistance to conduct and complete its tasks in an efficient and effective manner.

2.106.090 Reporting
As outlined in the Phases of the Ordinance and at least biannually thereafter, no later than March 30 and September 30 of each year, the Task Force will provide a report and recommendations to the County Council and County Executive on progress.

The following motions were approved in Public Works and Health Committee on 10/13/2020:

Amend Exhibit A Section 2.106.040 Permanent Members:

1 - Members of the Child and Family Well-being Task Force shall include the following 15 ~~designated officials or their~~ representatives, appointed by their designated agency:

2 - E. One representative from Department of Children, Youth, and Families (DCYF)

3 - K. One representative from small cities (selected by ~~small cities~~ the Small Cities Partnership)

4 - M. One representative from Nooksack Tribe (selected by Nooksack Tribe)

These representatives are not subject to term limits. The individual agencies will determine who will represent them on the Task Force.

A motion carried 3-0 to HOLD IN COMMITTEE AS AMENDED.

Whatcom County

COUNTY COURTHOUSE
311 Grand Avenue, Ste #105
Bellingham, WA 98225-4038
(360) 778-5010

Agenda Bill Master Report

File Number: AB2020-446

File ID:	AB2020-446	**Version:**	1	**Status:**	Agenda Ready
File Created:	10/13/2020	**Entered by:**	CStrong@co.whatcom.wa.us		
Department:	Planning and Development Services Department	**File Type:**	Discussion		
Assigned to:	Council Planning and Development Committee			**Final Action:**	
Agenda Date:	10/27/2020			**Enactment #:**	

Primary Contact Email: cstrong@co.whatcom.wa.us

TITLE FOR AGENDA ITEM:

Discussion regarding an ordinance adopting amendments to WCC 20.72, Point Roberts Special District

SUMMARY STATEMENT OR LEGAL NOTICE LANGUAGE:

Proposed amendments to WCC 20.72, Point Roberts Special District

HISTORY OF LEGISLATIVE FILE

Date:	Acting Body:	Action:	Sent To:

Attachments: Staff Report 2020-10-12, Ordinance, draft 2020-10-12, Exhibit A - WCC 20.72 Amendments 2020-09-10-PRCAC-Final, Exhibit B - PR zoning map 2020, Exhibit C - PRCAC 20.72 Minutes Discussion, Exhibit D - O'Brien comments

Whatcom County
Planning & Development Services
Staff Report

WCC 20.72 Point Roberts Special District Amendments

I. Background Information

File # PLN2019-00007

File Name: WCC 20.72 Point Roberts Special District Amendments

Applicants: Point Roberts Community Advisory Committee (PRCAC) & Whatcom County Planning and Development Services (PDS)

Summary of Request: Proposed amendments to WCC 20.72 Point Roberts Special District

Location: Point Roberts

Planning Commission Recommendation: Approve

Staff Recommendation: Approve

Background: The PRCAC is proposing amendments to WCC 20.72 to address changes in land use demand.

The Point Roberts Special District is an overlay zone. From the zoning map provided (Exhibit B) it can be seen that Point Roberts is zoned with many of the County's standard zones (Rural, Small Town Commercial, Resort Commercial, etc.), but laid over the entire peninsula is this Special District that modifies the underlying zoning. It was created as a way to help realize the Point Roberts Subarea Plan (a part of the Comprehensive Plan), first adopted back in 1979 (though updated a few times since).

The Point Roberts Subarea Plan (and its subsequent iterations) was developed during a different economic time. In particular, the U.S. dollar was low compared to the Canadian dollar, and travel was quite easy pre-9/11 (and now pre-COVID-19). Simply put, there were a lot more Canadians investing in and visiting Point Roberts for recreation. Thus, the subarea plan was based on an economic development strategy of creating a quaint, walkable downtown commercial core geared towards capturing tourist dollars. It was thought that there would be high demand for hotels, motels, bars and restaurants, small shops, and recreational opportunities.

However, since then, things haven't gone according to plan: Most commercial development in Point Roberts has been new gas stations, commercial mailboxes, and storage for Canadians; or local construction/services businesses. This has led to struggles between those citizens wanting to maintain the Subarea Plan's vision and those wanting to start businesses that may work better under the current economic conditions. This in turn has resulted in multiple code violation complaints, in particular about commercial storage uses.

The genesis of the amendments included herein is an attempt by the PRCAC to balance these two competing demands. They know that until the Subarea Plan is updated any amendments to WCC 20.72 must remain consistent with it, but they would also like to allow some of the businesses attempting to make a go of it to do so, and, in the interim, resolve some of the code enforcement cases. At this time, the next opportunity to update the Pont Roberts Subarea Plan would be a part of the next

Comprehensive Plan update cycle due in 2025. However, PDS will work with the PRCAC and the County Council to identify any earlier opportunities.

II. Code Amendments

The proposed code amendments are found in Exhibit A. Please refer to that attachment; explanations are provided therein. Briefly, in addition to simplifying and clarifying some of the language of 20.72, the substantive amendments would:

1. Allow permitted businesses in the Small Town Commercial district to have up to two on-site storage containers as an accessory use (WCC 20.72.102(1)), and up to three through a conditional use permit (WCC 20.72.154(4)), and add setback standards for them (WCC 20.72.350(3)). This amendment would alleviate certain code enforcement cases where some storage of goods and materials has been found necessary, contrary to the existing code.
2. Make it clear that businesses with fleet vehicles are not considered accessory to a commercial use in the Small Town Commercial district (WCC 20.72.101(2), in keeping with the subarea plan's goal of encouraging a pedestrian-friendly commercial core (and not allowing vehicle storage).
3. Allow hotels, motels, and timeshare condominiums in the Small Town Commercial district as a conditional use (in addition to the Resort Commercial district, which is already allowed) (WCC 20.72.154(1)). This amendment would potentially allow for additional economic development in the commercial core.
4. Allow kennels for kenneling up to 6 animals when associated with an animal groomer in the Small Town Commercial district as a conditional use (WCC 20.72.154(2)). This would allow a proposed pet groomer with limited kenneling to locate in the commercial core. Large kennels would still be prohibited (WCC 20.72.204(2)).
5. Allow RV parks in the Small Town Commercial district as a conditional use (WCC 20.72.154(3)). This amendment would potentially allow for additional economic development in the commercial core.
6. Repeal the larger, 40-foot setback along Roosevelt Way (erroneously referred to as Roosevelt Road in the existing code), though the underlying zones' standard setbacks would still apply (WCC 20.72.350(1)). The larger, 50-foot setback along Tyee Drive, the main entrance to Point Roberts, would be maintained. This amendment would potentially allow for additional economic development in the commercial core.
7. Allow a 10-foot setback throughout the Small Town Commercial district, not just along Gulf Road (WCC 20.72.350(2)). This amendment would potentially allow for additional economic development in the commercial core.
8. Make the maximum building height of 45 feet apply throughout the Small Town Commercial district, not just along Gulf Road (WCC 20.72.401). This would complement the allowance of hotels, motels, and timeshare condominiums, limiting their height in the commercial core.
9. Add measurable standards to the existing screening requirements for trash and utility areas of commercial and institutional uses (WCC 20.72.653(a)) and for vehicle storage areas (WCC 20.72.653(b)). Though the code already required screening of these areas, it did not say to what standard, making it difficult to judge code compliance.

10. Allow some flexibility as to where businesses' parking lots area located in the Small Town Commercial district (WCC 20.72.659(a)). Though the subarea plan's goal is to have a pedestrian-oriented commercial core, some lots have been found to be too constrained to meet this requirement.

III. Comprehensive Plan Evaluation

The proposed amendments are consistent with the Comprehensive Plan, and in particular the Point Roberts Subarea Plan.

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, on behalf of the Point Roberts Community Advisory Committee, an application to make various amendments to Whatcom County Code (WCC) 20.72 (Point Roberts Special District).
2. A determination of non-significance (DNS) was issued under the State Environmental Policy Act (SEPA) on April 3, 2020.
3. Notice of the subject amendment was submitted to the Washington State Department of Commerce on September 9, 2020.
4. The Point Roberts Community Advisory Committee discussed these amendments in 27 public meetings over a two and a half year period. The PRCAC heard from members of the community in person at these meetings and through e-mail correspondence. PRCAC's at-large members reached out to Point Roberts for feedback outside the meetings. In addition the 3 member groups Chamber of Commerce, the Point Roberts Taxpayers Association and the Point Roberts Registered Voters Association all held multiple public meetings regarding 20.72 changes.
5. The Planning Commission held a duly noticed public hearing on the proposed amendments on October 8, 2020.
6. The County Council held a duly noticed public hearing on the proposed amendments on X[CES1], 2020.
7. The amendments are consistent with Comprehensive, and in particular the Point Roberts Subarea Plan.
8. In addition to simplifying and clarifying some of the language of 20.72, the amendments would:
    a. Allow permitted businesses in the Small Town Commercial district to have up to two on-site storage containers as an accessory use (WCC 20.72.102(1)), and more through a conditional use permit (WCC 20.72.154(4), and add setback standards for them (WCC 20.72.350(3)).
    b. Allow hotels, motels, and timeshare condominiums in the Small Town Commercial district as a conditional use (in addition to the Resort Commercial district, which is already allowed). (WCC 20.72.154(1))
    c. Allow kennels for kenneling up to 6 animals when associated with an animal groomer as a conditional use. (WCC 20.72.154(2))
    d. Allow RV parks in the Small Town Commercial as a conditional use. (WCC 20.72.154(3))

e. Repeal the larger, 40-foot setback along Roosevelt Road (though the underlying zones' standard setbacks would still apply) (WCC 20.72.350(1)

f. Allow a 10-foot setback throughout the Small Town Commercial district, not just along Gulf Road (WCC 20.72.350(2))

g. Make the maximum building height of 45 feet apply throughout the Small Town Commercial district, not just along Gulf Road. (WCC 20.72.401)

h. Add measurable standards to the existing screening requirements for trash and utility areas of commercial and institutional uses (WCC 20.72.653(a)) and for vehicle storage areas. (WCC 20.72.653(b))

i. Allow some flexibility as to where businesses' parking lots area located in the Small Town Commercial district. (WCC 20.72.659(a))

V. Proposed Conclusions

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

VI. Recommendations

The Planning Commission and the Department of Planning and Development Services recommend that the County Council approve the proposed amendments.

Attachments

1. Draft Ordinance
2. Exhibit A – Proposed Code Amendments
3. Exhibit B – Point Roberts Zoning Map
4. Exhibit C – Excerpts from the PRCAC minutes regarding discussions of WCC 20.72 amendments
5. Exhibit D – Written comments from Thomas O'Brien representing the Point Roberts Independent Business Council submitted to the Planning Commission

PROPOSED BY: _____
INTRODUCTION DATE:_____

ORDINANCE NO. _____

ADOPTING AMENDMENTS TO WHATCOM COUNTY CODE CHAPTER 20.72, POINT ROBERTS SPECIAL DISTRICT

WHEREAS, the Point Roberts Community Advisory Committee has proposed amendments to Whatcom County Code Chapter 20.72, Point Roberts Special District; 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, on behalf of the Point Roberts Community Advisory Committee, an application to make various amendments to Whatcom County Code (WCC) 20.72 (Point Roberts Special District).
2. A determination of non-significance (DNS) was issued under the State Environmental Policy Act (SEPA) on April 3, 2020.
3. Notice of the subject amendment was submitted to the Washington State Department of Commerce on September 9, 2020.
4. The Point Roberts Community Advisory Committee discussed these amendments in 27 public meetings over a two and a half year period. The PRCAC heard from members of the community in person at these meetings and through e-mail correspondence. PRCAC's at-large members reached out to Point Roberts for feedback outside the meetings. In addition the 3 member groups Chamber of Commerce, the Point Roberts Taxpayers Association and the Point Roberts Registered Voters Association all held multiple public meetings regarding 20.72 changes.
5. The Planning Commission held a duly noticed public hearing on the proposed amendments on October 8, 2020.
6. The County Council held a duly noticed public hearing on the proposed amendments on X[CES1], 2020.
7. The amendments are consistent with Comprehensive, and in particular the Point Roberts Subarea Plan.
8. In addition to simplifying and clarifying some of the language of 20.72, the amendments would:
    a. Allow permitted businesses in the Small Town Commercial district to have up to two on-site storage containers as an accessory use (WCC 20.72.102(1)), and more through a conditional use permit (WCC 20.72.154(4), and add setback standards for them (WCC 20.72.350(3)).
    b. Allow hotels, motels, and timeshare condominiums in the Small Town Commercial district as a conditional use (in addition to the Resort Commercial district, which is already allowed). (WCC 20.72.154(1))

c. Allow kennels for kenneling up to 6 animals when associated with an animal groomer as a conditional use. (WCC 20.72.154(2))

d. Allow RV parks in the Small Town Commercial as a conditional use. (WCC 20.72.154(3))

e. Repeal the larger, 40-foot setback along Roosevelt Road (though the underlying zones' standard setbacks would still apply) (WCC 20.72.350(1)

f. Allow a 10-foot setback throughout the Small Town Commercial district, not just along Gulf Road (WCC 20.72.350(2))

g. Make the maximum building height of 45 feet apply throughout the Small Town Commercial district, not just along Gulf Road. (WCC 20.72.401)

h. Add measurable standards to the existing screening requirements for trash and utility areas of commercial and institutional uses (WCC 20.72.653(a)) and for vehicle storage areas. (WCC 20.72.653(b))

i. Allow some flexibility as to where businesses' parking lots area located in the Small Town Commercial district. (WCC 20.72.659(a))

CONCLUSIONS

1. The amendments to the development regulations are 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 in Exhibit A.

Section 2. Staff is authorized to work with Code Publishing to correct and update any cross-references made ineffective by these amendments.

ADOPTED this _____ day of _____, 2020.

WHATCOM COUNTY COUNCIL
WHATCOM COUNTY, WASHINGTON

ATTEST:

_____ _____

Dana Brown-Davis, Council Clerk Barry Buchanan, Council Chair

APPROVED as to form: ( ) Approved ( ) Denied

_____ _____

Civil Deputy Prosecutor Satpal Sidhu, Executive

Date: _____

Exhibit A: WCC Chapter 20.72 Point Roberts Special District

FINAL DRAFT from PRCAC 01/27/2020

20.72.010 Purpose.

Point Roberts is a unique area of Whatcom County because of its relatively small size, its mixed development character, its relative isolation and the constraints on normal growth patterns caused by the impact of access only via an international border crossing. This geographic isolation from the remainder of Whatcom County complicates the direct application of other zone districts within this title. Point Roberts is considered a limited area of more intense rural development, being clearly bounded by the border and marine environment. However, within these boundaries are zoning districts allowing a variety of development intensities. Proposed changes in uses or lots, and new proposed uses, must be consistent with rural land use as set forth in the Comprehensive Plan.

The Point Roberts Special District is an overlay zone which imposes additional controls and creates opportunities not available in the underlying zone districts to fit the needs of Point Roberts. This district is designed to protect the rural character of Point Roberts while allowing opportunities for community growth and self-reliance.

20.72.020 Application.

20.72.022 Area and applicability.

The Point Roberts Special District is an overlay zone which covers the entire geographic area of Point Roberts. Any regulations contained herein which are more restrictive than those in the underlying zone districts or in the Shoreline Management Program shall apply. Opportunities, or lesser restrictions, shall also override the requirements of the underlying zone. However, if the provisions of this chapter conflict with the provisions of the Shoreline Management Program, then the most restrictive shall apply.

20.72.030 Review of Permit Applications by the Point Roberts Community Advisory Committee.

(1) The Point Roberts Community Advisory Committee (PRCAC) is a local body advisory to Whatcom County through the office of the Whatcom County Executive and of the Whatcom County Council.

(2) The pertinent purpose of the PRCAC, as it relates to development permits, is to examine commercial and institutional permit applications in the Point Roberts subarea and make recommendations to Whatcom County planning and development services as to their compliance with this chapter and consistency with the Point Roberts design guidelines.

(3) Upon receipt of a permit application, planning and development services will forward the application to the PRCAC for review and comment. Permit applications are to be promptly examined by the PRCAC and a determination made, with or without recommendations, within 30 days of receipt of the application.

(4) Planning and development services will consider all pertinent comments received by the PRCAC prior to issuing a decision on the permit.

20.72.050 Permitted Uses.

All permitted uses in the underlying zone districts are permitted except as expressly prohibited or made conditional, or further conditioned by this chapter. In addition, the following uses are permitted:

.051 In the Resort Commercial District~~rc Zone~~:~~,~~

(1) Bed and breakfast establishments and bed and breakfast inns.~~;~~

20.72.100 Accessory uses.

.101 All accessory uses permitted as accessory uses in the underlying zone~~ing~~ districts are permitted as accessory uses.

.102 In the Small Town Commercial District:

(1) No more than two storage containers or other similar temporary storage units per lot if accessory to an approved commercial use on the same lot.

(2) Accessory vehicles shall be limited to two per each approved commercial use on a lot. The outdoor storage of contractor equipment or fleet vehicles shall not be permitted as accessory uses.

Comment [CES1]: Proposed so as to dissuade businesses with large fleets (i.e., storage of vehicles) from locating in STC, similar to 20.72.204(2).

20.72.130 Administrative approval uses.

All administrative approval uses in the underlying zone districts are permitted except as expressly prohibited or made conditional, or further conditioned by this chapter. In addition, the following uses are permitted subject to administrative approval pursuant to WCC 20.84.235:

.135 One private, noncommercial, recreational vehicle or park model trailer and one accessory guest RV per lot; provided, that the following minimum requirements and standards are met and/or followed:

(1) All recreational vehicles that remain on the site for more than 14 consecutive days shall be connected to a permitted on-site sewage system or public sewer.

(2) Maximum length of stay of any recreational vehicle on a lot shall not exceed 120 days per calendar year; provided, that no accessory guest RV shall remain on the subject lot for more than 14 consecutive days or more than 30 days total per calendar year.

(3) All recreational vehicles shall be screened from neighboring properties not using RVs and from public roads. Such screening may consist of landscaped buffer areas, native vegetation or a fence.

(4) Lots shall not be leased or rented out on a daily or overnight basis for recreational use.

(5) Accessory structures are limited to one personal storage building no larger than 200 square feet.

(6) The locations of parked RVs on vacant lots shall observe normal building setback standards for a single-family residence.

(7) All recreational vehicles shall be supported by their own wheels or camper jacks, and not be fastened to accessory structures. Placement of a recreational vehicle on a foundation or removal of the wheels of a recreational vehicle, except for temporary purposes for repair, is prohibited.

20.72.150 Conditional uses.

All conditional uses in the underlying zone districts shall remain conditional uses unless expressly prohibited by this chapter. In addition, the following uses ~~shall only~~may be conditionally permitted:

.151 In the Resort Commercial District:

~~(1) Hotels, motels and time share condominiums.~~

(1) Dry boat storage, including stacked boat storage, and boat trailer storage associated with a marina.

.152 In the Rural District:

(1) Surface and subsurface mining including the extraction of sand and gravel ~~shall~~ pursuant to ~~be conditionally permitted in the Rural Zone under~~ the provisions ~~set forth in~~of WCC 20.36.15~~0~~9 (Rural District, Conditional Uses).

~~(1)~~(2) Private commercial recreation facilities and clubs.

.153 In the R5A Zone located west of the Point Roberts Marina and east of Marine Drive, an air park facility/subdivision and commercial activities incidental to aviation facilities ~~may be conditionally permitted~~; provided, that:

(1) The proposed air park will comply with national, state, and local aviation regulations and safety standards; and

(2) Residential development shall be subordinate to the primary airstrip operations; and

(3) An air park shall include a 50-foot vegetated buffer between the proposed facility/subdivision and adjacent parcels; provided, that the required buffer may be reduced or eliminated where such a buffer might otherwise interfere with site access; use of the airstrip and/or taxi way(s); health and safety of air park residents, visitors or operators; and/or FAA regulations. Any open space reserve tract(s) associated with the proposed air park shall be exempt from the buffer requirements of this section; provided, that the open space reserve tract establishes a minimum distance of 50 feet between the air park facility/subdivision and adjacent parcels; and

(4) If a proposed subdivision, binding site plan, or short subdivision is located adjacent to an existing airstrip, the developer and any subsequent purchasers or successors in interest shall agree to refrain from any legal action to restrain or collect damages from the owners or users, or from Whatcom County, arising out of normal operation or use of the airstrip. The agreement shall appear as a covenant or deed restriction upon the plat, tract or instrument of conveyance and shall run with the land.

~~**.154** In the Rural District, private commercial sports facilities and clubs are permitted as conditional uses under WCC 20.36.165 shall include horse racing facilities and pari-mutuel wagering as regulated and licensed by the Washington State Horse Racing Commission, together with the usual accessory uses including club house, food and beverage service, restaurant and stables.~~

~~**.155** In the Resort Commercial District, dry boat storage, including stacked storage, and boat trailer storage associated with a marina.~~

.154 In the Small Town Commercial District ~~the following are permitted as conditional uses~~:

(1) Hotels, motels, and timeshare condominiums.

(2) Animal kennels for kenneling up to 6 animals and that are associated with an animal groomer.

Comment [CES2]: Moved to new .154

Comment [CES3]: Moved from .155

Comment [CES4]: Moved from .154 and curtailed (see comment below).

Comment [CES5]: Moved to .152(2) and curtailed. This language was included in 20.72 as at the time of its development (years ago) there was a proposal to have some sort of horse betting facility. However, this is no longer the case. The amended language above puts it in line with other zones.

Comment [CES6]: Moved to .151(1)

Comment [CES7]: Moved from .151

Comment [CES8]: Moved from 20.72.204 to allow small kenneling if associated with an animal groomer.

(3) ~~Additional r~~Recreational vehicle parks meeting the requirements of WCC 20.80.950 (Mobile home and recreational vehicle park standards).

(4) Up to three storage containers or similar temporary storage units per lot if accessory to an approved commercial use on the same lot.

Comment [CES9]: Moved from 20.72.204 (prohibited uses).

Comment [CES10]: Added to allow up to 3 storage containers per business as a conditional use.

20.72.200 Prohibited uses.

In addition to the uses prohibited in the underlying zone districts, the following uses are prohibited:

.201 Service stations in all zones, except expansion of existing service stations by adding additional pumps or hose dispensers.

.202 The following uses are prohibited in the Resort Commercial Zone District in the Maple Beach area of Point Roberts:

(1) Rooming houses.

(2) Taverns.

(3) Commercial parking lots or garages.

.204 The following uses are prohibited in the Small Town Commercial Zone District ~~along Gulf Road only~~:

(1) Mini storage facilities.

(2) Animal kennels ~~not associated with a veterinary practice~~, except as allowed pursuant to WCC 20.72.154(2).

(3) Facilities for commercial rental, sale, storage, service, repair, or washing of ~~M~~motorized vehicles and equipment, motorcycles, marine vessels or equipment, farm implements, light and heavy equipment, or recreational vehicles ~~service, repair, washing facilities, commercial storage or sale~~.

~~(4) Additional recreational vehicle parks.~~

~~(5)~~(4) Cemeteries.

Comment [CES11]: Deleted by PRCAC to make the prohibitions apply throughout the zone, not just along Gulf Road.

Comment [CES12]: Moved by PRCAC to 20.72.154 to allow through a CUP.

20.72.250 Minimum lot size.

.251 Where the cluster subdivision option is used to protect a critical area:

(1) A parcel size reduction of five percent may be granted where average parcel size (except the reserve tract) is less than 10,000 square feet; or

(2) A parcel size reduction of 10 percent may be granted where average parcel size (except the reserve tract) is 10,000 square feet; or

(3) More of a reduction may be granted only if the resultant lots are able to meet the applicable development standards of this title and other county ordinances, including setbacks and minimum reserve tract area.

20.72.260 Maximum density.

.261 Except as modified by this chapter, all residential densities in the Rural General Commercial, Small Town Commercial and Resort Commercial Zones shall not exceed 10 units per acre.

.262 For the purpose of developing an air park facility only, the parcels zoned R5A that are located west of the Point Roberts Marina and east of Marine Drive, including the airstrip property, may be developed as a cluster development at a maximum density of one dwelling unit per acre.

20.72.270 Subdivision requirements.

.271 Lands within the Rural Zone District in Point Roberts shall be exempt from the provisions of the Agriculture Protection Overlay District, Chapter 20.38 WCC.

20.72.350 Building setbacks/buffer areas. (Adopted by reference in WCCP Chapter 2.)

(1) Building setbacks along Tyee Drive ~~and Roosevelt Road~~ are increased to 50 feet ~~and 40 feet respectively~~. In existing treed areas along Tyee Drive ~~and Roosevelt Road~~, a 50-foot ~~/40 foot~~ vegetative buffer comprised of existing trees shall be maintained for visual or aesthetic purposes except for necessary ingress and egress points. In ~~open~~ non-treed areas a 50-foot ~~/40 foot~~ planted buffer shall be developed as part of the normal landscape requirements for site development.

(2) Within the Small Town Commercial Zone ~~along Gulf Road~~, commercial, institutional, and mixed use building setbacks shall be reduced to 10 feet. Buildings oriented towards the street edge shall be encouraged and the front of buildings shall be designated for landscaping and pedestrian traffic.

~~(2)~~(3) In the Small Town Commercial district any storage containers or other similar temporary storage units accessory to a permitted business shall be set back 50 feet from any adjacent right-of-way.

~~(3)~~(4) The provisions of WCC 20.64.353 (Building setbacks, Resort Commercial District) shall not apply to single-family residences in the Resort Commercial District at Point Roberts.

20.72.400 Height limitations.

.401 The maximum building height within the Small Town Commercial Zone ~~along Gulf Road~~ shall be 45 feet. Height of structures shall also conform to the view corridor provisions of WCC 20.72.654 and the general requirements of WCC 20.80.675.

.402 The maximum building height in all other zones shall be 25 feet unless further restricted by the Whatcom County Shoreline Management Program. Height of structures shall also conform to the general requirements of WCC 20.80.675 where applicable.

.403 Through the variance process established in Chapter 20.84 WCC, the maximum building height for any use outside of the Small Town Commercial Zone may be increased to 45 feet under the following conditions:

(1) The resultant higher structure will not unreasonably impede views from other properties any more than would a similar structure of the same mass which conforms to the 25-foot maximum building height.

(2) Building setbacks pursuant to this chapter and WCC 20.80.200 shall be increased by one foot for each foot of building height in excess of 25 feet as applicable to all setbacks.

20.72.650 Development criteria.

20.72.651 Facility design. (Adopted by reference in WCCP Chapter 2.)

(1) All commercial and institutional use structures shall be consistent with the Point Roberts design guidelines, which are herein adopted by reference as an addendum to this chapter.

Comment [CES13]: Deleted by PRCAC

Comment [CES14]: Deleted by PRCAC to make the standard apply throughout the zone, not just along Gulf Road.

Comment [CES15]: Added by PRCAC to add setback for now allowed storage containers.

Comment [CES16]: Deleted by PRCAC to make the standard apply throughout the zone, not just along Gulf Road.

(2) All commercial and institutional structures shall screen roof-mounted mechanical equipment so as not to be visible by surrounding uses or roads.

20.72.652 Archaeological resources.

(1) Applicability. This section shall apply to regulated development activities within 500 feet of all known archaeological sites, including all recorded sites listed with the Washington State Office of Archaeology and Historic Preservation. The provisions of this section shall also apply to any archaeological resources that are inadvertently discovered in association with regulated development activities pursuant to this title; provided, that the provisions of this section may be waived if the technical administrator determines that the proposed development activities do not include any ground-disturbing activities and will not impact a regulated archaeological resource.

(2) Archaeological Resource Protection.

(a) Upon receipt of application for a development permit on properties within 500 feet of a site known to contain archaeological resources, the department shall require an archaeological resources site assessment. The site assessment shall be conducted by a professional archaeologist at the expense of the applicant or project proponent to determine the presence of significant archaeological resources.

(b) If the archaeological resources site assessment identifies the presence of significant archaeological resources, an Archaeological Resource Management Plan (ARMP) shall be prepared by a professional archaeologist. The professional archaeologist shall solicit comments from the Washington State Office of Archaeology and Historic Preservation, Lummi Nation Historic Preservation Office, and Nooksack Tribe. Comments received shall be incorporated into the conclusions and recommended conditions of the ARMP to the maximum practicable.

i. An ARMP shall contain the following minimum elements:

(A) The purpose of the project, an examination of project on-site design alternatives, and an explanation of why the proposed activity requires a location on, or access across and/or through, a significant archaeological resource; and

(B) A description of the archaeological resources affected by the proposal; and

(C) An assessment of the archaeological resource and an analysis of the potential adverse impacts as a result of the activity; and

(D) An analysis of how these impacts have been avoided; or

(E) Where avoidance is not possible, how these impacts have been mitigated/minimized; and

(F) A recommendation of appropriate mitigation measures, which may include but are not limited to the following:

1. Recording the site with the State Office of Archaeology and Historic Preservation;
2. Re-interment in the case of grave sites;
3. Covering the site with a nonstructural surface to discourage pilferage (e.g., maintained grass or pavement);

4. Excavation and recovery of resources;
5. Inventorying prior to covering of resources with structures or development; and
6. Monitoring of construction excavation.

ii. The recommendations and conclusions of the ARMP shall be used to assist the technical administrator in making final administrative decisions concerning the presence and extent of archaeological resources and appropriate mitigating measures. The technical administrator shall consult with the Washington State Office of Archaeology and Historic Preservation, Lummi Nation Historic Preservation Office, and Nooksack Tribe prior to approval of the ARMP.

iii. The technical administrator may reject or request revision of the conclusions reached in an ARMP when the technical administrator can demonstrate that the assessment is inaccurate or does not fully address the archaeological resource management concerns involved.

(c) Within 15 days of receipt of a complete development permit application in an area of known archaeological resources, the county shall notify and request a recommendation from appropriate agencies such as the Whatcom Museum, Western Washington University Anthropology Department, the Office of Archaeology and Historic Preservation, the Lummi Nation Historic Preservation Office, and Nooksack Tribe. Recommendations of such agencies and other affected persons shall be duly considered and adhered to whenever possible and reasonable. Notification shall include the following information:

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

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

iii. A site map including the street address, tax parcel number, township, range, and section of the proposed project area;

iv. 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;

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

vi. The identification of existing environmental documents that evaluate the proposed project and, if not otherwise stated on the document providing notice of application, the location where the application and any studies can be reviewed;

vii. Any other information determined appropriate by the county;

viii. 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;

ix. A statement of the limits of the public comment period, the right of each agency to comment on the application within a 15-day time period, 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

agency wishing to receive personal notice of any hearings must notify the hearing examiner's office within 15 days of the date of the notice of application.

(d) In granting development permits, the county may attach reasonable conditions to provide sufficient time and/or conditions for consultation with the Washington State Office of Archaeology and Historic Preservation, Lummi Nation Historic Preservation Office and Nooksack Tribe, and to assure that valuable information and materials are properly protected, or for appropriate agencies to contact property owners regarding purchase or other long-term arrangements. Provision for the protection and preservation of archaeological sites shall be incorporated to the maximum extent possible.

(3) Inadvertent Discovery.

(a) Whenever historic, cultural or archaeological sites or artifacts of potential significance are discovered in the process of development, work on that portion of the development site shall be stopped immediately and the find reported as soon as possible to the county.

(b) The administrator shall then notify the Washington State Office of Archaeology and Historic Preservation, Lummi Nation Historic Preservation Office, Nooksack Tribe and other appropriate agencies and shall request that an immediate site assessment be conducted by a professional archaeologist pursuant to subsection (2)(a) of this section to determine the significance of the discovery. If a positive determination is not received within 14 days of receipt of such request, or if a negative determination is received, such stopped work may resume.

(c) On receipt of a positive determination of the site's significance, the administrator may invoke the provisions of subsection (2)(b) of this section.

20.72.653 Landscaping, screening, and tree canopy retention. (Adopted by reference in WCCP Chapter 2.)

In addition to compliance with all other requirements of this title and other titles of the Whatcom County Code, development activities shall be subject to the following provisions:

(1) Landscaping.

(a) Where possible the removal of existing vegetation should be minimized in areas that possess a natural beauty.

(b) Special efforts shall be made to preserve existing stands of healthy trees throughout the area proposed for development.

(c) Long expanses of fencing should be broken up by the use of landscaping.

(d) The practice of monoculture shall be avoided. Plantings should have variety in their design.

(e) Attention should be given to the growth rate of the planting materials used and how they will relate to the site in the future.

(2) Screening.

(a) Dumpster and utility areas of commercial and institutional uses~~businesses or other use buildings~~ shall be screened pursuant to WCC 20.80.355 (Trash or garbage collection storage areas – Screening and placement).

Comment [CES17]: Added by PRCAC so that there are screening standards.

~~(a)~~(b) ~~and stored~~ Commercial storage of vehicles, trailers, or truck containers ~~in commercial areas~~ shall be screened from public rights-of-way and adjacent properties to a height of 6 feet~~,~~ using earth berms, landscaping or building wall, or living wall (i.e., fabricated wall with vertical living vegetation).

Comment [CES18]: Amended by PRCAC so that there are screening standards.

(3) Tree Canopy Retention.

(a) Permit Required for Removal of Trees. No person shall remove, directly or indirectly, any tree canopy on any property within the Point Roberts subarea without first obtaining a tree removal permit unless the activity is exempted below:

(i) Pruning and maintenance of trees of up to 25 percent of the existing tree canopy.

(b) In the RC, RGC, and STC Districts, existing tree canopy areas (as defined by the dripline of the tree(s)) may be used to meet all or part of the open space requirements of this title. If existing tree canopy areas do not fully satisfy the minimum open space requirements of the applicable zone district, the remainder of the required open space shall be subject to the landscaping requirements established in WCC 20.80.300.

(c) In the RR, TZ, and R Districts:

i. Residential Development.

(A) Lots less than one-half acre may remove 100 percent of the existing tree canopy on site; provided, that 30 percent of the pre-existing tree canopy shall be replanted.

(B) Lots greater than, or equal to, one-half acre shall retain 30 percent of the existing tree canopy area on a lot. Trees may be removed within areas to be cleared for purposes of a building site, driveways, parking areas, and areas to be landscaped, but such areas shall not exceed 5,000 square feet or 70 percent, whichever is greater, of the total lot area.

(C) On lots greater than one acre, no more than 50 percent of the existing tree canopy area shall be removed.

ii. Commercial, institutional and recreational development may use existing tree canopy areas to meet all or part of the landscaping requirements of this title.

(d) The following criteria shall be used to determine which tree canopy areas are to be prioritized for retention:

i. Stands of mature native trees;

ii. Trees on sensitive slopes, on lands classified as having landslide hazards, or high erosion hazards, as defined under the critical areas ordinance;

iii. Trees within critical areas or their associated setback and/or buffer areas as defined under WCC Title 16 or 23; or

iv. Trees with significant habitat value as identified by a qualified wildlife biologist or by the technical administrator, per WCC Title 16.

(e) A 200-meter protective buffer of existing trees and vegetation shall be maintained around the Heronry.

(f) Buffering ~~which~~ that recognizes the need for safety and the unique features of Lily Point shall be required on ~~the~~ Lily Point. No development shall take place in such areas.

(g) The county shall require that tree canopy areas to be retained are identified on a site plan and clearly flagged, or delineated, on the site. A tree canopy area retention plan must accompany a project or clearing permit application and be approved by the technical administrator before clearing activity takes place. The plan shall contain the following components:
    i. A scaled drawing identifying the following:
        (A) North arrow;
        (B) Property boundaries;
        (C) Existing structures;
        (D) Site access;
        (E) Tree canopy areas to be removed;
        (F) The outer dripline of tree canopy areas to be retained;
        (G) Critical areas including, but not limited to, slopes, wetlands, and habitat conservation areas;
        (H) Protection measures to be utilized for areas that will be undisturbed; and
        (I) Areas to be replanted pursuant to subsection (3)(i) of this section;
    ii. A planting schedule that indicates the time frame for replanting of trees as applicable; and
    iii. Provisions for maintenance and monitoring.

(h) Prior to any land clearing activity or development activity, any tree canopy areas designated for retention shall be delineated by temporary fencing, tape, or other indicators around the outer dripline of the trees. Temporary fencing, tape, or other indicators shall be clearly visible and shall be maintained for the duration of the proposed clearing or development activity. Any tree canopy areas designated for retention shall be field verified by the technical administrator before clearing activities begin. Trees within canopy areas designated for retention shall not be damaged by clearing, excavation, ground surface level changes, soil compaction, or any other activities that may cause damage of roots or trunks. Machinery, impervious surfaces, fill and storage of construction materials shall be kept outside of the dripline of tree canopy areas designated for retention.

(i) Tree canopy areas may be removed when limited to those canopy areas affected under the following circumstances:
    i. Fire prevention methods when supported by the county fire marshal;
    ii. Hazard trees, as defined in Chapter 20.97 WCC, are identified (an evaluation and determination by a licensed arborist or forester may be required);
    iii. Encroachments where the trunk, branches or roots would be, or are, in contact with main or accessory structures; or
    iv. Where installation and/or maintenance of roads or utilities would unavoidably require removal or cut through the root system.

(j) In the event that tree canopy areas in excess of the applicable threshold must be removed to facilitate reasonable use of the site, or to eliminate hazard trees, not less than two replacement trees shall be planted for every tree removed. Replacement trees shall:
    i. Be of the same, or similar, native species as those trees removed from the site;

ii. Be planted to re-establish tree clusters where they previously existed, or to enhance protected tree clusters;
iii. Be planted in locations appropriate to the species' growth habitat and horticultural requirements; and
iv. Be located away from areas where damage is likely.

(k) If any trees within canopy areas designated for retention are damaged or destroyed through the fault of the applicant, agent or successor, the applicant, their agent or successor shall restore the site pursuant to a restoration plan approved by the county.

(l) The county may require a bond or other security in an amount not to exceed 125 percent of the merchantable timber to guarantee retention of existing trees within designated tree canopy areas during construction. In the event of a dispute between the landowner and the county over the established value, an assessment will be made by a professional forester or arborist whose selection will be made by mutual agreement between the county and the landowner. The fee for the services of the professional forester or arborist shall be paid by the landowner or responsible party. In the event any trees designated to be retained are removed, the county shall require that sufficient trees be replanted to replace those previously in existence. In the event that replanting does not occur, the county may enforce upon any bond posted. Each tree removed or destroyed shall constitute a separate violation.

20.72.654 Site design/view corridors. (Adopted by reference in WCCP Chapter 2.)
Scenic views and open space shall be considered in all developments and the site plan designed to ensure view access is maximized while maintaining reasonable use of the development site.

20.72.655 Public restrooms and trash facilities.
All new and redeveloped commercial establishments on Point Roberts that are open to the public shall make adequate provision for trash disposal and handicapped-accessible public restrooms. Establishments with less than four employees on premises at one time may utilize a unisex facility. Commercial complexes may provide common restrooms and/or trash disposal, or two or more establishments in one commercial area may jointly provide for such facilities, subject to appropriate agreements or covenants to ensure the facilities are available and properly maintained. Dumpsters within commercial areas shall be screened from public view using landscaping or building walls.

20.72.656 Vehicular access.
Driveways and curb cuts shall be minimized along all collector roads. Each existing lot shall be allowed only one driveway or curb cut; adjacent lots are encouraged to share access points. In new developments, lots or leased sites shall be oriented toward internal driveways, parking areas, or roads, with limited access to collector roads. These access points should normally not be closer than 400 feet apart.

20.72.657 Non-vehicular access.

(1) Commercial development or redevelopment of any parcel along Tyee Drive, Gulf Road, Marine Drive and APA Road shall be required to install appropriate street improvements along the road frontage of the parcel which may include curbs, gutters, sidewalks, boardwalks, benches, lighting, and appropriate provisions for bicycle and equestrian facilities in accordance with applicable Comprehensive Plan policies, land use regulations and current road standards. Planting of street trees along the road frontage(s) of the subject parcel shall be required. These requirements may be waived if a local improvement district, road improvement district, or transportation benefit district is formed for the purpose of providing the aforementioned improvements.

(2) Commercial development of any parcel along a collector street shall require a no-protest agreement to participate in a local improvement district, road improvement district, or transportation benefit district.

20.72.658 Drainage.

All development activity within Whatcom County shall be subject to the stormwater management provisions of WCC 20.80.630, Stormwater and drainage, unless specifically exempted. No project permit shall be issued prior to meeting the stormwater management requirements.

20.72.659 Parking.

Parking shall conform to the requirements of WCC 20.80.500 unless otherwise specified in this section.

Within the Small Town Commercial Zone:

(1) Parking lots shall be provided ~~only~~ at the rear or side of buildings, except, when infeasible due to site conditions, alternate on-site parking locations may be allowed.

(2) New parking lots shall connect with existing parking facilities and allow for connection to future lots where applicable.

(3) Minimum parking standards may be reduced if a shared parking agreement has been filed with the County Auditor's office establishing a shared parking lot for land uses with noncompeting hours of operation, or for multitenant retail and commercial facilities; provided, the parking lot is not located further than 700 feet from any of the uses it is intended to serve.
   (a) The minimum required parking in shared facilities shall be based on the land use with the highest parking demand.
   (b) Mixed use development with similar operating hours may be required to submit a parking demand study to determine if parking can be combined.

(4) Minimum parking standards along Gulf Road may be reduced to the minimum required emergency, ADA, and/or service parking only; provided, that it can be demonstrated that a public benefit parking area or other similar consolidated parking concept will adequately serve the proposed use.
   (a) A parking demand study shall be submitted which determines whether all land uses intending to utilize the consolidated parking area will be adequately served.
   (b) Pedestrian walkways connecting the proposed use with a consolidated parking area shall be provided.

Comment [CES19]: Amended by PRCAC to allow some flexibility in parking location.

Amended by staff to clarify that "infeasible" means due to site conditions rather than financial or desire.

20.72.670 Signs and flag poles.

(1) Signs in the Small Town Commercial (STC), Rural General Commercial (RGC), Rural Industrial Manufacturing (RIM), and Resort Commercial (RC) Zones are permitted subject to the provisions of WCC 20.80.410 and 20.80.470, and subject to the following:

(a) Not more than one freestanding sign is permitted on a lot of record, and a freestanding sign shall have no more than two sign faces. Freestanding signs shall not exceed 12 feet in height and shall not exceed 40 square feet in area per sign face.

(b) Not more than 10 square feet of sign area per sign face may be internally illuminated. Characters within the internally illuminated sign area shall be ~~achromatic and~~ no larger than six inches tall. Signs may be externally illuminated.

(c) Single-faced signs placed on walls or eaves of business establishments shall not exceed a total of 40 square feet per business establishment.

(d) Signs shall not rotate or otherwise be in motion, and copy or pictures on the sign shall not flash, scroll, or display a video or animated image.

(e) For purposes of this section, any sign erected or existing as of July 1, 2016, that has a valid permit from the department, but does not conform with the provisions of this section, is a nonconforming sign. A nonconforming sign may be maintained only by painting or refinishing the surface of the sign face or sign structure so as to keep the appearance of the sign as it was when the prior permit was issued. Any structural or other substantial maintenance to a nonconforming sign shall render the prior permit void and shall result in the reclassification of such sign as an illegal sign. Where there are conflicts between this section and Chapter 20.83 WCC, the provisions of this section shall prevail.

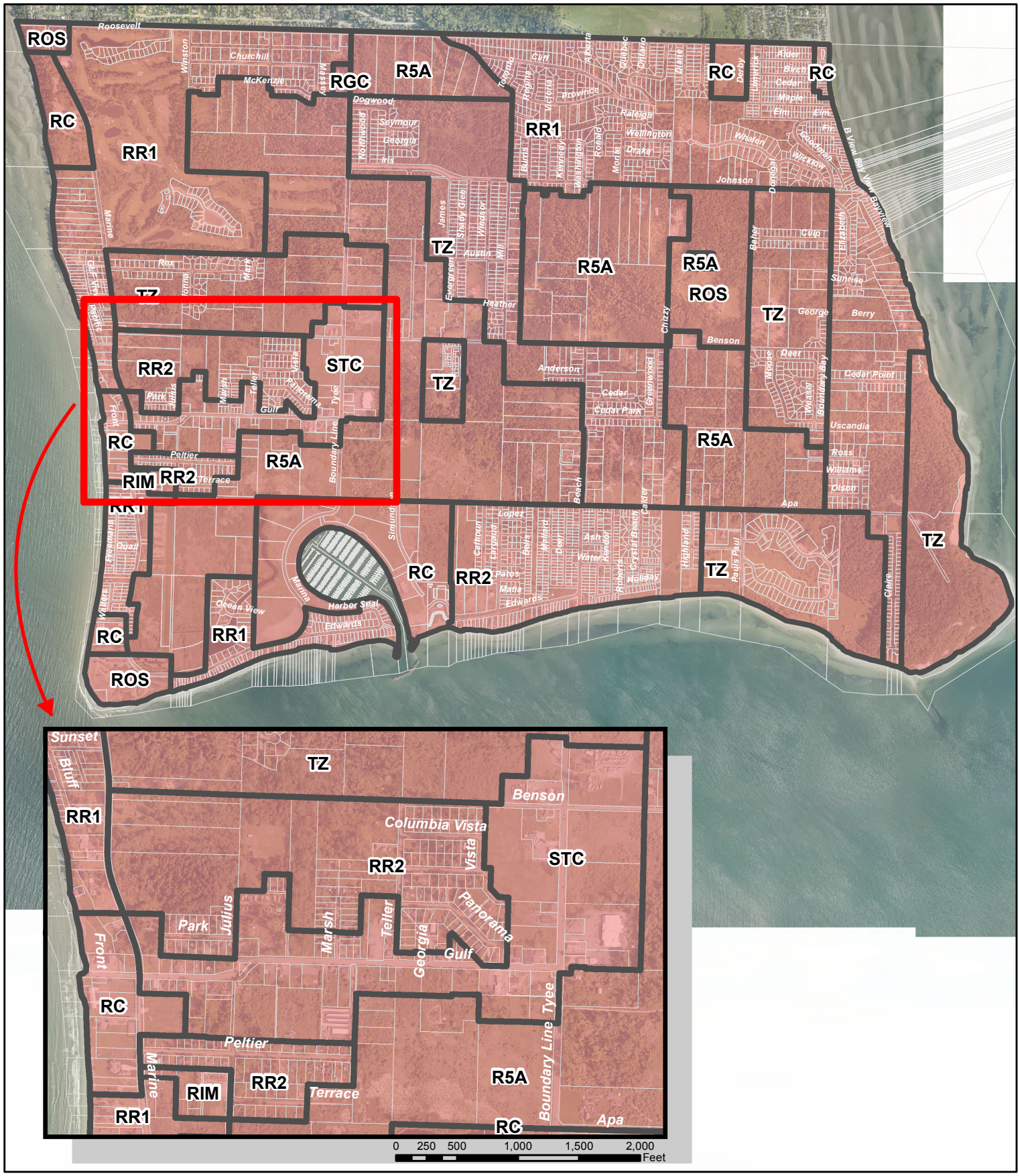
(2) Flag Poles.

(a) The height of flag poles shall not exceed 20 feet.

(b) Flag poles on top of buildings shall not exceed 10 feet above the roof top.

Comment [CES20]: Deleted by PRCAC to allow colored font.

Point Roberts



Legend

Zoning Boundaries

Rural Community Comprehensive Plan Designation

318

USE OF WHATCOM COUNTY'S GIS DATA IMPLIES THE USER'S AGREEMENT WITH THE FOLLOWING STATEMENT:

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Exhibit C – Excerpts of PRCAC Minutes Regarding WCC 20.72 Amendments

February 20, 2019 — no 20.72 votes

March 9, 2019 (special) — no 20.72 votes

March 19, 2019 — no 20.72 votes

April 1, 2019 (special) — no 20.72 votes

April 18, 2019 — no 20.72 votes (STF not present)

May 4, 2019 (special) — no 20.72 votes (discussion; no votes) (STF not present)

May 16, 2019 — no 20.72 votes (STF not present)

June 8, 2019 (special) — 20.72 discussion:

- .135 (2) - Under .130 Administrative Approval Uses, section .135 (2) limits the time an RV can be parked on an otherwise undeveloped residential property to 120 days per year. There is a fee (not in this provision) of $1200/year. PRCAC Questions: What is that $1200 for? What are the funds used for? Is that fee necessary or appropriate when considering that the property owner would have paid for the property, paid to have septic installed and paid to have water and electric service installed. Just having an RV on a property is not a cheap or simple option. The PRCAC may propose that the fee be lowered, perhaps to $300/year.
- .130 (5) - This section limits the property owner to one "Accessory" structure, namely a personal storage building no larger than 200 square feet. There was discussion of proposing a larger size, but the consensus was to propose permitting no more than two personal storage buildings, rather than just one.
- .154 - Under .150 Conditional Uses, in section .154, it was proposed to remove "shall include horse racing facilities and pari-mutuel wagering" [and presumably the rest of the same clause]: "In the Rural District, private commercial sports facilities and clubs permitted as conditional uses under WCC 20.36.165~~ shall include horse racing facilities and pari-mutuel wagering~~ [*as regulated and licensed by the Washington State Horse Racing Commission*], together with the usual accessory uses including club house, food and beverage service, restaurant and stables."
- .202 - Under .200 Prohibited Uses in Maple Beach, the suggestion was made to get input from the Maple Beach Residents Association regarding the prohibition on rooming houses, taverns and commercial parking areas in Maple Beach. DG will check with Olav Grabi and/or Paul Barrister on this.

- .204 - Under .200 Prohibited Uses in the "Small Town Commercial Zone District along Gulf Road only", there was a proposal to remove "along Gulf Road only" so that the STC restrictions would also apply along the relevant section of Tyee Drive.
- .204 - Under .200 Prohibited Uses, in section .204 (1), mini-storage facilities are prohibited. There was a proposal to amend .204 (1) to add "no additional" (as suggested by George Wright) in view of the existence of such property uses currently in the STC district:
    - 204(1) "No additional mini-storage facilities."
- There was a further proposal to add a percent limit on the number of properties in the STC district which could be used for mini-storage facilities.
- .204 - Under .200 Prohibited Uses, in section .204 (3), to make the restriction easier to understand, there were suggestions to separate the repair type restriction from the storage type restriction, and to re-write the provision as:
    - .204(3)(a) "Facilities for service, repair or washing of motorized vehicles and equipment, motorcycles, marine, farm implements, light and heavy equipment, and recreational vehicles" and
    - .204(3)(b) "Facilities for commercial storage or sale of motorized vehicles and equipment, motorcycles, marine [vessels or equipment], farm implements, light and heavy equipment, and recreational vehicles.
- .204 - There was a final proposal that each member send comments and proposed language for .204 to DG for him to review with Cliff Strong.

June 18, 2019 (special) — 20.72 discussion:

- .350 - Building Setbacks/Buffer Areas - The prior meeting ended with brief discussion about setbacks under section .350. **No changes were proposed.**
- .401 - Under section .400 Height Limitations, **no changes were proposed** to this section.
- .653(2) - Under section .650 Development Criteria, section .653 covers Landscaping, Screening, and Tree Canopy Retention. In part (2) Screening, at the end of "(a)", LH proposed to amend (as struck out or underlined): (a) Dumpster and utility areas of businesses or other use buildings in commercial areas shall be screened, using earth berms, landscaping, ~~or~~ building wall, or living wall (i.e., fabricated wall with vertical living vegetation).
- .653(3) - Under section .650 Development Criteria, section .653 covers Landscaping, Screening, and Tree Canopy Retention. In part (3) Tree Canopy Retention, in "(e)", the reference to "the Point" seemed colloquial and/or vague, it was suggested to clarify the Point as being Lily Point: (e) Buffering which recognizes the need for safety and the unique features of Lily Point shall be required on ~~the~~ Lily Point. No development shall take place in such areas.
- .656 - Vehicular Access - LH suggested that we ask Cliff Strong about options for revising this provision.
- .659 - Parking - LH suggested that we notify the public that this section will be discussed at the regular meeting on June 20, 2019, to elicit more public input before any revisions are drafted by the PRCAC.
- In connection with Parking, Allison Calder suggested that 10.24.0304, .0404 and .0600 be discussed as well. These sections deal with on street parking, including on Gulf Road. It could useful to ask Cliff Strong about modifying these provisions.

- Allison Calder raised an issue concerning .135 (discussed at the June 8, 2019 special meeting), suggesting that it be re-written to make clear that properties with a house can have an RV parked on the property.
- .670 - Signs and Flag Poles - LH suggested that this section be limited to the Small Town Commercial (STC) zone, and that it applicability to "Rural General Commercial (RGC), Rural Industrial Manufacturing (RIM), and Resort Commercial (RC) Zones" be removed.
- In connection with restrictions on lighted signs, Judson Meraw suggested that provisions be added to limit light pollution in Point Roberts. He proposed that there be no (new) signs that light up the night sky.

June 20, 2019 — 20.72 discussion:

The PRCAC members discussed the following sections of WCC 20.72:

* .659 - Parking - In .659(1), in STC, parking "shall" be at the rear or side of the building. There was discussion of revising the language to make it preferred to have parking at the rear or side, but not an absolute requirement if that would destroy the viability of the project:

  Within the Small Town Commercial Zone:

  (1) <u>When feasible, p</u>arking lots shall be provided only at the rear or side of buildings<u>; however, when necessary to allow permitting of the project, alternate parking lot locations may be approved</u>.

- In .659(2), SW questions the clarity of the terms "connect" and "connecting". SW will ask Cliff Strong about his concerns.
- In .659(4), there is mention of sidewalks. SW has an issue about sidewalks on one side of Gulf Road that he will raise with Cliff Strong.
- In connection with parking, Allison Calder brought to the PRCAC's attention that there are restrictions on Point Roberts in WCC 10.24.030 (Gulf Road), 10.24.040 (Front Street (gone!)), and 10.24.60 (Edwards Drive). There is a suggestion to delete these restrictions. Even though this is not part of 20.72, this will be raised with Cliff Strong.
- Design Guidelines - SW suggested having a high-level discussion about how to address the Design Guidelines which were incorporated by reference into WCC 20.72 in 2017. He noted that PDS treats the "guidelines" as law and they may contain too many mandatory provisions.
- Referring back to Judson Meraw comments that the June 18, 2019 special meeting regarding light pollution in Point Roberts, LH drew attention to the Lighting provisions of the Design Guidelines. There was discussion about incorporating the standards of the "Dark Skies Initiative". SW agreed to find and share the language of the Dark Skies Initiative.
- LH raised the question whether any issues/problems have come up as a result of the Design Guidelines; whether is anything in need of "fixing". There do not appear to be any issues that have come up at the PRCAC when reviewing recent projects. SW agreed to ask Cliff Strong if the Design Guidelines have caused problems with any commercial developments in Point Roberts.
- For now, LH moved that the Design Guidelines be left as they are. TP seconded. Approved.
- LH will prepare a draft of WCC 20.72 with proposed changes to provide to Cliff Strong before the July 9, 2019 special meeting, and to share locally. LH intends to prepare this by June 26, 2019.

July 18, 2019 — 20.72 discussion (meeting with Cliff Strong in attendance):

Administrative Approval Uses:

- .135(3) - Regarding screening, Isobel Brophy, asked how high screening needs to be; Mr. Strong noted that this can depend on the geography and distance from the road, but that in general the fence or screening should be high enough to obscure the item at issue, such as blocking view of RVs.
- .135(5) - The number of "accessory structures" could be increased from one, but allowing two or more would tend to encourage use of properties without homes and extended time with RVs; generally that is not what is favored and encouraged.

Conditional Uses

- .151 - Having "hotels, motels and timeshare condominiums" as Conditional Uses could be changed if there were community support to permit such uses more generally.
- .154 - Deleting horse racing and pari-mutuel betting facilities from "sports facilities" could be done, but those items would still be interpreted as being only conditional uses.

Prohibited Uses

- .202 - The prohibition of rooming houses, taverns and commercial parking in Maple Beach could be changed to follow standard code in Whatcom County if residents, particularly those in Maple Beach supported the change.
- .204(1) - There was considerable discussion about the prohibition of mini-storage facilities. The existing storage business on Gulf Road is "grandfathered in" as pre-existing non-conforming use. If there was some tolerance for such uses, they could be governed under "Conditional Uses," for example, if permissible with appropriate screening.
- .204(3) - Separating the auto service and vehicle storage prohibitions into two provisions makes both provisions clearer.
- There was considerable discussion in connection with Prohibited Uses on the issues related to the compliance action regarding 1480 Gulf Road. There was no clear way to make the storage of commercial vehicles and truck containers permitted without opening up the entire Gulf Road commercial area to such uses.
- .350 - Regarding building setbacks, the applicability to Roosevelt Road could be removed if that was what the community wanted.
- On the Design Guidelines, Mr. Strong noted that they are guidelines. The mandatory "shall" usage in the Design Guidelines does not alter their status as only recommended guidelines. They provide a framework for property owners to use in their planning and for the PRCAC to use it is review of new commercial projects.
- .659 - Parking - The PRCAC had noted provisions of WCC 10.24 that should be changed. Mr. Strong commented that those limitations are under the purview of Whatcom County Public Works (CPW). Those provisions could be changed. Regarding covering ditches to install sidewalks, CPW would have practical concerns about maintaining draining ditches which could prevent such action.
- Mr. Strong suggested that the zoning change process should involve getting out a map of the community, drawing out what uses one wants where, and then making the rules fit those goals.

July 27, 2019 (special) — 20.72 discussion:

For the working session, the members present took up the compilation prepared by SW showing proposed changes, questions, and comments from PDS (Cliff Strong). The compilation included a new section .052 proposed in an e-mail from DG earlier that day.

New 0.52 in Permitted Uses:

In the STC zone, licensed business related storage of containers, wheeled trailers and other movable units provided such storage units are screened from view. The number of such units shall not exceed two (2) per business unless approved through an application for conditional use.

SW proposed some changes to the new provision:

In the STC zone, licensed business related storage of containers, wheeled trailers and other movable units provided such storage units are screened from view per standard Whatcom County screening rules and setback from the street by 50 feet. The number of such units shall not exceed two (2) per business unless approved through an application for conditional use.

The members present discussed the pros and cons of this provision. There was discussion about whether "licensed business related" should be removed from the draft section. There was further discussion about whether this change would effectively address the enforcement action regarding 1480 Gulf Road since, currently, the Potty Wagon business is not known to have an office at that location, and the storage containers are not believed to be connected to a business at that location. With respect to 1480 Gulf Road, these considerations were complicated by the point raised earlier by Pam Sheppard that 1480 Gulf Road is only permitted to have one business in the building on the property and it seems that the owner has not applied for a license to have multiple businesses operating from that building.

August 15, 2019 — 20.72 discussion:

Scheduled 2 more special meetings in lieu of discussion at this meeting.

August 24, 2019 (special) — 20.72 discussion:

The committee members reviewed all of the sections of WCC 20.72 which had been previously discussed at earlier meetings, as well as comments to those and other sections provided to the PRCAC by the PRRVA and the PRTA. Informal votes were taken on each section at issue, whether it was to be left unaltered, modified or deleted.

The results of the Working Session are set forth in the attached copy of WCC 20.72 indicating which sections were addressed (shown in bold type), with the outcome (no action taken, revisions, deletions). Changes to code provisions are in red and deletions are struck through. In all cases in which the vote was not 5:0, the "dissenting" vote was from SF.

August 29, 2019 (special) — 20.72 discussion:

Each provision of WCC 20.72 which the PRCAC has reviewed or which has been the subject of significant comments from PRRVA, PRTA, CoC or individuals, was read or described to the meeting attendees and further discussed. In addition to the notes included in the attached copy of revised WCC 20.72, the following comments came up during the discussions:

.010 — PRTA suggested additional language to add to the Purpose section. DG suggested this be reviewed at a later date.

.052 — DG suggested that the PRCAC approve the new provision for storage units and have it reviewed by PDS (Cliff Strong). LH reiterated her suggestion to remove "licensed business related" from the provision to allow greater flexibility. Samantha Scholefield asked why local businesses need more storage. Erica Conlan expressed concern about enforcement of this new provision. Martin Hogan commented that he has never seen businesses needing more storage space than their buildings provide, and wondered whether this was enabling mini-storage units. SF noted that this would not create small scale mini-storage facilities if the "licensed business related" language is retained. LH noted that Rawganique needed 14 additional storage units and that that need contributed to the business' move to Blaine.

.053 — There was a question whether allowing two 200 sq. ft. storage sheds was permissible. PRCAC will seek feedback from PDS (Cliff Strong).

.130(5) — The change would allow for two 200 sq. ft. storage sheds for properties with RVs. They would have to be screened.

.151 — The question of permitting hotels in Resort Commercial zones was revived. It would allow up to 16-room hotels on properties in the few areas zones as Resort Commercial. The PRCAC voted 4:1 (SF "dissenting") to approve this change. (In response, SF drafted a new section .157 to provide this option, in addition to revising .151 to exclude Resort Commercial from its scope.)

.154 — This change just removes specific redundant language.

.156 — This provision was added for the Conditional Uses formerly part of the Prohibited Uses of .204.

.202 — DG did not have a chance to reach the MBRA to ask their position on the prohibition of boarding houses, taverns and commercial parking lots. One resident wrote to LH to express support to allow hotels in Maple Beach. The PRCAC agreed to take no action at this time, pending input from MBRA.

.204 — PRCAC voted earlier (4:1) to make the Prohibited Uses dog kennels, vehicle storage, repair, cleaning and sales facilities and RV parts to be Conditional Uses (see .156). It was mentioned that requests for such businesses in the STC zone would come before the PRCAC for review and positive or negative recommendation to PDS. SF and LH disagreed on the significance of PRCAC as a potential roadblock to approval of such Conditional Use requests. Samantha Scholefield questioned why we would permit such businesses if a major business goal is to increase tourism. Martin Hogan questioned whether there would be sufficient public input against such uses (in comparison to the strong reaction to the radio towers). Erica Conlan commented that part-time residents have a hard time attending meetings to contest plans they object to. She further questioned how these proposed changes could be consistent with the vision for Point Roberts. Martin Hogan suggested that an economic development plan should be updated before significant changes like the one to .204 is made. Allison and Ken Calder commented that the change was being implemented to resolve Lorne Nielson's issue at 1480 Gulf Road.

.350 — It was noted that the parenthetical heading should be removed, as agreed earlier for other sections. PRCAC earlier agreed to remove the deeper treed setbacks along Roosevelt Road. The setback would revert to 25 feet on Roosevelt Road.

.400 — The "along Gulf Road" limitation would be removed to have the 45 foot height limitation apply in STC on Gulf Road as well.

.653 — In the section on screening ((2)(a)), in which PRCAC previously agreed to propose including "living walls", it was also agreed to add that screening be used to block the view of stored containers,

trailers or vehicles. No change was made to tree retention provisions. A typographical error was corrected in (e).

.659 — In subsection (1), it was previously agreed to encourage parking at the rear of businesses in STC, but to allow alternatives when the parking requirement would prevent the project from proceeding.

.670 — There was further discussion about LH's proposal to remove the achromatic requirement for internally lit signs and the prohibition of moving signs. PRTA has reviewed these issues, but PRRVA and CoC have not yet had a chance to consider the issue. No action was taken at this time.

Design Guidelines — LH suggested that a change be made, if needed, to make sure that property "improvements", such as the total re-build of the store at the Chevron station, be required to come before the PRCAC during the permitting process. DG suggested that that particular project was slated to come before the PRCAC, but that that previous Chairperson did not get it on a meeting agenda at the time.

10.24 — On the plan to seek a change to the prohibition on parking along much of Gulf Road, Martin Hogan commented that the parking-free shoulders give a place for pedestrians and cyclists. PRCAC members noted that if parking on both sides of Gulf Road is not approved, parking on one side would still be an advantage.

September 19, 2019 — 20.72 discussion:

DG reported that he had spoken with Cliff Strong of Planning and Development Services (PDS). Mr. Strong did not want to provide oral comments on the PRCAC's proposed changes until after written comments have been completed. In addition, he noted that the changes are being reviewed by others in PDS (in Engineering and in Code Enforcement) and by County Public Works (CPW) (regarding the parking changes). It could be 2-3 weeks before review is completed and a response is provided to the PRCAC.

September 28, 2019 (special) — no 20.72 votes or discussion

October 17, 2019 — no 20.72 votes or discussion

October 24, 2019 (special) — 20.72 discussion:

Cliff Strong of PDS attended the Special Meeting to talk about the comments from his office and other County agencies on the changes to WCC 20.72 proposed by PRCAC in late August 2019. He noted that most of the changes were found to be acceptable, but noted three areas of particular concern:

Making vehicle repair, storage, etc. a conditional use in the STC zone, rather than being prohibited, is contradictory to the vision developed by the community and set forth in Subarea Plan. The zoning code must be consistent with the Sub Area Plan. If this proposed change is maintained, the Sub Area Plan must also be amended.

Allowing more than one storage unit on properties that do not have a "primary use" (e.g., a house) is a problem. This is not allowed anywhere within Whatcom County. Building Code Enforcement is concerned that storage units without a primary use on the property will eventually be used as a residence — which would be illegal and an enforcement issue. SW suggested that the provision could

be changed to require a primary use on the property. SW noted that allowing more storage units on a property could alleviate the need for more mini-storage units in Point Roberts.

The proposed parking changes were referred to WCPW which had objections. WCPW noted that parking on the prohibited areas of Gulf Road would create hazards for pedestrian traffic in the STC zone which is intended to be "pedestrian friendly". SW asked how the PRCAC could make a case for the proposed change. Mr. Strong suggested that the request should be accompanied by drawings, plans, etc. to show how the proposed change would affect pedestrians, etc. [QUESTION: Was this plan to be about "regular" parking along Gulf Road, or about working to establish a shared parking lot somewhere in the STC zone?]

At this point, Mr. Strong reviewed each change in WCC 20.72 proposed by the PRCAC and the comments from PDS on those changes. At the conclusion of this part of the discussion, Mr. Strong said he would revise his earlier document with updates based on his better understanding of the PRCAC's intentions behind those changes. When received, a copy of that update response from PDS will be attached to these Minutes.

November 23, 2019 — 20.72 discussion:

SW noted that discussion is needed on the Tree Removal rules (e.g., $40 tree removal permit fee; Hazard Tree rules) and parking on Gulf Road, possibly on one side of the street. We should have one more special meeting to review WCC 20.72 issues. SW has asked for community feedback on the Tree Removal rules.

LH noted that we will have to have a special meeting on this topic.

December 19, 2019 — 20.72 discussion:

On November 8, 2019, Cliff Strong of PDS sent the PRCAC a second version of the PRCAC's proposed changes to WCC 20.72 with updated changes and comments from PDS. SW and SF had reviewed the changes and comments from Mr. Strong and provided their comments to the other members; copy attached.

At the meeting, the members reviewed the latest version of proposed changes to WCC 20.72:

Section .010 — With removal of "Above all" from the start of the fourth paragraph, the new additional Purpose language was approved 4:0.

Section .051 — Regarding the PDS language of allowing hotels etc. of "any number of units", it was decided to ask Mr. Strong why this open-end language was proposed. LH thought there could be problem setting a limit. SF was concerned that no stated limit could lead to maximal hotel structures (within the confines of other zoning or practical limitations (e.g., setbacks, septic)).

Section .102 — There was discussion to clarify the meaning of "two or fewer storage containers or other similar temporary storage units if accessory to a permitted business on the same lot", with respect to a single property with more than one businesses. It is understood to mean that each such business can have up to two storage containers. Ms. Baxter asked that such containers be screened from view. SW noted that that is dealt with elsewhere in WCC 20.72.

Section .151 — PRCAC members had no issue with the conditional uses in Resort Commercial district.

Section .152 — PRCAC members had no issue with the conditional uses in Rural district.

Section .154 — On the new "Conditional Use" businesses in the Small Town Commercial district, there was again concern about the hotels etc. with "any number of units". SF continued to question why the PRCAC was proposing to move RV parks and vehicle repair type businesses from "Prohibited" to "Conditional". SW suggested that PRCAC ask that PDS inform the PRCAC of all conditional use requests so that more of the community can be aware of the requests beyond those required to be notified. LH suggested that a PRCAC member should make it their business to inquire regularly to learn about any such requests.

Section .204 — On the reduced scope of "Prohibited Uses" in the Small Town Commercial district, SF renewed his concern about the changes agreed to earlier by a 4:1 vote.

Section .350 — PRCAC members had no issue with the new provision at (3) regarding setback for storage containers. Vote 4:0.

Section .653 — Regarding the proposed Tree Canopy provisions at (3) and Hazard Tree provisions at (4), the PRCAC members preferred to strike these possible changes for possible reconsideration later. Vote 4:0.

Parking — It was noted that WCPW did not like the PRCAC proposal to allow parking along Gulf Road. Ms. Calder of the PRRVA earlier suggested seeking approval for parking on one side of Gulf Road. The PRCAC deferred this issue to 2020.

January 23, 2020 — 20.72 discussion:

Rather than go through a few final amendments to the set of changes to WCC 20.72, it was decided to do that in a separate special meeting. The special meeting will take place on Monday, January 27, 2020 at 6 pm in the Community Center. The meeting will probably end at 7 pm due to member availability.

January 27, 2020 (special) — 20.72 discussion:

The limited purpose of this special meeting of the PRCAC was to address WCC 20.72, including possible further amendments to WCC 20.72, and possible review of a description of the zoning changes for local publication.

On the first point, SW noted that there were some questions raised by Planning and Development Services (PDS) to the final set of changes to WCC 20.72 and SW suggested that the PRCAC promptly address those remaining issues from its 2019 work. The following issues were discussed:

a) 20.72.010 – Purpose — Mark Robbins of PRTA had drafted language to include in the introductory portion of WCC 20.72 which the PRCAC earlier agreed to include. Cliff Strong of PDS suggested that this new language was more appropriate for inclusion in the Sub-Area Plan. The PRCAC members present voted 3:0 to withdraw this proposed change and to consider the language at some later time for inclusion in the Sub-Area Plan.

b) 20.72.100 – Accessory Uses — PRCAC had noted that there is no limit on the number of under-200 sq. ft. storage sheds, if they meet all other code requirements, and asked PDS whether this should be directly stated somewhere in 20.72 somewhere. PDS' comment was that it does not need to be said anywhere. It is based on the existing code for the underlying zones, which does not put a limit on them as accessory uses. The PRCAC members present voted 3:0 to accept the PDS recommendation.

In this context Heidi Baxter suggested that unpermitted sheds should be allowed even when there is no permitted structure on a property. She thought this could promote construction of tiny houses to provide low-cost housing in Point Roberts.

c) 20.72.051 – Hotels in Resort Commercial — In response to earlier discussion when Cliff Strong of PDS was present, PDS proposed changing .051 to read: Hotels, motels, and timeshare condominiums "of any number of units" were permitted uses in the Resort Commercial zones. SF said that he did not think that the PRCAC had meant to propose having no limit on the number of units. Allison Calder commented that the Sub-Area Plan supports the presence of public accommodations in Point Roberts and that 20.72 must be consistent with the Sub-Area Plan. Ms. Calder also noted that WCC 20.64.050 limits the number of units to 16 or fewer. The PRCAC members present voted 3:0 to seek guidance from PDS on whether WCC 20.72.051(2) was redundant and unnecessary in view of other existing requirements.

d) 20.72.102 – Storage Containers — The PRCAC had added to conditional uses in the STC zone the presence of two or fewer storage containers or other similar temporary storage units if accessory to a permitted business on the same lot. This led to a question whether that could be interpreted as only 2 for the whole property, or, as intended, as up to 2 for each permitted business on the property. To clarify, the PRCAC members present voted 3:0 to change the proposed language to read "if accessory to <u>each</u> permitted business".

e) 20.72.204 – Commercial Storage of Vehicles — Early on, the PRCAC had voted 4:1 to change the prohibition of having commercial storage of vehicles in the Small Town Commercial (STC) zone (.204) to, instead, be a conditional use in the STC zone (in new .154). PDS noted that this would contradict statements in the Sub-Area Plan. The PRCAC members present voted 3:0 to keep these uses as prohibited in the STC zone under .204.

f) 20.72.670 – Signs — The PRCAC earlier considered removing the requirement that internally illuminated signs be "achromatic." However, there had never been a direct vote on that issue once all the members had reached their final position on the question. SF reiterated his position that we do not need multicolored illuminated signs; that consumers can find all the local businesses just fine with current signage. The PRCAC members present voted 2:1 to remove "achromatic" from the internally illuminated signage requirement.

February 21, 2020 (special) — no 20.72 votes or discussion:

February 26, 2020 — no 20.72 votes or discussion:

SF noted that County Executive Satpal Sidhu commented when he was in Point Roberts that the PRCAC should pursue its current limited changes to WCC 20.72, but should also plan to take a much more comprehensive review with bolder changes as the outcome.

SW reported on a suggested from Cliff Strong at PDS that the PRCAC provide Mark Personius with excerpts from PRCAC Minutes which describe the rationale from the changes to WCC 20.72 being proposed by the PRCAC. Mr. Personius would use that information when he describes the proposed changes from PRCAC and the separate approach to WCC 20.72 proposed by the PRIBC to County Council at their March 10, 2020 meeting. SF will review the Minutes to identify such descriptions.

July 16, 2020

.102 (1) PDS wants to add: "Storage containers do not include truck trailers."

- *SW and SF felt that goes against our initial goal of allowing George's trailer as a storage container.*
- *PRCAC 07/16/2020 -- Reject ban on truck trailers VOTE 3:0*

.102 (2) PDS added this.

- *PRCAC OK*

.135 (4) "Lots or recreational vehicles shall not be leased or rented out for recreational use or permanent or temporary habitation, except in permitted recreational vehicle parks."

- *SBW and STF like it, as it means that only business owners' vehicles are allowed (e.g. no "rentals").*
- *PRCAC 07/16/2020 -- Reject the prohibition of renting or leasing said RV etc. -- VOTE 3:0*

.151 In the Resort Commercial District:

(1) Dry boat storage, including stacked boat storage, and boat trailer storage associated with a marina.

- *PRCAC 07/16/2020 – 1) Keep Conditional -- VOTE 2:1 2) QUESTION: PDS/Cliff Pros/Cons of Administrative instead.*

.154 In the Small Town Commercial District:

(1) Three or more storage containers or similar temporary storage units per lot if accessory to an approved commercial use on the same lot. Storage containers do not include truck trailers.

- *PDS was concerned that "3 or more" could allow, even under a CUP, a large number of storage containers thus creating a storage business which our vision doesn't want. SW and SF agree that "3 or more" is a loop hole under the Conditional Use flag. It could allow, if the applicant prevailed, to have many storage containers (a whole lot full?), defeating our goal of allowing some storage by businesses but not allow new open ended storage facilities. Perhaps say "up to 2 per business"?*
- *SBW and STF proposes eliminating "no truck trailers…" as that violates our vision.*
- *PRCAC 07/16/2020:*
    - *1) Use "not to exceed 3" and*
    - *2) remove "Storage containers do not include truck trailers" (also see .102 (1) -- VOTE 3:0*

.204 The following uses are prohibited in the Small Town Commercial Zone District

(1) Animal kennels, except as allowed pursuant to WCC 20.72.154(2).

- *SW and SF think this a needed change; limit it to "groomers" only.*
- *PRCAC 07/16/2020 – Approved -- VOTE 3:0*

(3) Facilities for commercial rental, sale, storage, service, repair, or washing of motorized vehicles and equipment, motorcycles, marine vessels or equipment, farm implements, light and heavy equipment, or recreational vehicles .

- *SW and SF think this is a good change.*
- *PRCAC 07/16/2020:*
    - *1) Approve adding "rental" -- VOTE 3:0:1(abstained).*
    - *2) Voted 2:2 Motion to discuss possible loss of repair biz in future.*
- *Subsequent PRCAC meeting (8/20/2020) discussed that the PR Subarea Plan may preclude eliminating the prohibition until we can agree on new (TBD) subarea Plan changes.*

20.72.350 Building setbacks/buffer areas. (Adopted by reference in WCCP Chapter 2.)

(1) In the Small Town Commercial district any storage containers or other similar temporary storage units accessory to a permitted business shall be set back 50 feet from any adjacent right-of-way.

- *PRCAC 07/16/2020 -- No comment needed*

20.72.653 Landscaping, screening, and tree canopy retention. (Adopted by reference in WCCP Chapter 2.)

(1) Screening.
    (a) Dumpster and utility areas of commercial and institutional uses shall be screened pursuant to WCC 20.80.355 (Trash or garbage collection storage areas – Screening and placement).
    (b) Commercial storage of vehicles, trailers, or truck containers shall be screened from public rights-of-way and adjacent properties to a height of 6 feet using earth berms, landscaping or building wall, or living wall (i.e., fabricated wall with vertical living vegetation).

- *PRCAC 07/16/2020 -- No comment needed*

20.72.659 Parking.

(1) Parking lots shall be provided at the rear or side of buildings, except, when infeasible due to site conditions, alternate on-site parking locations may be allowed.

- *PRCAC 07/16/2020 -- No comment needed*

Exhibit D

Written comments from Thomas O'Brien

From: Point Roberts Independent Business Council [mailto:pointrobertsibc@gmail.com]
Sent: Thursday, October 08, 2020 12:19 PM
To: PDS_Planning_Commission
Subject: Point Roberts Special District 20.72

To Whom It May Concern,

The PRIBC first identified in Mid-May of 2019, the glaring inconsistencies and rampant socio-economic disenfranchisements which are deeply embedded within 20.72, and the risks which 20.72 poses to the economy of Point Roberts.

Our 20.72 concerns were consistently brought to the attention of the Point Roberts Community Advisory Committee, Whatcom County Council, the Whatcom County Executive's office, as well as Planning and Development Services throughout 2019, and in our clearly articulated 2019 PDS Application to Request a Comprehensive Review of 20.72.

Sadly, earlier this year, Whatcom County Council ensured that no Comprehensive Review would take place.

We have thoroughly researched the threat that 20.72 poses to the economic well-being of Point Roberts, and we believe that this threat should be of particular concern to everyone on the Planning Commission at this 'critical tipping point'.

The PRIBC's position has not changed. We oppose implementation of the current updates.

We respectfully request that the Planning Commission recommend to Council that a moratorium be immediately established on 20.72, until such time as a reputable 'third party' provide can provide a Comprehensive Review of 20.72.

Prior to the Covid-19 outbreak, 20.72 did already pose a significant risk to the economic well-being of Point Roberts, as it is not only in stark contradiction to even its own Sub-Area Plan, it has countless flaws throughout which discriminate against certain social, ethnic, and economic sectors within the community.

Now that Point Roberts has already suffered an 80% decrease in economic output since International Border Restrictions were put in place, 20.72 poses an ongoing risk of further damaging Point Roberts' present and future economic prospects.

Throughout the nearly two decades long history of 20.72, Whatcom County has never willingly and transparently tested the efficacy of this unnecessary Small Town Commercial Code Overlay.

We thank you for your consideration on what is arguably the single most important governance and economic issue to face Point Roberts in its history.

Thomas O'Brien

On behalf of the Board of Directors
Point Roberts Independent Business Council
www.pribc.org

@pointrobertsibc
(360) 599-0899

Whatcom County

COUNTY COURTHOUSE
311 Grand Avenue, Ste #105
Bellingham, WA 98225-4038
(360) 778-5010

Agenda Bill Master Report

File Number: AB2020-219

File ID:	AB2020-219	**Version:**	1	**Status:**	Agenda Ready
File Created:	05/13/2020	**Entered by:**	DBrown@co.whatcom.wa.us		
Department:	Council Office	**File Type:**	Discussion		
Assigned to:	Council Committee of the Whole			**Final Action:**	
Agenda Date:	10/27/2020			**Enactment #:**	

Primary Contact Email: DBrown@co.whatcom.wa.us

TITLE FOR AGENDA ITEM:

Discussion and update on strategies and other items related to COVID-19 (Council and Health Board)

SUMMARY STATEMENT OR LEGAL NOTICE LANGUAGE:

Discussion and update on strategies and other items related to COVID-19 (Council and Health Board)

HISTORY OF LEGISLATIVE FILE

Date:	Acting Body:	Action:	Sent To:
05/19/2020	Council	DISCUSSED	
06/02/2020	Council	DISCUSSED	
06/16/2020	Council Committee of the Whole	DISCUSSED	
06/16/2020	Council Committee of the Whole	DISCUSSED	
06/23/2020	Council Special Committee of the Whole	DISCUSSED AND MOTION(S) APPROVED	
07/07/2020	Council Committee of the Whole	DISCUSSED	
07/21/2020	Council Committee of the Whole	DISCUSSED	
08/05/2020	Council Committee of the Whole	DISCUSSED	
09/15/2020	Council Committee of the Whole	DISCUSSED	
09/29/2020	Council Committee of the Whole	DISCUSSED	
10/13/2020	Council Committee of the Whole	DISCUSSED	

Attachments: Presentation 10.13.2020

DOH CARES Act $4.5 M Spending Plan **DRAFT** $4,500,000 **March - Dec 30 2020**

Item	Cost	Cost Summary
Public Health		**$2,407,440**
Health Department Salaries/Benefits for Staff working on Covid	$1,550,000	
Extra Help Health Dept Temp Staff Salaries/Benefits for Staff working on COVID	$10,000	
WUC Salaries/Benefits (Nov/Dec)	$20,000	
IT	$50,000	
Mass Vaccination Supplies & Equip	$20,000	
Contractual -Social marketing campaign	$215,000	
PPE	$100,000	
Isolation and Quarantine facility cost	$170,000	
Not yet allocated	$272,440	
Schools		**$1,182,560**
Bellingham School District	$499,185	
Mt Baker School District	$94,325	
Lynden School district	$146,025	
Blaine School District	$94,905	
Nooksack Valley School District	$82,755	
Meridian School District	$79,560	
Ferndale School District	$185,805	
Community		**$350,000**
Behavioral Health Services / Human Services	$350,000	
Economic and Business Response		**$560,000**
Whatcom Business Alliance	$10,000	
Downtown Bellingham Partnership	$56,033	
Sustainable Connections	$147,467	
Bellingham Regional Chamber of Commerce	$198,000	
Bellingam Whatcom Tourism	$106,500	
Recreation NW	$21,000	
TAG	$21,000	
Total	**$4,500,000**	**$4,500,000**

Whatcom County

COUNTY COURTHOUSE
311 Grand Avenue, Ste #105
Bellingham, WA 98225-4038
(360) 778-5010

Agenda Bill Master Report

File Number: AB2020-470

File ID:	AB2020-470	**Version:**	1	**Status:**	Agenda Ready
File Created:	10/20/2020	**Entered by:**	DBrown@co.whatcom.wa.us		
Department:	Council Office	**File Type:**	Presentation		
Assigned to:	Council Committee of the Whole			**Final Action:**	
Agenda Date:	10/27/2020			**Enactment #:**	

Primary Contact Email: TSchroed

TITLE FOR AGENDA ITEM:

Introduction to the County Executive's recommended 2021-2022 Biennium Budget presented by Deputy Executive Tyler Schroeder

SUMMARY STATEMENT OR LEGAL NOTICE LANGUAGE:

Introduction to the County Executive's recommended 2021-2022 Biennium Budget presented by Deputy Executive Tyler Schroeder

HISTORY OF LEGISLATIVE FILE

Date:	Acting Body:	Action:	Sent To:

Attachments: Link to Recommended 2021-2022 Biennium Budget

The complete recommended budget, including the County Executive's budget message, can be found here.

Whatcom County

COUNTY COURTHOUSE
311 Grand Avenue, Ste #105
Bellingham, WA 98225-4038
(360) 778-5010

Agenda Bill Master Report

File Number: AB2020-345

File ID:	AB2020-345	**Version:**	1	**Status:**	Agenda Ready
File Created:	08/19/2020	**Entered by:**	MAamot@co.whatcom.wa.us		
Department:	Planning and Development Services Department	**File Type:**	Discussion		
Assigned to:	Council Committee of the Whole			**Final Action:**	
Agenda Date:	10/27/2020			**Enactment #:**	

Primary Contact Email: maamot@co.whatcom.wa.us

TITLE FOR AGENDA ITEM:

Discussion of proposed Cherry Point amendments

SUMMARY STATEMENT OR LEGAL NOTICE LANGUAGE:

The County Council worked with the Cascadia Law Group to develop proposed Comprehensive Plan and Whatcom County Code (WCC) amendments primarily relating to fossil fuel and renewable fuel facilities in the Cherry Point Area (some of the amendments apply to various land uses on a countywide basis). The Council approved Resolution 2019-037 on August 7, 2019 forwarding the proposed amendments to the Planning Commission for review. The Planning Commission issued their Findings of Fact and Reasons for Action, Conclusions, and Recommendations on August 13, 2020. Council Special Committee of the Whole will discuss the proposed amendments.

HISTORY OF LEGISLATIVE FILE

Date:	Acting Body:	Action:	Sent To:
09/15/2020	Council Committee of the Whole	DISCUSSED AND MOTION(S) APPROVED	
09/29/2020	Council Committee of the Whole	DISCUSSED AND MOTION(S) APPROVED	
10/13/2020	Council Committee of the Whole	DISCUSSED	
10/20/2020	Council (Special)	DISCUSSED AND MOTION(S) APPROVED	

Attachments: Staff Memo, Planning Commission Recommendations, Exhibit A (Comp Plan Amendments), Exhibits B - D (Code Amendments), Planning Commissioner Minority Opinion, SEPA Packet, Councilmember Clarifications and Other Items, Browne Comments 10.13.2020, PDS Issues for Industry/Environmental Work Group, Link to Cherry Point Public Comments, Joint Stakeholder Proposed Revisions - Original, Joint Stakeholder Proposed Revisions - Revised, Frazey Comments 10.20.2020

WHATCOM COUNTY
Planning & Development Services
5280 Northwest Drive
Bellingham, WA 98226-9097
360-778-5900, TTY 800-833-6384
360-778-5901 Fax

Mark Personius
Director

Memorandum

August 20, 2020

TO: The Honorable Satpal Sidhu, Whatcom County Executive
The Honorable Whatcom County Council

FROM: Matt Aamot, Senior Planner

THROUGH: Mark Personius, Director

RE: Cherry Point Amendments (PLN2018-00009)

The County Council worked with the Cascadia Law Group to develop proposed Comprehensive Plan and Whatcom County Code (WCC) amendments primarily relating to fossil fuel and renewable fuel facilities in the Cherry Point Area (some of the amendments apply to various land uses on a countywide basis). The Council approved Resolution 2019-037 on August 7, 2019 forwarding the proposed amendments to the Planning Commission for review.

The Planning Commission held a series of meetings on the proposed amendments between September 2019 and August 2020 (there were no meetings in March, April, or May because of the COVID-19 meeting restrictions). Public comments through the end of the Planning Commission review process are posted on the County's website: https://www.whatcomcounty.us/2849/Cherry-Point-Amendments
The Planning Commission issued their Findings of Fact and Reasons for Action, Conclusions, and Recommendations on August 13, 2020 relating to:

- Exhibit A - Amending Whatcom County Comprehensive Plan Chapter 2 (Land Use).
- Exhibit B - Amending the State Environmental Policy Act (SEPA) code (WCC 16.08).
- Exhibit C - Amending the Light Impact Industrial District, Heavy Impact Industrial District, Cherry Point Industrial District, Major Project Permits, and Definitions chapters of the Whatcom County Zoning Code (Title 20).
- Exhibit D - Amending the Project Permit Procedures (WCC 22.05).

Selected differences between the original Council proposal and the Planning Commission proposal are summarized below (not all differences are shown below – please see the Exhibits in which all Planning Commission changes to the Council proposal are shown with yellow highlighting).

Exhibit	Document	Council	Planning Commission	Comments
A	Comp Plan		Added Policy 2CC-18 to allow on-going operation, maintenance, repair, modifications, etc. of existing facilities	New Policy would provide certainty to industry relating to particular types of activities that they can continue to conduct as allowed uses at existing facilities.
A	Comp Plan	Added Policy 2CC-18 to treat renewable fuel facilities similar to fossil fuel facilities	Deleted this proposed Policy	The Planning Commission recommended that new renewable fuel refineries and transshipment facilities should be allowed as a permitted use but new fossil fuel refineries and transshipment facilities should be prohibited. Additionally, the Planning Commission recommended that expansion of existing renewable fuel refineries and transshipment facilities should be allowed as a permitted use but expansion of fossil fuel facilities should require a conditional use permit. Therefore, the Planning Commission proposal would not treat renewable fuel facilities in a manner similar to fossil fuel facilities.
B	SEPA Code	Added worksheet for fossil fuel and renewable fuel facilities WCC 16.08.090.E	Allows use of the worksheet or an expert evaluation and makes other changes to this proposed code WCC 16.08.090.E	The worksheet will take time to develop and likely will not be available when Council adopts the ordinance. Additionally, larger or more complex projects may benefit from expert evaluation of the issues.
B	SEPA Code	Greenhouse gas (GHG) mitigation through SEPA or the Zoning Code WCC 16.08.160.F.1	GHG mitigation through SEPA only WCC 16.08.160.F.1	The Council proposal provides for GHG mitigation through either the Zoning Code or the SEPA Code. The Planning Commission version would provide the SEPA Responsible Official with the discretion to impose mitigation for GHG impacts, but there would not be an automatic requirement for GHG mitigation under the Zoning Code.
B C	SEPA Code Zoning Code	Definition of "Facility Emissions" WCC 20.97.124.1	Definition of "Facility Emissions" WCC 16.08.175.C	The Council proposal provided a definition of "Facility Emissions" in the Zoning Code. The Planning Commission proposal moves the definition to the SEPA Code. The Planning Commission version deleted the following elements from the original Council definition of facility emissions: • The transportation within the borders of Whatcom County of refined and unrefined fossil fuels to and from a facility located within the Cherry Point Heavy Industrial area, and • The upstream emissions generated by the production and transport of raw products to the facility such as crude oil feedstocks or other fuels used in production or energy generation at facilities.

Exhibit	Document	Council	Planning Commission	Comments
C	Zoning Code	Permitted outright improvements to existing fossil fuel and renewable fuel facilities WCC 20.68.802	Permitted outright improvements to existing fossil fuel and renewable fuel facilities 20.68.068	Planning Commission moved improvements to existing fossil fuel and renewable fuel facilities that are permitted outright (i.e. do not constitute an "expansion" that requires a conditional use permit) to the permitted use section of the Heavy Impact Industrial Zone. The Planning Commission also expanded the list of permitted uses to address industry and public comments.
C	Zoning Code	Renewable Fuel Facilities WCC 20.68.153 and .159	Renewable Fuel Facilities WCC 20.68.070 and .071	Council proposal requires a conditional use permit for new or expanded renewable fuel facilities. Planning Commission proposal would allow these as permitted outright uses.
C	Zoning Code	Conditional use permit for expansion of fossil fuel and renewable fuel facilities WCC 20.68.153	Conditional use permit for expansion of fossil fuel facilities (does not include renewable fuel facilities because they are permitted outright) WCC 20.68.153	Planning Commission proposal: • Sets specific thresholds defining what constitutes an "expansion" that requires a conditional use permit. • Inserts a clause that "If a conditional use permit is obtained, the baseline for determining the cumulative increase is reset." • Modifies the conditional use permit approval criteria.
C	Zoning Code	Prohibited Uses: New fossil fuel transshipment facilities WCC 20.68.205	Prohibited Uses: New fossil fuel transshipment facilities WCC 20.68.205	The Council proposal prohibits new fossil fuel transshipment facilities. The Planning Commission proposal maintains this prohibition, but inserts language clarifying that certain movements of petroleum products are not prohibited by this clause.
C	Zoning Code	GHG Mitigation WCC 20.68.801	Deletes GHG Mitigation requirement in the Zoning Code	The Council proposal included language in the Zoning Code requiring GHG mitigation for fossil fuel and renewable fuel facilities if certain criteria are met. The Planning Commission proposal deleted this language from the Zoning Code, but includes GHG mitigation language in the SEPA Code that is more discretionary in nature. There are a number of state laws, regulations, and proposals that address GHG emissions: • RCW 70.94 (Washington Clean Air Act) • RCW 70.235 (Limiting Greenhouse Gas Emissions) • WAC 173-441 (Reporting of Emissions of Greenhouse Gases) • WAC 173-442 (Clean Air Rule) • WAC 173-485 (Petroleum Refinery Greenhouse Gas Emission Requirements) • Directive of the Governor 19-18 • Proposed New WAC 173-445 WAC (Greenhouse Gas Assessment for Projects) – to be adopted by September 1, 2021

Exhibit	Document	Council	Planning Commission	Comments
C	Zoning Code	Change of Use WCC 20.74.110	Deletes this Change of Use provision	The Council proposal includes a provision that requires a change of use permit for certain activities. The Planning Commission deleted this proposed change of use provision (WCC 20.74.110). Concerns had been expressed relating to the potential conversion of an existing refinery/transshipment facility into a crude oil transshipment facility (e.g. see Resolution 2019-037). The Planning Commission language for proposed WCC 20.68.153 addressed this potential situation by requiring a conditional use permit if shipping capacity of unrefined fossil fuels were to increase over a certain level.
C	Zoning Code	Definition of "Fossil or Renewable Fuel Transshipment Facilities" WCC 20.97.160.3	Definition of "Fossil Fuel Transshipment Facilities" WCC 20.97.160.3 Definition of "Renewable Fuel Transshipment Facilities" WCC 20.97.350.4	The Council proposal provided a combined definition of "Fossil or Renewable Fuel Transshipment Facilities." The Planning Commission proposal provides separate definitions of "Fossil Fuel Transshipment Facilities" and "Renewable Fuel Transshipment Facilities" as the Commission's proposal treats these land uses differently. The Planning Commission also made modifications to these definitions.
C	Zoning Code		Definition of "Maximum Atmospheric Crude Distillation Capacity" WCC 20.97.230	The Planning Commission proposal adds a definition of this term because it is used in the conditional use section of the code (WCC 20.68.153).
D	Project Permit Procedures	Proof of Insurance WCC 22.05.125	Proof of Insurance WCC 22.05.125	The Council proposal includes new provisions relating to "Proof of insurance for hazards created in the County." The Planning Commission proposal includes abbreviated proof of insurance language with less detail than the Council proposal. There are several state laws and regulations that address insurance and/or financial responsibility: • RCW 88.40 (Transport of Petroleum Products – Financial Responsibility) • WAC 480-62-300(2) (Railroad Companies – Operations)

In September, the Planning and Development Services Department would like to review the Planning Commission's recommendations with the County Council's Special Committee of the Whole. When this review is complete, and the County Council has developed a final proposal, an ordinance can be introduced and public hearing scheduled before the Council. Please note that the "Determination of Non-significance" issued pursuant to the State Environmental Policy Act for the proposed amendments has been appealed.

WHATCOM COUNTY
PLANNING COMMISSION

Cherry Point
Amendments

FINDINGS OF FACT AND REASONS FOR ACTION

1. The Whatcom County Council approved Resolution 2019-037 on August 7, 2019, forwarding proposed Comprehensive Plan and code amendments to the Planning Commission for review. The subject amendments primarily relate to fossil fuel and renewable fuel facilities in the Cherry Point Area, although some of the amendments apply to various land uses on a countywide basis.

2. The subject amendments include the following:

   - Amending Whatcom County Comprehensive Plan Chapter 2 (Land Use).
   - Amending the State Environmental Policy Act (SEPA) code (WCC 16.08).
   - Amending the Light Impact Industrial District, Heavy Impact Industrial District, Cherry Point Industrial District, Major Project Permits, and Definitions chapters of the Whatcom County Zoning Code (Title 20).
   - Amending the Project Permit Procedures (WCC 22.05).

3. Notice was submitted to the Washington State Department of Commerce on August 15, 2019.

4. The Whatcom County Planning Commission held a town hall meeting on September 12, 2019.

5. The Whatcom County Planning Commission held work sessions on September 26, 2019, October 10, 2019, October 24, 2019, November 14, 2019, December 12, 2019, January 16, 2020, January 30, 2020, February 27, 2020, June 25, 2020, and July 9, 2020.

6. A Determination of Nonsignificance (DNS) was issued under the State Environmental Policy Act (SEPA) on July 28, 2020.

7. Notice of the Planning Commission hearing was sent to citizens, media, cities, and others on the County's e-mail list on July 30, 2020.

8. Notice of the Planning Commission hearing was posted on the County website on August 3, 2020.

9. Notice of the Planning Commission hearing for the subject amendments was published in the Bellingham Herald on August 3, 2020.

10. The Planning Commission held a public hearing on the subject amendments on August 13, 2020.

Comprehensive Plan Amendments

11. The Cherry Point UGA is approximately 7,030 acres. Whatcom County Comprehensive Plan Chapter 2 contains a specific section with text, goals, and policies relating to the Cherry Point UGA (other goals and policies in the Comprehensive Plan also apply).

12. The subject amendments modify text and Policies 2CC-11, 2CC-16, 2CC-17, and 2WW-4 in Whatcom County Comprehensive Plan Chapter 2. The subject amendments also add new Policy 2CC-18 to the Comprehensive Plan.

13. Whatcom County Comprehensive Plan Policy 2CC-11 already states that "It is the policy of Whatcom County to limit the number of industrial piers at Cherry Point to the existing three piers. . ." The subject amendments modify Policy 2CC-11. These amendments include:

    - Recognizing that the vested rights/enforceable agreement for an additional dock/pier no longer exist.

    - Recognizing the importance of preventing harm to habitat of the Cherry Point Herring stock and Southern Resident Killer Whales.

    - Recognizing that implementation of the Shoreline Program is an important way to preserve the natural character, result in long-term benefits, and protect the resources and ecology of the shoreline.

    - Deleting language that is unnecessary or no longer needed.

14. The subject amendments modify Whatcom County Comprehensive Plan Policy 2CC-16. These amendments include:

    - Recognizing that the study and recommendations to address negative impacts from fossil fuel facilities have been completed (see *Reducing Impacts from Fossil fuel Projects Report to the Whatcom County Council*, Cascadia Law Group, Feb. 12, 2018 and Whatcom County Council Resolution 2019-037, August 7, 2019).

    - Stating that the County will, through SEPA and permitting, seek to limit negative impacts from fossil fuel facilities within the Cherry Point UGA.

    - Refining the language relating to notice to the County Council of fossil fuel projects.

    - Deleting language that is unnecessary or no longer needed.

15. The subject amendments modify Whatcom County Comprehensive Plan Policy 2CC-17. These amendments include:

    - Recognizing that limited fossil fuel facility expansions are subject to environmental review, greenhouse gas analysis, and Cherry Point policies in the Comprehensive Plan.

    - Deleting language that is unnecessary.

16. The subject amendments modify Whatcom County Comprehensive Plan Policy 2WW-4 by recognizing that existing marine port facilities and limited expansions are allowed consistent with the State of Washington Department of Natural Resource Cherry Point Aquatic Reserve Management Plan.

17. The subject amendments add new Whatcom County Comprehensive Plan Policy 2CC-18. This new policy recognizes that the following are allowed: The on-going operation, maintenance, and repair of existing facilities, modifications designed to comply with adoption and implementation of new product standards and fuel standards, operational and site safety improvements, environmental improvements, and regulatory compliance projects.

18. Pursuant to WCC 22.10.060(1), in order to approve comprehensive plan amendments the County must find all of the following:

- 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.

- Further studies made or accepted by the Department of Planning and Development Services indicate changed conditions that show need for the amendment.

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

    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.

- The amendment does not include or facilitate spot zoning.

Growth Management Act

19. The Growth Management Act (GMA) establishes planning goals in Revised Code of Washington (RCW) 36.70A.020 to guide adoption of comprehensive plan amendments.

20. GMA planning goal # 1 is to: "Encourage development in urban areas where adequate public facilities and services exist or can be provided in an efficient manner."

21. GMA planning goal # 5 is to:

    Encourage economic development throughout the state that is consistent with adopted comprehensive plans, promote economic opportunity for all citizens of this state, especially for unemployed and

> for disadvantaged persons, promote the retention and expansion of existing businesses and recruitment of new businesses, recognize regional differences impacting economic development opportunities, and encourage growth in areas experiencing insufficient economic growth, all within the capacities of the state's natural resources, public services, and public facilities.

22. The subject Comprehensive Plan amendments, when viewed in the context of the other Comprehensive Plan goals and policies, continue to encourage development in the Cherry Point industrial area while also addressing public safety and environmental protection. The amendments recognize that the existing industries provide significant employment and have shipped refined fossil fuel products for decades. The amendments also recognize that existing operations of fossil fuel facilities, along with limited expansions, are allowed with appropriate environmental review and analysis.

23. GMA planning goal # 9 is to: "Retain open space, enhance recreational opportunities, conserve fish and wildlife habitat, increase access to natural resource lands and water, and develop parks and recreation facilities."

24. GMA planning goal # 10 is to: "Protect the environment and enhance the state's high quality of life, including air and water quality, and the availability of water."

25. The State Shoreline Management Act policies, which are incorporated as a GMA goal pursuant to RCW 36.70A.480, indicate that:

> . . . It is the policy of the state to provide for the management of the shorelines of the state by planning for and fostering all reasonable and appropriate uses. This policy is designed to insure the development of these shorelines in a manner which, while allowing for limited reduction of rights of the public in the navigable waters, will promote and enhance the public interest. This policy contemplates protecting against adverse effects to the public health, the land and its vegetation and wildlife, and the waters of the state and their aquatic life, while protecting generally public rights of navigation and corollary rights incidental thereto. . . (RCW 90.58.020)

26. Fossil fuel refineries and transshipment facilities have potential for accidents, which can release pollutants into the environment and impact fish habitat, wildlife habitat, water quality, and air quality. The subject amendments seek to limit negative impacts on public health, safety, and the environment.

Countywide Planning Policies

27. Countywide Planning Policy E-3 states:

> Cherry Point shall be designated as an unincorporated industrial urban growth area in recognition of existing large scale industrial land uses. Additional large scale development shall be encouraged consistent with the ability to provide needed services and consistent with protecting critical areas along with other environmental protection considerations. The Cherry Point industrial area is an important and appropriate area for industry due to its access to deep water shipping, rail, all-weather roads, its location near the Canadian border, and its contribution to the County's goal of providing family wage jobs.

28. Countywide Planning Policy I-2 indicates "New business development and expansion of existing businesses are key factors in providing 'family wage' jobs and a strong tax base. Economic development that pays family wage rates should be encouraged. . ."

29. Countywide Planning Policy I-8 states:

> Economic development should be encouraged that:
>
> a. Does not adversely impact the environment;
> b. Is consistent with community values stated in local comprehensive plans;
> c. Encourages development that provides jobs to county residents;
> d. Addresses unemployment problems in the county and seeks innovative techniques to attract different industries for a more diversified economic base;
> e. Promotes reinvestment in the local economy;
> f. Supports retention and expansion of existing businesses.

30. Countywide Planning Policy N-2 states that "The Cities and the County in cooperation with other municipal corporations and tribal governments shall adopt zoning regulations and development standards to protect water resources. . ."

31. Countywide Planning Policy N-3 states that "Jurisdictions shall cooperate to protect and restore water resources and fish habitat within UGA's and across jurisdictional boundaries to maintain quality of life and economic health in Whatcom County."

32. The Countywide Planning Policies recognize the significance of the Cherry Point UGA for industry, transportation, and good jobs. The Countywide Planning Policies also recognize the importance of environmental protection.

33. The Comprehensive Plan, including the subject amendments, allows a variety of industrial uses in the Cherry Point UGA, while encouraging review processes that will facilitate a full evaluation of fossil fuel development proposals and mitigation of negative impacts.

Interlocal Agreements

34. There are no interlocal agreements relating to the Cherry Point UGA.

Further Studies/Changed Conditions

35. The GMA, originally adopted in 1990, included a requirement to designate Urban Growth Areas (UGAs).

36. The Cherry Point UGA was adopted in 1997 when the Whatcom County Comprehensive Plan was adopted.

37. The Washington State Department of Natural Resources (DNR) originally issued the *Cherry Point Environmental Aquatic Reserve Management Plan* in November 2010, and amended the Plan in January 2017.

38. The primary focus of the *Cherry Point Environmental Aquatic Reserve Management Plan* is to:

> . . . protect, enhance and restore habitats used by Cherry Point herring stock, salmon, migratory and resident birds, Dungeness crab, groundfish rearing areas and marine mammals, as well as the protection of submerged aquatic vegetation and water quality. . . (p. 4).

39. The *Cherry Point Environmental Aquatic Reserve Management Plan* states:

> . . . the aquatic environment of Cherry Point: provides essential habitat and irreplaceable biological and ecological functions; is a portion of Treaty-protected usual and accustomed (U&A) grounds and stations of local Native American Indians; and provides significant economic benefits, recreational opportunities and other social values. . . (pp. 4 and 5).

40. The *Cherry Point Environmental Aquatic Reserve Management Plan* recognizes that:

> . . . A number of species and habitats addressed in this plan have experienced declines over the past 40 years, such as the Cherry Point herring stock, which has shrunk from approximately 15,000 tons to between 800 and 2,100 tons over the last ten years. Other key species in decline include Puget Sound Chinook salmon, bull trout, and

certain species of rockfish, surf scoter, and Southern Resident orca whales . . . (pp. 1 and 2).

41. The *Cherry Point Environmental Aquatic Reserve Management Plan* specifically excludes certain areas, including the three existing industrial piers, from the Reserve (pp. 10 and 11).

42. The *Cherry Point Environmental Aquatic Reserve Management Plan* constitutes a further study that indicates a need for the subject amendments.

43. Other areas of the U.S. and Canada have experienced community impacts and environmental degradation associated with fossil fuel industry accidents since the adoption of the Cherry Point UGA in 1997.

Public Interest

44. The Cherry Point area contains valuable fish and wildlife habitat (*Cherry Point Environmental Aquatic Reserve Management Plan*, DNR, amended 2017).

45. The Cherry Point UGA is a unique location, with important attributes, for industry (Whatcom County Comprehensive Plan, pp. 2-54 to 2-56). Existing industries provide high wage jobs and a substantial tax base (*Employment at Cherry Point*, Hodges, Rucker, and McCafferty, 2019).

46. The Cherry Point UGA text, goals and policies in the Whatcom County Comprehensive Plan, including the subject amendments, recognize the value of existing industrial uses and the importance of marine waters, fish and wildlife habitat, and air quality.

47. The subject comprehensive plan amendments should not adversely affect the overall rate or distribution of population growth, employment growth, development, and conversion of land as envisioned in the comprehensive plan. The Whatcom County Comprehensive Plan allocated an additional 890 jobs for the Cherry Point UGA for the 2013-2036 planning period. The *Employment at Cherry Point* report from 2014 estimated that there were 2,100 – 2,200 jobs in the Cherry Point industrial area at that time (p. 3). The *Employment at Cherry Point* report from 2019 estimates 3,318 jobs and indicates that, between 2014-2019, ". . . roughly 1,100 jobs have been added . . ." (pp. 6 and 14). However, most of the 700 jobs at Alcoa Intalco Works, along with related jobs, will be lost with the shutdown of the aluminum smelter. Growth projections will be updated in the next periodic update of the Comprehensive Plan (due by June 2025). These updated projections will take into account conditions at that time and expectations for the future.

48. The subject comprehensive plan amendments should not adversely affect 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. The subject amendments do not expand the allowed uses that would be served by Fire District 7, which encompasses the Cherry Point UGA. Additionally, new residential uses are not allowed in the Cherry Point industrial area and, therefore, new students will not be generated by development in this area.

49. The closest designated Agricultural lands are over .80 of a mile to the southeast, the closest Mineral Resource designation is approximately .06 of a mile to the east, and the closest designated Forestry lands are over 4 miles to the southeast of the Cherry Point UGA. There is no evidence in the record that the subject comprehensive plan amendments would adversely impact designated agricultural, forestry, or mineral resource lands.

50. The Cherry Point UGA goals and policies, including subject amendments, continue to allow industrial uses in the Cherry Point UGA that provide family wage jobs and contribute to the tax base of the County and special purpose districts, while addressing impacts to public safety and the environment. Such planning is in the public interest.

Spot Zoning

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

52. The subject proposal does not involve nor facilitate illegal spot zoning.

Development Regulation Amendments

53. The subject amendments modify text of the Whatcom County SEPA rules (WCC 16.08), the Zoning Code (WCC 20), and Project Permit Procedures (WCC 22.05)

54. Pursuant to WCC 22.10.060(2), in order to approve development regulation amendments the County must find that the amendments are consistent with the Whatcom County Comprehensive Plan.

SEPA Code Amendments

55. Whatcom County Comprehensive Plan Policy 10A-6 states "Aim to meet or exceed national, state, and regional air quality standards. Work with the Northwest Clean Air Agency to ensure compliance with applicable air quality standards."

56. Whatcom County Comprehensive Plan Policy 10A-9 is to "Cooperate with state and federal agencies and neighboring jurisdictions to identify and protect threatened and endangered fish and wildlife species and their habitats."

57. Whatcom County Comprehensive Plan Goal 10D is to "Strengthen the sustainability of Whatcom County's economy, natural environment, and built communities by responding and adapting to the impacts of climate change."

58. Whatcom County Comprehensive Plan Goal 10L is to "Protect and enhance ecosystems that support native fish and wildlife populations and habitat."

59. The Washington State Department of Ecology adopted a "Clean Air Rule," which included greenhouse gas emission limits, in 2016 (Washington Administrative Code or WAC 173-442). The Clean Air Rule was developed under the authority granted in RCW 70.94 (Washington Clean Air Act) and RCW 70.235 (Limiting Greenhouse Gas Emissions). The Clean Air Rule was challenged and the Thurston County Superior Court issued a ruling in March 2018 that prevented Ecology from implementing the Clean Air Rule regulations. However, the Washington Supreme Court reversed the Superior Court in part on January 16, 2020, upholding the Clean Air rule as it relates to regulating stationary sources (Case No. 95885-8).

60. A Directive of the Governor (# 19-18), dated December 19, 2019, states:

> . . . I hereby direct the Department of Ecology to adopt rules by September 1, 2021, to strengthen and standardize the consideration of climate change risks, vulnerability, and impacts in environmental assessments for major projects with significant environmental impacts. . .
>
> The rules should be uniform and apply to all branches of government, including state agencies, political subdivisions, public and municipal corporations and counties. The rules should cover major industrial projects and major fossil fuel projects; and establish uniform methods, processes, procedures, protocols or criteria that ensure a comprehensive assessment and quantification of direct and indirect greenhouse gas emissions resulting from the project.

> Rules for cumulative environmental assessments and reporting should include . . . Methods, procedures, protocols, criteria or standards for mitigation of greenhouse gas emissions, as necessary to achieve a goal of no net increase in greenhouse gas emissions . . .

61. The Washington State Department of Ecology sent an e-mail "Notice of Rulemaking for Proposed New Chapter 173-445 WAC – Greenhouse Gas Assessment for Projects Rulemaking" on May 1, 2020. An associated document entitled "Preproposal Statement of Inquiry" on Ecology's website stated:

> The Department of Ecology (Ecology) is beginning rulemaking as per the Directive of the Governor #19-18. The purpose of this rulemaking is to create a new rule under Chapter 173-445 WAC Greenhouse Gas Assessment for Projects. This rule will address analysis and mitigation of greenhouse gas emissions for environmental assessments of industrial and fossil fuel projects.

62. The subject amendments modify the County's SEPA rules to require applicants for certain fossil fuel and renewable fuel projects to submit additional information on a number of topics including greenhouse gas and other emissions, tanker and barge traffic, stormwater, wastewater, and risk of spills and explosions. These provisions are intended to provide the SEPA Responsible Official with more information in order to make reasoned decisions on threshold determinations.

63. The subject amendments include provisions on SEPA's relationship to federal, state, and regional regulations (see WAC 197-11-158(4)).

64. The subject amendments modify the County's SEPA rules by adding provisions relating to air quality & climate and plants & animals. These topics are specifically listed as "elements of the environment" under the State SEPA Rules (WAC 197-11-444).

65. The subject amendments include provisions that the decision maker may condition or deny projects (conditioning includes mitigating measures). This authority is already granted under RCW 43.21C.060, which states ". . . Any governmental action may be conditioned or denied pursuant to this chapter. . ." (the State Environmental Policy Act).

66. While State government is taking action to address air quality and greenhouse gas emissions, the County finds that the subject amendments will also provide assistance at the local government level in fulfilling responsibilities under SEPA.

Zoning Code Amendments

67. The Cherry Point UGA is zoned Light Impact Industrial (LII) and Heavy Impact Industrial (HII). There are approximately 470 acres in the LII zone and 6,560 acres in the HII zone.

68. The subject amendments modify the LII zone, HII zone, Cherry Point Industrial District, Major Project Permits, and Definitions sections of the Whatcom County Zoning Code (Title 20).

69. Whatcom County Comprehensive Plan Goal 2H is to "Preserve private property rights while recognizing the importance of the rights of the community, including protecting the natural environment and conserving resources."

70. Whatcom County Comprehensive Plan Goal 7A is to "Promote a healthy economy providing ample opportunity for family-wage jobs for diverse segments of the community, which is essential to the quality of life in the area."

71. Whatcom County Comprehensive Plan Policy 7A-2 is to "Foster a diverse, private-sector job base, which will provide family-wage jobs at the state median income level or greater, and facilitate the retention and expansion of existing businesses."

72. Whatcom County Comprehensive Plan Policy 7J-1 is to "Support creation of job opportunities for local residents, especially family wage jobs to decrease unemployment and underemployment.

73. The Zoning Code, as modified by the subject amendments, preserves private property rights and fosters economic development by continuing to allow a wide array of industrial land uses in the Cherry Point UGA. In the LII zone, allowed uses include manufacturing (except new fossil fuel refineries), fabrication, printing, storage, boat building and repair, communications, and other similar uses. In the HII zone, allowed uses include manufacturing (except new fossil fuel refineries), fabrication, printing, storage, boat building and repair, power plants (except coal-fired plants), and solid waste handling facilities.

74. Additionally, the HII zone amendments allow continued operation, maintenance, and certain improvements to existing refineries and transshipment facilities (WCC 20.68.068).

75. Whatcom County Comprehensive Plan Goal 2G is to "Encourage citizen participation in the decision making process." Policy 2G-1 is to "Examine and improve methods to notify affected property owners of proposed land use changes."

76. The subject Zoning Code amendments provide greater public review of certain land uses that could impact public safety, transportation, and the environment. Specifically, the expansion of existing fossil fuel refineries and existing fossil fuel transshipment facilities requires a conditional use permit in the HII zone (WCC 20.68.153). The conditional use permit process requires notice, a public hearing, evaluation of the proposal for compliance with the approval criteria, and a decision by the hearing examiner.

77. Whatcom County Comprehensive Plan Policy 2CC-16 was adopted in 2017 (Ordinance 2017-027). This Policy, which is being modified by the subject amendments, stated:

> The County shall undertake a study to be completed if possible by December of 2017 to examine existing County laws, including those related to public health, safety, development, building, zoning, permitting, electrical, nuisance, and fire codes, and develop recommendations for legal ways the County may choose to limit the negative impacts on public safety, transportation, the economy, and environment from crude oil, coal, liquefied petroleum gases, and natural gas exports from the Cherry Point UGA . . . Based on the above study, develop proposed Comprehensive Plan amendments and associated code and rule amendments. . .

78. The subject amendments prohibit new fossil fuel refineries and new fossil fuel transshipment facilities (WCC 20.66.204, 20.68.204 and .205). Potential impacts from new refineries and associated transshipment facilities may include: Increased pollutant emissions to the air, increased chance of crude oil or refined product spills, increased chance of fire or explosion, increased rail traffic that can impact other modes of transportation (e.g. hold up motor vehicle, school bus, or emergency vehicle traffic at railroad crossings), increased chance of derailment, and increased vessel traffic.

79. The Whatcom County Comprehensive Plan states "Whatcom County lies within the influence of the convergent plate margin between the Pacific and North American Plate termed the Cascadia Subduction Zone. Regionally-extensive and damaging earthquakes, termed mega-thrusts, are possible when stress generated between the subducting Pacific Plate and over-riding North American Plate is released. . ." (Chapter 10, p. 10-12). Because new refineries and transshipment facilities would transport and process flammable and toxic materials there is heighted concern, based upon the geology of the region, that these facilities could increase risk to both public safety and the environment.

80. There are currently five oil refineries in Washington State. Two are in Whatcom County, two are in Skagit County, and one in Pierce County. Whatcom County has approximately 3% of the State's population, but 40% of the State's refineries. The County has accepted its fair share of such facilities in the state and region and wants to limit the local impacts on the community and environment of further concentration of such facilities.

81. The subject amendments prohibit new coal fired power plants in the HII zone (WCC 20.68.207).

82. According to the National Institute of Health's National Library of Medicine website (https://toxtown.nlm.nih.gov/sources-of-exposure/power-plants):

> . . . Air pollution from coal-fired power plants cause serious risk to human health. Coal-fired power plants emit 84 of the 187 hazardous air pollutants identified by the U.S. Environmental Protection Agency. These pollutants may cause cancer, according to the National Toxicology Program.
>
> Hazardous air pollution released by coal-fired power plants can cause a wide range of health effects, including heart and lung diseases. Exposure to coal power plant pollution can damage the brain, eyes, skin, and breathing passages. It can affect the kidneys, lungs, and nervous and respiratory systems. Exposure can also affect learning, memory, and behavior.
>
> . . . Coal-fired power plants are the biggest industrial sources of mercury and arsenic in the air. Mercury pollutes lakes, streams, and rivers, and builds up in fish. People who eat large amounts of fish from contaminated lakes and rivers are at the greatest risk of exposure to mercury.
>
> . . . People who work at or live near coal-fired power plants have the greatest health risks from coal pollution. . .

83. The subject amendments continue to allow other types of power plants in the HII zone, but would prohibit coal-fired power plants because of the risks to the local community, public health, and environment.

84. Whatcom County Comprehensive Plan Policy 10D-10 is to "Create updates to Whatcom County land use policies and development regulations to support renewable energy development goals."

85. The subject amendments allow renewable fuel refineries as a permitted use in the HII zone (WCC 20.68.070 and .071).

86. The Whatcom County Comprehensive Plan states that ". . . Cherry Point is also important historically and culturally to the Coast Salish people, and part of the usual and accustomed fishing area for five treaty tribes, reserved under the Treaty of Point Elliot of 1855. . ." (Chapter 2, p. 2-54). Comprehensive Plan Policy 2CC-11 states:

> It is the policy of Whatcom County to limit the number of industrial piers at Cherry Point to the existing three piers, taking into account the need to . . . Recognize federal actions upholding treaty rights. . .

87. The United States Department of the Army, Corps of Engineers denied a permit for a new pier under Section 10 of the Rivers and Harbors Act on May 9, 2016 because ". . . the proposed project would violate the Lummi Indian Nation's tribal Treaty Rights to access and utilize usual and accustomed fishing areas. . ."

88. The subject Zoning Code amendments implement the Comprehensive Plan by prohibiting new piers, docks, and wharves in the HII zone (WCC 20.68.206 and WCC 20.74.055).

Project Permit Procedure Amendments

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

90. Whatcom County Comprehensive Plan Policy 7G-1 is to "Recognize the natural environment as a major asset and manage environmental resources accordingly. We need both economic prosperity and environmental sustainability."

91. Whatcom County Comprehensive Plan Policy 10A-2 is to:

> Protect the environment through a comprehensive program that includes voluntary activity, education, incentives, regulation, enforcement, restoration, monitoring, acquisition, mitigation, and intergovernmental coordination.

92. RCW 88.40 is entitled "Transport of Petroleum Products – Financial Responsibility." This State law, at RCW 88.40.005, indicates:

> The legislature recognizes that oil and hazardous substance spills and other forms of incremental pollution present serious danger to the fragile marine environment of Washington state. It is the intent and purpose of this chapter to define and prescribe financial responsibility requirements for vessels that transport petroleum products as cargo or as fuel across the waters of the state of Washington and for facilities

that store, handle, or transfer oil or hazardous substances in bulk on or near the navigable waters.

93. This State law requires a tank vessel that carries oil as cargo in bulk to demonstrate financial responsibility to ". . . meet state and federal financial liability requirements for the actual costs for removal of oil spills, for natural resource damages, and for necessary expenses" (RCW 88.40.020).

94. WAC 480-62 is entitled "Railroad Companies – Operations." This State code, at WAC 480-62-300(2), requires any railroad company that transports crude oil in Washington to submit to the Washington Utilities and Transportation Commission a statement that contains:

    (a) All insurance carried by the railroad company that covers any losses resulting from a reasonable worst case spill.

    (b) Coverage amounts, limitations, and other conditions of the insurance.

    (c) Average and largest crude oil train, as measured in barrels, operated in Washington by the railroad company in the previous calendar year.

    (d) Information sufficient to demonstrate the railroad company's ability to pay the costs to clean up a reasonable worst case spill of oil including, but not necessarily limited to, insurance, reserve accounts, letters of credit, or other financial instruments or resources on which the company can rely to pay all such costs.

95. The State Legislature adopted Engrossed Substitute House Bill (ESHB) 1578 in 2019. This bill amended the "Vessel Oil Spill Prevention and Response" law (RCW 88.46), the "Oil and Hazardous Substance Spill Prevention and Response" law (RCW 90.56), and other provisions of state law.

96. ESHB 1578 states:

    The legislature finds that a variety of existing policies designed to reduce the risk of oil spills have helped contribute to a relatively strong safety record for oil moved by water, pipeline, and train in recent years in Washington state. Nevertheless, gaps exist in our safety regimen, especially deriving from shifts in the modes of overwater transportation of oil and the increased transport of oils that may submerge or sink, contributing to an unacceptable threat to Washington waters, where a catastrophic spill would inflict potentially irreversible damage on the endangered southern resident killer

> whales. . .Therefore, it is the intent of the legislature to enact certain new safety requirements designed to reduce the current, acute risk from existing infrastructure and activities of an oil spill that could eradicate our whales, violate the treaty interests and fishing rights of potentially affected federally recognized Indian tribes, damage commercial fishing prospects, undercut many aspects of the economy that depend on the Salish Sea, and otherwise harm the health and well-being of Washington residents. . . (Section 1).

97. Tug escorts have been required for larger loaded oil tankers for years. ESHB 1578 amended state law to require certain smaller oil tankers to be under the escort of tugs, require the Department of Ecology to develop and maintain a model to assess current and potential future risks of oil spills from vessels in Washington waters, and modify reporting requirements for railroad cars and pipelines that transport crude oil within the state.

98. While the Washington State legislature has enacted laws relating to the transportation and handling of fossil fuels, there have been a number of accidents involving fossil fuel refineries and transportation of fossil fuels in North America over the years. These accidents, involving flammable and/or toxic materials, have impacted local communities and the environment.

99. Overall, the subject amendments seek to minimize or avoid additional risk to the local community and environment from fossil fuel facilities. The amendments are intended to heighten the level of review or, in certain cases, prohibit uses in order to protect public health, safety & welfare, fisheries industries, fish & wildlife habitat, and the environment.

100. However, in case of accidents, the subject amendments include proof of insurance requirements (WCC 22.05.125), as it is a matter of fairness that responsible parties mitigate the consequences of any accidents.

County Charter and GMA Takings Provisions

101. Whatcom County Charter Section 1.11 states, "The rights of the individual citizen shall be guaranteed under the Constitutions of the United States and the State of Washington. No regulation or ordinance shall be drafted and adopted without consideration of and provisions for compensation to those unduly burdened."

102. GMA Planning Goal 6, relating to property rights, states "Private property shall not be taken for public use without just compensation having been made. The property rights of landowners shall be protected from arbitrary and discriminatory actions" (RCW 36.70A.020(6)).

103. The Whatcom County Prosecuting Attorney's Office has rendered an opinion that the subject Comprehensive Plan and code amendments do not unduly burden property owners and do not take private property for public use.

CONCLUSIONS

1. The subject Whatcom County Comprehensive Plan amendments are consistent with the approval criteria in WCC 22.10.060(1).

2. The subject development regulation amendments are consistent with the approval criteria in WCC 22.10.060(2).

RECOMMENDATIONS

Based upon the above findings and conclusions, the Planning Commission recommends:

1. Approval of Exhibit A, amendments to the Whatcom County Comprehensive Plan.

2. Approval of Exhibit B, amendments to Whatcom County Code 16.08 (State Environmental Policy Act).

3. Approval of Exhibit C, amendments to the Whatcom County Code Title 20 (Zoning).

4. Approval of Exhibit D, amendments to Whatcom County Code 22.05 (Project Permit Procedures).

WHATCOM COUNTY PLANNING COMMISSION

Kelvin Barton, Chair

Ashley Ubil, Secretary

August 13, 2020
Date

August 13, 2020
Date

Commissioners voted to recommend approval 8-1 of the Findings of Fact & Reasons for Action and amendments on August 13, 2020. Members present at the meeting when the vote was taken: Robert Bartel, Kelvin Barton, Atul Deshmane, Jim Hansen, Stephen Jackson, Kimberly Lund, Jon Maberry, Natalie McClendon, and Dominic Moceri.

Exhibit A

NOTE: Changes from existing Comprehensive Plan text are shown within underlines and strikethroughs (Planning Commission changes that differ from the County Council Resolution 2019-037 are also highlighted in yellow).

Comprehensive Plan (Chapter 2)

Major Industrial Urban Growth Area / Port Industrial

Cherry Point – Text

Change Second Paragraph of Cherry Point Text

Because of the special characteristics of Cherry Point, including deep water port access, rail access, and proximity to Canada, this area has regional significance for the siting of large industrial or related facilities. General Petroleum constructed the Ferndale Refinery in 1954, Alumax/Pechiney/Howmet constructed the Aluminum Smelter in 1966, and the Atlantic Richfield Company constructed the Cherry Point Refinery in 1971. The existing industries in the Cherry Point UGA, which provide significant employment, have produced and shipped refined fossil fuels and other products for decades.

Amend Policy 2CC-11

Policy 2CC-11: It is the policy of Whatcom County to limit the number of industrial piers at Cherry Point to the existing three piers, taking into account the need to:

- ~~Honor any existing vested rights or other legally enforceable agreements for an additional dock/pier;~~ Act conservatively in land use matters at Cherry Point to prevent further harm to habitat important to the Cherry Point Herring stock and Southern Resident Killer Whales;
- ~~Update the~~ Optimally implement the Whatcom County Shoreline Master Program to ~~conform with this policy~~ fulfill the Shoreline Management Act's shorelines of statewide significance policy to preserve natural character, result in long-term over short-term benefit, and protect the resources and ecology of the shoreline;
- Encourage the continued agency use of best available science;
- Support and remain consistent with the state Department of Natural Resources' withdrawal of Cherry Point tidelands and bedlands from the general leasing program and the species recovery goals of the Cherry Point Aquatic Reserve designation and Management Plan;
- Recognize federal actions upholding treaty rights;

• Protect traditional commercial and tribal fishing; and

• Prevent conflicts with vessel shipment operations of existing refineries that could lead to catastrophic oil or fuel spills.

Amend Policy 2CC-16

2CC-16: The County will, through its adopted SEPA policies and applicable permitting processes, ~~shall undertake a study to be completed if possible by December of 2017 to examine existing County laws, including those related to public health, safety, development, building, zoning, permitting, electrical, nuisance, and fire codes, and develop recommendations for legal ways the County may choose to~~ seek to limit the negative impacts on public safety, transportation, the economy, and environment from new fossil fuel facilities, including new or expanded crude oil, coal, liquefied petroleum gases, and natural gas~~, and exports from~~ facilities within the Cherry Point UGA. ~~above levels in existence as of March 1, 2017~~[XXX, ~~2020~~2019].

Rationale for Changes (shown with highlighting): Refinery operations may fluctuate over time, depending on product demand, maintenance turnarounds, etc. Therefore, it may be difficult to implement this policy if it relates to exceeding impacts that existed on a particular day (the day of adoption of the policy). Rather, the County would review the impacts of the new or expanded development, when proposed.

~~To provide clear guidance to current and future county councils on the County's legal rights, responsibilities and limitations regarding interpretation and application of project evaluation under Section 20.88.130 (Major Projects Permits) of the Whatcom County Code. The County should consider any legal advice freely submitted to the County by legal experts on behalf of a variety of stakeholder interests, and make that advice publicly available.~~

~~• Based on the above study, develop proposed Comprehensive Plan amendments and associated code and rule amendments for Council consideration as soon as possible.~~

~~• Until the above mentioned amendments are implemented, t~~ The ~~Prosecuting Attorney and/or the~~ County Administration should provide the County Council written notice of all known preapplication correspondence or permit application submittals and notices, federal, state, or local that involve activity with the potential to expand ~~the export of fossil fuels from Cherry Point~~ "Fossil Fuel Refinery, Renewable Fuel Refinery, ~~or~~ Fossil Fuel Transshipment Facilities, or Renewable Fuel Transshipment Facilities," as defined in the Whatcom County Code (Chapter 20.97).[1]

Rationale for Changes (shown with highlighting): On February 27, 2020, the Planning Commission approved a motion deleting "Prosecuting Attorney" from the notice provisions above. The County Planning & Development Services Department reviews land use permits for fossil and renewable fuel facilities. The Prosecuting Attorney's Office typically only becomes aware of a permit application if consulted by Planning & Development Services. On August 13, 2020, the Planning Commission approved separate definitions for Fossil Fuel Transshipment Facilities and Renewable Fuel Transshipment Facilities in the Zoning Code (they were previously combined in one definition).

[1] The reference to a definition in the Whatcom County Code could be removed to avoid a policy with a code reference. A definition could be added to the Comprehensive Plan if thought necessary. Typically, the code is more detailed.

Amend Policy 2CC-17

~~Policy 2CC-16 shall not limit~~ Allow existing operations or maintenance of existing fossil-fuel related facilities operating ~~at levels~~ as of ~~March 1, 2017~~ [XXX, 2020~~2019~~] with limited expansions subject to environmental review, greenhouse gas emission analysis ~~mitigation~~, and conformance with Policies 2CC-3 and -11.

Rationale for Changes (shown with highlighting): On October 24, 2019, the Planning Commission approved a motion to remove the proposed GHG mitigation requirements from the Zoning Code and keep proposed GHG provisions in SEPA (with further discussion on the SEPA language at a later date). The proposed SEPA rules will require GHG analysis and authorize GHG mitigation. Pursuant to the proposed SEPA rules, GHG mitigation may be imposed by the Responsible Official, but will not be automatically imposed for any project that creates any increase in GHG emissions.

Add a new policy as follows:

Policy 2CC-18: This chapter is intended to allow the on-going operation, maintenance, and repair of existing facilities, modifications designed to comply with adoption and implementation of new product standards and fuel standards, operational and site safety improvements, environmental improvements, and regulatory compliance projects.

Rationale for Changes (shown with highlighting): On February 27, 2020, the Planning Commission approved a motion inserting new Policy 2CC-18 into the Cherry Point UGA section of the Comprehensive Plan.

~~**Add a new policy on renewable fuels:**~~

~~2CC-18. Treat renewable fuels facilities similar to fossil fuel facilities.~~

Rationale for Changes (shown with highlighting): On October 10, 2019, the Planning Commission provided direction that renewable fuel facilities should not be required to mitigate greenhouse gas emissions if they reduce lifecycle greenhouse gas emissions. On December 12, 2019, the Planning Commission recommended that new renewable fuel refineries and transshipment facilities should be allowed as a permitted use but new fossil fuel refineries should be prohibited. Additionally, on January 16, 2020, the Planning Commission recommended that expansion of existing renewable fuel refineries and transshipment facilities should be allowed as a permitted use (expansion of fossil fuel facilities would require a conditional use permit). Therefore, in some respects, renewable fuel facilities would not be treated in a manner "similar" to fossil fuel facilities.

Essential Public Facilities

Amend Policy 2WW-4

Policy 2WW-4 State and regional highways in unincorporated Whatcom County that have been designated as essential state or regional transportation facilities are I-5, State Route 539 (the Guide Meridian), State Route 546/9 (Badger from the Guide to Sumas), and State Route 20 to eastern Washington. Other transportation facilities in unincorporated Whatcom County that have been designated as essential public facilities are Amtrak Cascades passenger rail service, the Burlington Northern Santa Fe railroad tracks, and the Cherry Point marine port facilities. Such facilities in the City of Bellingham include Fairhaven Station (intercity passenger rail terminal), Bellingham Cruise Terminal (Alaska Ferry), and the Port of Bellingham (marine port). Additionally, State Route 543 (the truck route at the Blaine border) is an essential public facility located within the city limits of Blaine.

Widening of existing state highways or railroad tracks (including construction of sidings) and siting new state highways or railroad tracks should be planned in the Washington Highway System Plan, Amtrak Cascades Plan and the Freight Rail Plan. The state will invite the Regional Transportation Planning Organization and the County to participate in planning studies, review design plans, and provide comments when siting new or expanded state highways or railroad tracks.

Highways and railroad tracks that qualify as essential public facilities should be sited in accordance with all of the following principles. These facilities should be located:

- In a manner that minimizes or mitigates noise impacts to surrounding residential areas.
- Outside of the Lake Whatcom Watershed, unless there are no viable alternatives.
- In a manner that allows continued fish passage beyond the road or railroad tracks or restores blocked passage.
- In a manner that avoids or mitigates wetland impacts.
- In a manner that minimizes impacts of additional impervious surfaces by treating stormwater runoff.
- In a manner that encourages a vibrant economy by facilitating the efficient movement of people and freight.
- In a manner that accommodates pedestrians, bicycles, and transit.

Major passenger intermodal terminals should be located in General Commercial, Airport Operations, Urban Residential-Medium Density or industrial zones.

Freight railroad switching yards and terminals should be located in industrial zones.

Marine port facilities should be located within the Heavy Impact Industrial zone of the Cherry Point Major/Port Industrial Urban Growth Area. <u>Allow existing facilities and limited expansions consistent with the State of Washington Department of Natural Resource Cherry Point Aquatic Reserve Management Plan.</u>

Exhibit B

NOTE: Changes from existing text are shown within underlines and strikethroughs (Planning Commission changes that differ from the County Council Resolution 2019-037 are also highlighted in yellow).

CHAPTER 16.08 STATE ENVIRONMENTAL POLICY ACT (SEPA)

16.08.090. Environmental checklist

E. Evaluation/Worksheet for Fossil and Renewable Fuel Facilities: Air and environmental health are elements of the environment in WAC 197-11-444 and subjects addressed in WAC 197-11-960, Environmental Checklist. As provided in WAC 197-11-906(1)(c), Whatcom County hereby adds a procedure and criteria to help identify the affected environment, impacts, and potential mitigation regarding air quality and climate and risks from spills and/or explosions. For any proposed change of use or expansion of facilities that manufacture, process, store or transport any fossil fuel, renewable fuel, or hydrocarbon feedstock, the proponent will provide an expert evaluation or fill out the County's SEPA "Worksheet for Fossil and Renewable Fuel Facilities." This expert evaluation or Worksheet provides detailed information required to evaluate impacts to air, land and water during review of a SEPA environmental checklist. The form of the worksheet shall be prepared and updated as needed~~once per year~~ by the SEPA Responsible Official in consultation with the Planning Commission~~and taking into account the comments of the Climate Impacts Advisory Group and its members~~. The expert evaluation or Worksheet shall analyze the "significance" of direct, indirect, and cumulative impacts ~~including but not limited to those~~ arising from:

1. Windborne transport of fossil or renewable fuel emissions across Whatcom County;
2. Lifecycle greenhouse gas emissions for renewable facilities and facility emissions above existing levels for fossil fuel facilities;
3. Transits of tankers or barges and their support vessels that have the potential to create risks of spills or explosion or interfere with commercial and treaty tribe fishing areas; ~~and~~
4. Releases of stormwater and wastewater to groundwater, marine waters, intertidal wetlands, streams within the shorelines, and to their headwaters; and
5. Potential for loss of life and/or property related to risks from spills or explosions associated with refining and transport of renewable or fossil fuels or related feedstocks within Whatcom County.

In determining whether possible impacts are "significant" and "probable," the Responsible Official shall determine whether the ~~answers on~~ information in the expert evaluation or the Worksheet ~~for Fossil Fuel Facilities~~ accurately analyze the severity of potential harm, independently from analysis of probability of occurrence, in compliance with WAC 197-11-330. Also, as provided in WAC 197-11-794, "the severity of an impact should be weighed along with the likelihood of its occurrence" and "an impact may be significant if its chance of occurrence is not great, but the resulting environmental impact would be severe if it occurred."

The ~~worksheet and supplemental~~ information provided in the expert evaluation or Worksheet required for fossil and renewable fuel facilities shall be considered procedures and criteria added to Whatcom County's SEPA policies and procedures pursuant to WAC 197-11-906(1)(c) and are deemed necessary to be consistent with the provisions of SEPA

contained in RCW 43.21C.020, RCW 43.21C.030 and RCW 43.21C.031. However, the expert evaluation or Worksheet may not be required if an environmental impact statement is prepared.

Discussion/Notes: Suggest reference to WAC 197-11-906(1)(c) as basis to require worksheet since it allows for additional procedures and criteria. WAC 197-11-315 refers to Ecology and 30-day review for planned actions, which is not proposed.

Rationale for Changes (shown within highlighting): The worksheet will take time to develop and likely will not be available when Council adopts the ordinance. Additionally, larger or more complex projects would benefit from expert evaluation of the issues listed above.

It may not be necessary to update the worksheet every year. Therefore, the proposed change is to update the worksheet "as needed." On January 30, 2020, the Planning Commission passed a motion to remove the reference to the Climate Impact Advisory Committee, as the SEPA Official may consult with any committee (including but not limited to the Climate Impact Advisory Committee) when preparing/updating the worksheet. On February 27, 2020, the Planning Commission inserted a clause that requires the SEPA Official to consult with the Planning Commission when preparing/updating the worksheet.

The proposed SEPA rules authorize GHG mitigation for "facility emissions" for fossil fuel facilities (proposed WCC 16.08.160.F.1.b.i(a) – Exhibit B, page 4). The proposed SEPA rules require "lifecycle" GHG emission analysis for renewable facilities (proposed WCC 16.08.160.F.1.b.ii – Exhibit B, page 5). The information required in the evaluation/worksheet should correspond to these SEPA requirements.

The evaluation/worksheet addresses impacts "including but not limited to" the five listed issues. The phrase "including but not limited to" has been deleted because it is open-ended and undefined. Applicants will not know what they are required to address if this phrase is retained.

Finally, if an environmental impact statement (EIS) is required, then the evaluation/worksheet will not be needed since significant adverse impacts will be addressed in the EIS.

16.08.160 Substantive authority.

A. The policies and goals set forth in this chapter are supplementary to those in the existing authorization of Whatcom County.

B. The county may attach conditions to a permit or approval for a proposal so long as:

1. Such conditions are necessary to mitigate specific probable adverse environmental impacts identified in environmental documents prepared pursuant to this chapter; and

2. Such conditions are in writing; and

3. The mitigation measures included in such conditions are reasonable and capable of being accomplished; and

4. The county has considered whether other local, state, or federal mitigation measures applied to the proposal are sufficient to mitigate the identified impacts; and

5. Such conditions are based on one or more policies or provisions in subsection D, E, or F of this section and cited in the license or other decision document.

Rationale for Changes (shown with highlighting): Subsections E and F below include provisions relating to placing conditions on projects.

C. The county may deny a permit or approval for a proposal on the basis of SEPA so long as:

1. A finding is made that approving the proposal would result in probable significant adverse environmental impacts that are identified in a FEIS or final SEIS prepared pursuant to this chapter; and

2. A finding is made that there are no reasonable mitigation measures capable of being accomplished that are sufficient to mitigate the identified impact; and

3. The denial is based on one or more policies or provisions identified in subsection D or F of this section and identified in writing in the decision document.

Rationale for Changes (shown with highlighting): Subsection F below includes a provision relating to denying projects.

D. The county designates and adopts by reference the following policies as the basis for the county's exercise of SEPA authority pursuant to this section:

1. The county shall use all practicable means, consistent with other essential considerations of state policy, to improve and coordinate plans, functions, programs, and resources to the end that the state and its citizens may:

a. Fulfill the responsibilities of each generation as trustee of the environment for succeeding generations;

b. Assure for all people of Washington safe, healthful, productive, and aesthetically and culturally pleasing surroundings;

c. Attain the widest range of beneficial uses of the environment without degradation, risk to health or safety, or other undesirable and unintended consequences;

d. Preserve important historic, cultural, and natural aspects of our national heritage;

e. Maintain, wherever possible, an environment which supports diversity and variety of individual choice;

f. Achieve a balance between population and resource use which will permit high standards of living and a wide sharing of life's amenities; and

g. Enhance the quality of renewable resources and approach the maximum attainable recycling of depletable resources.

2. The county recognizes that each person has a fundamental and inalienable right to a healthful environment and that each person has a responsibility to contribute to the preservation and enhancement of the environment.

3. The county adopts by reference the policies in the following county documents:

Whatcom County Comprehensive Land Use Plan (inclusive of goal statements and all subarea components)

Whatcom County Shoreline Management Program

Whatcom County Subdivision Ordinance

Whatcom County Solid Waste Management Plan

Whatcom County Critical Areas Ordinance

All official land use controls adopted by Whatcom County.

E. Relationship to Federal, State and Regional Regulations. Many of the environmental impacts addressed by these SEPA policies are also the subject of federal, state and regional regulations. In deciding whether a project specific adverse environmental impact has been adequately addressed by an existing rule or law of another agency with jurisdiction, the County shall consult orally or in writing with that agency and may expressly defer to that agency. In making this deferral, the County shall base or condition its project approval on compliance with these other existing rules or laws. ~~In deciding whether these regulations provide sufficient impact mitigation, the County shall consult orally~~

~~or in writing with the responsible federal, state or other agency with jurisdiction and environmental expertise and may expressly defer to that agency. The County shall base or condition its project decision on compliance with these other existing regulations, rules, laws, or adopted enforceable plans.~~ The County needs~~shall~~ not so defer if such regulations did not anticipate or are otherwise inadequate to address a particular impact of a project.

> Rationale for Changes (shown with highlighting): The replacement language above (the 2nd and 3rd sentences) is taken from the State SEPA rules (WAC 197-11-158(4)) to better reflect these State rules.

F. Specific Environmental Policies

1. Air Quality and Climate:

a. Air pollution can be damaging to human health, plants and animals, visibility, aesthetics, and the overall quality of life. Mitigation of ~~criteria~~air pollutant impacts will normally be the subject of air permits required by the Northwest Clean Air Agency (NWCAA) and/or State Department of Ecology (DOE) and no further mitigation by the County shall be required. However, where a project being reviewed by the County generates public nuisance impacts, ~~or~~ odors or greenhouse gas emissions impacts not addressed through the regulations of NWCAA or DOE, the County may require mitigation under SEPA.

> Rationale for Changes (shown with highlighting): Criteria pollutants are specific types of pollutants identified in the Federal Clean Air Act. The NWCAA addresses a wider variety of pollutants. Additionally, the State Department of Ecology may require a "Prevention of Significant Deterioration" permit for certain industrial sources of air pollution (e.g. refineries). Using the term "public" nuisance in the text above will maintain consistency with WCC 20.66.704 and WCC 20.68.704, the Light Impact Industrial and Heavy Impact Industrial provisions relating to odors.

b. Climate change is resulting in increased temperatures, reduced summertime snowpack, reduced stream flows and increased stream temperatures, more intense storms with increased potential for flooding and damage to roads, dikes and critical infrastructure such as water and waste treatment facilities. While climate change is a global phenomenon, it is the policy of Whatcom County to do its fair share to reduce local emissions and to ensure that projects with a likelihood of more than a moderate adverse impact on air quality and climate that may be authorized by the County address greenhouse gas emissions impacts. ~~Mitigation may be achieved through the provisions contained in County land use and development regulations or through the State Environmental Policy Act where land use code provisions do not address mitigation of greenhouse gas emissions impacts.~~

> Rationale for Changes (shown with highlighting): On October 24, 2019, the Planning Commission approved a motion to remove the proposed GHG mitigation requirements from the Zoning Code and keep proposed GHG provisions in SEPA (with further discussion on the SEPA language at a later date). The above changes would delete the reference to GHG mitigation in the Zoning Code. GHG mitigation through SEPA is addressed below.

i. Greenhouse Gas Emissions – Fossil Fuel Facilities and Fossil Fuel Transshipment Facilities: The following policies shall apply to fossil fuel facilities and fossil fuel transshipment facilities.

(a) Emissions Calculated: The SEPA Responsible Official may require mitigation for greenhouse gas emissions of fossil fuel facilities and fossil fuel transshipment facilities, as calculated consistent with the definition of facility emissions in WCC 16.08.175~~20.97.124.1~~.

(b) Assessment: Greenhouse gas emissions impacts shall be assessed using ~~the most~~ current scientifically valid modeling techniques~~version of the GREET Model developed by Argonne National Laboratories or, where feedstocks are from Canada, using the latest version of the GH Genius model developed by Canadian agencies for quantification of upstream emissions from production of feedstocks produced in Canada.~~

Rationale for Changes (shown with highlighting): Industry representatives have indicated concern about the models referenced above. The proposed changes would allow appropriate methods to be used in calculating greenhouse gas emissions.

(c) Mitigation: Greenhouse gas emissions that create specific adverse environmental impacts may be offset ~~for proposals subject to WCC 20.68.801 through either code requirements or, if not addressed through code requirements,~~ through mitigation projects that provide real~~, additional~~ and quantifiable greenhouse gas mitigation. ~~Such mitigation must not be required by any other regulatory mechanism and there shall be no double counting of emission reductions where identified as mitigation of greenhouse gas emissions impacts for permits subject to WCC 20.68.801.~~

Rationale for Changes (shown with highlighting): On October 24, 2019, the Planning Commission approved a motion to remove the proposed GHG mitigation requirements from the Zoning Code and keep proposed GHG provisions in SEPA (with further discussion on the SEPA language at a later date). The above changes would delete the reference to GHG mitigation in the Zoning Code. The double counting language above is somewhat confusing. It seems to indicate that, if mitigation is required by a different agency, then County-required mitigation must be different and additional. But a general concept is that, if another agency requires adequate mitigation, County mitigation is not required. Therefore, this language has been deleted.

Additionally, SEPA allows for mitigation of "specific adverse environmental impacts" (RCW 43.21C.060). This language has been inserted above.

ii. Greenhouse Gas Emissions – Renewable Fuels Facilities and Renewable Fuel Transshipment Facilities: The SEPA Responsible Official shall require documentation of lifecycle greenhouse gas emissions associated with renewable fuel facilities. The SEPA Responsible Official will consider the lifecycle greenhouse gas emissions analysis when making the threshold determination. ~~The SEPA Responsible Official shall require documentation of emissions consistent with b.i(a) and b.i(b) above. The applicant shall demonstrate that the lifecycle greenhouse gas reductions associated with the renewable fuels provide a net reduction even when considering transportation and upstream emissions. If there is a net increase in emissions locally, the SEPA Responsible official may require mitigation per b.i(c) above.~~

On October 10, 2019, the Planning Commission provided direction that renewable fuel facilities should not be required to mitigate greenhouse gas emissions if they reduce lifecycle greenhouse gas emissions. Therefore, the greenhouse gas language above has been modified, including deletion of the mitigation language.

iii. Greenhouse Gas Emissions – Other Uses Within the Heavy Impact Industrial District:

(a) Method of analysis: Determined by SEPA Responsible Official following consultation with federal and state agencies with jurisdiction or expertise.

(b) Mitigation: Determined by SEPA Responsible Official. See 1.c.

c. It is the County's policy to minimize or prevent adverse air quality impacts. Federal, state, regional, and county regulations and programs cannot always anticipate or adequately mitigate adverse air quality impacts. If the decision-maker makes a written finding that the applicable federal, state, regional, and/or County regulations did not anticipate or are inadequate to address the particular impact(s) of the project, the decision-maker may condition the proposal to mitigate its adverse impacts or, if impacts cannot be mitigated, may deny a project under the provisions of the State Environmental Policy Act.

2. Plants and Animals:

a. Many species of birds, mammals, fish, and other classes of animals and plants living in both rural and urban environments and are of ecological, educational, and economic value. Fish and wildlife populations are threatened by habitat loss and by the reduction of habitat diversity. For the purposes of this policy, animals and plants of ecological, educational, and economic value include priority habitats and species as listed in the Washington Department of Fish and Wildlife's Priority Habitats and Species, as amended, consistent with WCC 16.16.710, and High Biodiversity Value Areas per the Whatcom County 2017 Ecosystem Report, as amended.

b. It is the County's policy to minimize or prevent the loss of fish and wildlife habitat that have substantial ecological, educational, and economic value. A high priority shall also be given to meeting the needs of state and federal threatened, endangered, and sensitive species of both plants and animals. Special consideration shall be given to anadromous fisheries and marine mammals.

c. ~~It is the County's policy to ensure applicants provide verifiable documentation of consistency with federal and state laws regarding treaty rights, clean water rights (both water quality and water quantity), and endangered species protection such as through attaining permits or conducting consultations.~~ The decision-maker may condition or deny the project to mitigate its specific adverse environmental impacts if the decision-maker finds that a proposed project would reduce or damage rare, uncommon, unique or exceptional plant or wildlife habitat, designated wildlife corridors, or habitat diversity for plants or animals species of substantial educational, ecological, or economic value, or interfere with treaty rights, clean water rights, or endangered species protection.

Discussion/Notes: If amendments are made to the Comprehensive Plan policies then the County will in effect update policies under the County's SEPA substantive authority.

Rationale for Changes (shown with highlighting): Federal and state agencies would typically determine compliance with federal and state laws when they issue or deny a permit or other authorization for a project. The language above implies that certain federal and state permits/authorizations must be issued before the County can do SEPA review on a project. The State SEPA rules (WAC 197-11-158(4)) indicate:

> In deciding whether a project specific adverse environmental impact has been adequately addressed by an existing rule or law of another agency with jurisdiction, the GMA county/city shall consult orally or in writing with that agency and may expressly defer to that agency. In making this deferral, the GMA county/city shall base or condition its project approval on compliance with these other existing rules or laws.

This concept of consultation is already embodied in the proposed amendments in WCC 16.08.160.E above. Therefore, the language highlighted above should be deleted.

16.08.175 Purpose of this article and adoption by reference.

This article contains uniform usage and definitions of terms under SEPA. The county adopts the following sections by reference, as supplemented by WAC 173-806-040:

WAC	
197-11-700	Definitions.
197-11-702	Act.
197-11-704	Action.
197-11-706	Addendum.
197-11-708	Adoption.
197-11-710	Affected tribe.
197-11-712	Affecting.
197-11-714	Agency.
197-11-716	Applicant.
197-11-718	Built environment.
197-11-720	Categorical exemption.
197-11-721	Closed record appeal.
197-11-722	Consolidated appeal.
197-11-724	Consulted agency.
197-11-726	Cost-benefit analysis.
197-11-728	County/city.
197-11-730	Decision maker.
197-11-732	Department.
197-11-734	Determination of nonsignificance (DNS).
197-11-736	Determination of significance (DS).
197-11-738	EIS.
197-11-740	Environment.
197-11-742	Environmental checklist.
197-11-744	Environmental document.
197-11-746	Environmental review.
197-11-750	Expanded scoping.
197-11-752	Impacts.
197-11-754	Incorporation by reference.
197-11-756	Lands covered by water.
197-11-758	Lead agency.
197-11-760	License.
197-11-762	Local agency.
197-11-764	Major action.
197-11-766	Mitigated DNS.

197-11-768 Mitigation.

197-11-770 Natural environment.

197-11-772 NEPA.

197-11-774 Nonproject.

197-11-775 Open record hearing.

197-11-776 Phased review.

197-11-778 Preparation.

197-11-780 Private project.

197-11-782 Probable.

197-11-784 Proposal.

197-11-786 Reasonable alternative.

197-11-788 Responsible official.

197-11-790 SEPA.

197-11-792 Scope.

197-11-793 Scoping.

197-11-794 Significant.

197-11-796 State agency.

197-11-797 Threshold determination.

197-11-799 Underlying governmental action.

In addition to those definitions contained within WAC 197-11-700 through 197-11-799, when used in this article, the following terms shall have the following meanings, unless the context indicates otherwise:

A. “Early notice” means the county’s response to an applicant stating whether it considers issuance of a determination of significance (DS) likely for the applicant’s proposal (mitigated determination of nonsignificance (MDNS) procedures).

B. “ERC” means environmental review committee established in WCC 16.08.045.

C. "Facility Emissions" means greenhouse gas emissions associated with fossil fuel refineries or fossil fuel transshipment facilities based upon the refining and processing of fossil fuels located within the Cherry Point Heavy Industrial area.

Rationale for Changes (shown with highlighting): On October 24, 2019, the Planning Commission approved a motion to remove the proposed GHG mitigation requirements from the Zoning Code and keep proposed GHG provisions in SEPA (with further discussion on the SEPA language at a later date). The definition of “facility emissions” was in the proposed Zoning Code language. However, this term no longer is used in the Zoning Code. Therefore, the definition was moved from the Zoning Code to the County’s SEPA rules. On June 25, 2020, the Planning Commission approved a motion to remove the following elements from the original Council definition of facility emissions:

- The transportation within the borders of Whatcom County of refined and unrefined fossil fuels to and from a facility located within the Cherry Point Heavy Industrial area, and
- The upstream emissions generated by the production and transport of raw products to the facility such as crude oil feedstocks or other fuels used in production or energy generation at facilities.

D. “Greenhouse Gas Emissions” means gases that trap heat in the atmosphere. "Greenhouse gas," "greenhouse gases," "GHG," and "GHGs" includes carbon dioxide, methane, nitrous oxide, hydrofluorocarbons, perfluorocarbons, and sulfur hexafluoride, and any other gas or gases designated by the federal clean air act (United States Code Title 42, Chapter 85), state clean air act (Chapter 70.94 RCW) or state limiting greenhouse gas emissions law (Chapter 70.235 RCW).

E. “Lifecycle greenhouse gas emissions” means the aggregate quantity of greenhouse gas emissions (including direct emissions and significant indirect emissions), related to the full fuel lifecycle, including all stages of fuel and feedstock production and distribution, from feedstock generation or extraction through the distribution and delivery and use of the finished fuel to the ultimate consumer, where the mass values for all greenhouse gases are adjusted to account for their relative global warming potential.

Rationale for Changes (shown with highlighting): On October 24, 2019, the Planning Commission approved a motion to remove the proposed GHG mitigation requirements from the Zoning Code and keep proposed GHG provisions in SEPA (with further discussion on the SEPA language at a later date). The definitions of “greenhouse gas emissions” and “lifecycle greenhouse gas emissions” are in the proposed Zoning Code language. However, these terms are only used in the definition of “renewable fuels” in the Zoning Code. They are most often used in the proposed SEPA rules. Therefore, these terms were inserted into the County’s SEPA rules.

F~~C~~. “Ordinance” means the procedure used by the county to adopt regulatory requirements.

G~~D~~. “Responsible official” shall mean the director of the department which bears responsibilities for the SEPA process or his/her designee.

H~~E~~. “SEPA rules” means Chapter 197-11 WAC adopted by the Department of Ecology. (Ord. 98-048 Exh. A; Ord. 84-122 Part 8).

Exhibit C

CHAPTER 20.66 LIGHT IMPACT INDUSTRIAL (LII) DISTRICT

20.66.200 Prohibited uses.

All uses not listed as permitted, accessory, administrative approval, or conditional uses are prohibited, including but not limited to the following, which are listed here for purposes of clarity:

.201 Reserved.

.202 Adult businesses except those allowed as an administrative approval use under WCC 20.66.131.

.203 In the Bellingham Urban Growth Area the following uses are prohibited: ~~petroleum refinery and the primary manufacturing of products thereof,~~ primary manufacturing and processing of rubber, plastics, chemicals, paper, asbestos and products derived thereof, and primary metal industries.

.204 New fossil-fuel refinery~~,~~ or new fossil fuel transshipment ~~or~~ facility ~~unless permitted as a part of an existing refinery modification otherwise permitted under this code~~.

Rationale for Changes (shown with highlighting): The existing refineries are south of Grandview Rd., in the Heavy Impact Industrial zone. There are no refineries north of Grandview in the Light Impact Industrial zone.

Discussion/Notes: Prohibit fossil fuel related industries in the LII District; already prohibited in the Bellingham UGA. It does not appear that such uses exist in the LII zone; thus, we have only addressed the prohibition of fossil-fuel refinery and fossil fuel transshipment facility unless part of an existing refinery (e.g. transshipment).

CHAPTER 20.68 HEAVY IMPACT INDUSTRIAL (HII) DISTRICT

20.68.050 Permitted uses.

Unless otherwise provided herein, permitted and accessory uses shall be administered pursuant to the applicable provisions of Chapter 20.80 WCC, Supplementary Requirements, and Chapter 20.84 WCC, Variances, Conditional Uses, Administrative Uses and Appeals, the Whatcom County SEPA Ordinance, the Whatcom County Subdivision Ordinance and the Whatcom County Shoreline Management Program. and implementing regulations. The purpose of the SIC numbers listed within this chapter is to adopt by reference other activities similar in nature to the use identified herein. (Policies of the subarea Comprehensive Plan may preclude certain permitted uses to occur in particular subareas. Please refer to the policies of the applicable subarea plan to determine the appropriateness of a land use activity listed below.)

.051 The manufacture and processing of food including meat (including packinghouses and slaughterhouses), dairy, fruits, vegetables, seafood, grain mill, large scale bakery, sugar and beverage products, provided the following criteria are met:

(1) Holding pens associated with packinghouses and slaughterhouses shall be limited to that necessary to accommodate animals intended for processing within 24 hours.

(2) The facility shall comply with the solid waste handling standards as set forth in Chapter 173-350 WAC, as administered by the Whatcom County health department as adopted by reference in Chapter 24.06 WAC.

(3) If required by the Washington State Department of Ecology, the following permits shall be obtained:

(a) State waste discharge permit (Chapter 173-216 WAC);

(b) Industrial stormwater permit – general permit (Chapter 173-226 WAC);

(c) An NPDES permit (Chapter 90.48 RCW and Chapter 173-220 WAC).

.052 Manufacturing and processing of textiles including weaving cotton, synthetic, silk or wool fabrics; knitting yarn and thread mills; textile bleaching, dyeing and printing; and carpet manufacture.

.053 The manufacture and processing of lumber and wood including sawmills; planing mills; millwork; veneer, plywood and prefabricated wood products; wooden containers and cooperage.

.054 The following are permitted uses except as otherwise prohibited:

(1) The manufacture and process of paper including pulp, paper and paperboard mills; and building paper and board mill products.

(2) The manufacture and processing of chemicals and allied products including industrial inorganic and organic chemicals; synthetic resins, rubber, fibers and plastic materials; soap, detergents and cleaning preparations; paint, linseed oil, shellac, lacquer and allied products; chemicals from gum and wood; and agricultural chemicals.

~~(3) Refining and storage of petroleum and asphalt.~~fossil fuels, limited as follows:

~~(a) fossil fuel refineries, existing legally as of [XXX effective date].~~

~~(b) fossil fuel transshipment facilities existing legally as of [XXX effective date].~~

~~*Discussion/Notes: Allow existing legal fossil fuel uses.*~~

Rationale for Changes (shown with highlighting): Existing fossil fuel facilities have been moved to proposed WCC 20.68.068 below.

(3~~4~~) The manufacture and processing of rubber and plastic products.

(4~~5~~) Leather tanning and finishing.

(56) The manufacture and processing of cement and glass; and concrete, gypsum, plaster, abrasive, asbestos and nonmetallic mineral products.

(67) Primary metal industries including blast furnaces and steel works; mills for primary smelting, secondary smelting, refining, reducing, finishing, rolling, drawing, extruding, and casting of ferrous and nonferrous metals; and the manufacture of miscellaneous metal products.

(7) Storage of asphalt in the Heavy Impact Industrial Zone.

Discussion/Notes: Retained from (3) above in case of construction related businesses.

~~(9) The refining, storage, blending, manufacture and transshipment of renewable fuels, existing legally as of [XXX effective date]. Expansions of such existing facilities are subject to the provisions of Section 20.68.153.~~

Rationale for Changes (shown with highlighting): Existing renewable facilities are addressed in proposed WCC 20.68.068 and 20.68.071 below.

.055 The fabrication of metal products including metal cans, hardware, hand tools, cutlery, heating apparatus, plumbing fixtures, structural metal and stamping.

.056 The manufacture of machinery including engines; turbines; farm machinery and equipment; construction, mining and materials handling equipment; machine tools and dies; and special and general industrial equipment.

.057 The manufacture of electrical machinery including transmission and distribution equipment, and industrial apparatus.

.058 The manufacture of transportation equipment including automobiles, trucks, buses, airplanes, boat building and repair, railroad equipment, bicycles and motorcycles.

.059 Bulk commodity storage facilities, and truck, rail, vessel and ~~pipeline~~ transshipment terminals and facilities except for fossil fuel facilities or fossil fuel transshipment facilities ~~subject to the provisions of 20.68.153~~. ~~New fossil fuel storage and transshipment facilities are expressly prohibited except as provided in Section 20.68.153.~~

Rationale for Changes (shown with highlighting): Proposed WCC 20.68.068, WCC 20.68.153, and WCC 20.68.205 address permitted, conditionally permitted, and prohibited fossil fuel facilities. The above change would simplify the proposed language by indicating that fossil fuel facilities are not addressed by WCC 20.68.059.

.060 Stationary thermal power plants with generating capacity of less than 250,000 kilowatts, floating thermal power plants with generating capacity of less than 50,000 kilowatts, and other power plants utilizing renewable resources from solar, wind (Chapter 20.14 WCC) or water sources, except that coal-fired power plants are prohibited.

Rationale for Changes (shown with highlighting): The Council's proposed amendments would prohibit coal fired power plants (proposed WCC 20.68.207). However, power plants are already permitted in the HII zone (WCC 20.68.060). Therefore, WCC 20.68.060 should be modified to clarify that permitted power plants do not include coal fired power plants.

.061 Heavy construction contractors.

.062 Public uses and community facilities including police and fire stations, libraries, activity centers, community centers, park and recreation facilities identified in an adopted city or county Comprehensive Plan or Park Plan, and other similar noncommercial uses, excluding state education facilities and correction facilities.

.063 One one-story detached accessory storage building per lot; provided, that the floor area shall not exceed 200 square feet and shall only be used for personal storage and not for habitation or business; and provided further, that the storage building shall contain no indoor plumbing but may be served with electrical power for lighting.

.064 Uses allowed in the Light Impact Industrial Zone as permitted uses, WCC 20.66.100, shall be permitted outright within the Heavy Impact Industrial District in the Bellingham UGA.

.065 Trails, trailheads, restroom facilities and associated parking areas for no more than 30 vehicles.

.066 Marijuana production or processing facility.

.068 Existing fossil-fuel refineries, fossil-fuel transshipment facilities, renewable fuel refineries, renewable fuel transshipment facilities, piers and docks legally established as of [XXX effective date of ordinance], uses including repairs, improvements, maintenance, modifications, remodeling or other changes including but not limited to the following, provided that a conditional use permit is not required by WCC 20.68.153:

(1) Accessory and appurtenant buildings, structures, and processing equipment.

(2) Office space.

(3) Parking lots.

(4) Radio communications facilities.

(5) Security buildings, fire stations, and operation centers.

(6) Storage buildings.

(7) Routine maintenance and repair.

(8) Environmental improvements and other projects that are required on the subject site by federal, state, regional, or local regulations, including modifications of fossil fuel facilities for purposes of co-processing biomass with petroleum.

(9) Road projects and bridges.

(10) Temporary trailers.

(11) Heating and cooling systems.

(12) Cable installation.

(13) Information technology improvements.

(14) Continuous emissions monitoring systems or analyzer shelters.

(15) Wastewater and stormwater treatment facilities.

(16) Replacement and upgrading of existing equipment.

(17) Safety upgrades.

(18) Storage tanks.

(19) Pipelines carrying petroleum or petroleum products solely within the Heavy Impact Industrial zoning district.

(20 Pipelines carrying natural gas solely within the Heavy Impact Industrial zoning district.

(21) Renewable fuel production and shipment.

(22) Other similar structures or activities.

Rationale for Changes (shown with highlighting): Moving permitted uses associated with existing refineries and transshipment facilities from former proposed WCC 20.68.802 to the permitted use section of the Heavy Impact Industrial Zoning District for consistency with other sections of the Code. Additional items have been inserted as permitted uses to address public comments, including pipelines (# 19 and 20) added on July 9, 2020. On August 13, 2020, the Planning Commission added the co-processing language to # 8 and inserted # 21 above.

.070 New renewable fuel refineries or renewable fuel transshipment facilities, except that new piers, docks, or wharves in the Cherry Point Industrial District are prohibited.

> Rationale for Changes (shown with highlighting): On December 12, 2019, the Planning Commission passed a motion that renewable fuel facilities be allowed as a permitted use (instead of a conditional use, as proposed by Council).
>
> The Council's original proposed amendments would prohibit new piers, docks, or wharves in the Cherry Point Industrial District (proposed WCC 20.68.206 and 20.74.055). This is recognized in proposed WCC 20.68.070 by indicating that this provision does not apply to piers, docks, or wharves.

0.71 Expansion of existing legal renewable fuel refineries or renewable fuel transshipment facilities, provided that the expansion is for renewable fuels only.

> Rationale for Changes (shown with highlighting): On January 16, 2020, the Planning Commission passed a motion that expansion of renewable fuel facilities be allowed as a permitted use (instead of a conditional use, as proposed by the County Council).

.081 Freight railroad switching yards and terminals, excluding uses addressed in .059.

.082 Marine port facilities, excluding uses addressed in .059, and excluding new piers, docks, or wharves.

.085 Type I solid waste handling facilities.

.086 Type II solid waste handling facilities.

20.68.100 Accessory uses.

.101 Employee recreation facilities and play areas.

.102 Restaurants, cafes and cafeterias operated primarily for the convenience of employees, clients and customers of the district.

.103 Temporary buildings for construction purposes for a period not to exceed the duration of such construction.

.104 When auxiliary to a principally permitted use: electric utility facilities; substations; generating plants, if less than 50 megawatt (MW) net plant capability; gas works; sewage disposal facilities; solid waste landfills and incinerators.

.105 Other accessory uses and buildings, including security services, customarily appurtenant to a principally permitted use.

.106 On-site treatment and storage facilities for hazardous wastes associated with outright permitted uses or approved conditional uses subject to the most current siting criteria under Chapter 173-303 WAC.

.107 Mini-day care centers, and day care centers operated by, maintained by or funded by business in the district for the purpose of serving the child care needs of employees whose place of employment lies within this zone district.

.108 Electric vehicle rapid charging stations and battery exchange facilities.

20.68.130 Administrative approval uses.

.131 Commercial mushroom substrate production limited to the Cherry Point Industrial Area and pursuant to the requirements as contained in WCC 20.15.020(2) (commercial mushroom substrate production facilities). (Ord. 2006-031 § 1 (Exh. A), 2006).

20.68.150 Conditional uses.

The following uses require a conditional use permit in the HII Zoning District.

.152 Uses allowed in the Light Impact Industrial zone as permitted uses, WCC 20.66.100, subject to the following:

(1) Outside of the Bellingham Urban Growth Area, approval shall be supported by a finding by the hearing examiner that allowing the use will not limit the supply of land available to meet the demand for future heavy industrial uses.

(2) Filing of a deed restriction acknowledging that heavy industrial uses are the preferred uses in the zone and agreeing not to protest proposed heavy industrial uses allowed in the zone in accordance with Chapter 20.68 WCC, and to refrain from legal action against any heavy industrial use in compliance with the regulations of WCC Title 20 and any conditions of approval which might have been proposed.

.153 Expansion of existing legal fFossil ~~or renewable~~ fFuel rRefineries~~y operations and the primary manufacturing of products thereof~~ or expansion of existing legal ~~f~~Fossil ~~or renewable~~ fFuel ~~t~~Transshipment ~~f~~Facilities. For purposes of this section, an expansion is any Fossil Fuel Refinery and/or Fossil Fuel Transshipment Facility development (including otherwise permitted or accessory uses), vested after the effective date of this ordinance, that meets any one of the following thresholds:

A. Cumulatively increases its maximum atmospheric crude distillation capacity of fossil fuels by more than 10,000 barrels (or 420,000 gallons) per day based upon an evaluation of physical equipment limitations conducted by a licensed professional engineer; or

B. Cumulatively increases the maximum transshipment capacity of the facility by more than 10,000 barrels (or 420,000 gallons) per day; or

C. Cumulatively increases the maximum transshipment capacity of unrefined fossil fuels from the facility by more than 10,000 barrels (or 420,000 gallons) per day.

If a conditional use permit is obtained, the baseline for determining the cumulative increases is reset.

> Rationale for Changes (shown with highlighting): On January 16 and 30, 2020, the Planning Commission approved motions defining what activities constitute an "expansion" and when a conditional use permit is required. On January 16, 2020, the Planning Commission also approved a motion to move expansion of renewable fuel facilities from conditional use to permitted use, as long as the expansion is for the increased production of renewable fuels. On August 13, 2020, in response to the joint Industry/RE Sources proposal, the Planning Commission approved a motion to remove certain fossil fuel storage tank capacity increases from the above list of improvements that require a conditional use permit (storage tanks are a permitted use under proposed WCC 20.68.068).

Such expansions shall be subject to the conditional use criteria below:

(1) The conditional use permit approval criteria listed under WCC 20.84.220 are met;

(2) Within shorelines, if applicable, County approval shall be contingent upon approval of a shoreline permit;

(3) The applicant has documented to the satisfaction of the County decision maker all of the anticipated ~~sources,~~ types~~,~~ and volumes of substances transferred in bulk at the facility. The permit shall be limited exclusively to those types and volumes of materials or products as documented and approved.

Rationale for Changes (shown with highlighting): Sources of raw materials may change over time and new sources may come on-line. It may be very difficult, if not impossible, to predict sources of materials over the life of a project.

(4) Insurance requirements meet the provisions of WCC Section 22.05.125.

(5) Mitigation of transportation impacts consistent with Chapter 20.78 WCC, Transportation Concurrency Management, and Chapter 16.24 WCC, Commute Trip Reduction.

(6) Mitigation of impacts to other services including fire and emergency response capabilities, water supply and fire flow, to address risks created by expansions.

~~(7) Prior to issuance of any site preparation or construction permits, and prior to occupancy and/or operation of the expanded facility, the applicant shall provide verifiable documentation to the county that the facility has been constructed consistent with any applicable federal or state requirements, including but not limited to water rights and use.~~

Rationale for Changes (shown with highlighting): Criterion 7 above, addressing federal and state requirements appears to be unnecessary because criterion 9 already addresses federal and state permitting.

(~~7~~8) Plans for stormwater and wastewater releases have been approved.

(~~8~~9) Prior to commencement of any site preparation or construction activities, all necessary state leases shall be acquired for any piers or aquatic lands improvements, and it shall be demonstrated to the satisfaction of the zoning administrator that the project applicant has met any federal or state permit ~~or~~ consultation requirements, including ~~properly addressing~~ tribal treaty rights or the provisions of the Magnuson Amendment through state and federal permitting decisions; and

(9) The County decision maker may approve a conditional use permit with a condition to obtain relevant leases and complete any necessary federal and state permitting requirements, and may restrict the conditional use permittee from undertaking site preparation or construction activities until it has fulfilled that condition.

~~(10) Minimization of greenhouse gas emissions and inclusion of local carbon offset mitigation projects; and~~

Rationale for Changes (shown with highlighting): On October 24, 2019, the Planning Commission approved a motion to remove the proposed GHG mitigation requirements from the Zoning Code and keep proposed GHG provisions in SEPA (with further discussion on the SEPA language at a later date).

~~(11) Demonstration that the proposal will retain or add living wage jobs or contribute to the Whatcom County economy.~~

Rationale for Changes (shown with highlighting): On January 30, 2020, the Planning Commission approved a motion to delete the living wage job language from the conditional use permit approval criteria.

.154 Treatment and storage facilities for hazardous wastes subject to the following:

(1) The ~~eight~~ criteria for a conditional use listed under WCC 20.84.200.

(2) The most current state siting criteria under Chapter 173-303 WAC.

(3) It shall be the responsibility of the applicant to document to the satisfaction of the approving body the anticipated sources, types, volumes and final disposition of hazardous wastes to be collected and the type of treatments associated with those wastes. The permit shall be limited exclusively to those types of wastes and treatments as documented and approved.

(4) Total off-site facility capacity shall be limited to that needed to treat and store wastes generated within Whatcom County by generators requiring off-site management of hazardous wastes; provided, however, waste streams may be sourced from other jurisdictions through interagency zone designation agreements as approved by the county council, not to exceed 10 percent of the total local hazardous waste stream.

(5) Prior to occupancy of the facility, the State Department of Ecology shall certify to the county that the facility has been constructed consistent with state requirements.

(6) As a condition of approval, the applicant shall be required to keep and maintain accurate and current records of the types, amounts, sources, and final disposition of hazardous wastes collected. The applicant shall provide such records annually to the county, or sooner upon county request. If the facility is found to be exceeding the waste stream limitations or permit restrictions, the county staff shall so report to the approving body who shall have the authority to revoke the permit, following a public hearing, if the limitation has been exceeded absent an emergency situation. Any emergency must be documented by county staff.

(7) Annual inspections of the facility shall be a minimum requirement. The applicant shall be required to forward copies of all facility inspection reports to the county. If deficiencies are found, the operator shall, within 15 days, submit to the county for approval an implementation schedule of corrective measures. Such schedule shall include specific completion dates and inspection reporting procedures.

If the state does not inspect the facility within the year, the applicant shall be required to arrange and bear all costs for an inspection by a qualified and independent inspection agency satisfactory to the county.

(8) Should the facility be found to consistently operate in a manner unsatisfactory to the county in regard to the public health and safety, the permit may be revoked by the approving body following a public hearing.

.156 Public and private parks facilities not included in an adopted city or county Comprehensive Plan or Park Plan.

.157 Trailheads with parking areas for more than 30 vehicles.

.158 Athletic fields.

~~.159 New renewable fuel refineries or renewable fuel transshipment facilities, subject to the conditional use permit criteria identified in WCC 20.68.153.~~

Rationale for Changes (shown with highlighting): On December 12, 2019, the Planning Commission passed a motion that new renewable fuel facilities should be allowed as a permitted use (instead of a conditional use, as proposed by Council). Therefore, a new code section, WCC 20.68.070, has been inserted indicating that new renewable fuel facilities would be permitted outright uses.

.180 Major passenger intermodal terminals.

.187 Type III solid waste handling facilities; provided, that:

(1) The facility or site will not be located within the 100-year floodplain or the Lake Whatcom watershed. The facility or site will not be located within any area identified in an adopted critical areas ordinance unless outside of the floodplain and at least three feet in elevation higher than the floodway elevation;

(2) Solid waste handling facilities shall be located at least 1,500 feet from the following:

(a) All zoning district boundaries, except Commercial Forestry and Industrial Zones;

(b) Public parks, public recreation areas, or publicly-owned wildlife areas;

(c) Archaeological and historical sites that are registered with the State Office of Archaeology and Historic Preservation;

(d) Shorelines that are within the jurisdiction of the Shoreline Management Program;

(e) Rivers, streams or creeks that contain documented threatened or endangered fish species;

(f) This 1,500-foot buffer does not apply to:

(i) Structures used for offices, storage areas for equipment, and weigh scales. These facilities shall be set back from the property line 100 feet or the standard zoning district setback, whichever is greater;

(ii) Inert landfills;

(3) Inert landfills shall be located at least 500 feet from the following:

(a) All zoning district boundaries, except Commercial Forestry and Industrial Zones;

(b) Public parks, public recreation areas, or publicly-owned wildlife areas;

(c) Archaeological and historical sites that are registered with the State Office of Archaeology and Historic Preservation;

(d) Shorelines that are within the jurisdiction of the Shoreline Management Program;

(e) Rivers, streams or creeks that contain documented threatened or endangered fish species;

(f) This 500-foot buffer does not apply to:

(i) Structures used for offices, storage areas for equipment, and weigh scales. These facilities shall be set back from the property line 100 feet or the standard zoning district setback, whichever is greater;

(4) The facility or site will not result in filling or excavation, location of structures or buildings, driveways or machinery use except for vegetation maintenance within 100 feet of any property line and except for driveways within 150 feet of any county or state road right-of-way;

(5) The facility or site will have vehicular approaches designed to minimize conflict between automobile and truck traffic, will maintain the carrying capacity of county roads, and will be located on a road classified as all weather, except where use is shown to be intermittent and easily delayed until emergency conditions have passed;

(6) The facility or site has complied with the provisions of WCC 20.84.200 and all other ordinances and laws regulating solid waste facilities and sites, such as but not limited to WCC Title 24, the Whatcom County SEPA Ordinance, as well as state and federal regulations concerning solid waste facilities and sites;

(7) All landfills have a final closure plan meeting the requirements of WCC Title 24 and of Chapter 173-350 WAC, and the closure plan includes:

(a) Reclamation in two to 10 acre increments, as appropriately responsive to the size and intensity of the particular activity, with seeding to be accomplished annually but no later than September 30th; and

(b) Permanent vegetative cover that will maintain in healthy growing condition with the level of maintenance that is covered through the financial assurance for post-closure activities;

(8) The buffer areas and visual screening shall include a minimum of 50 feet wide of landscaping meeting the requirements of WCC 20.80.300 (Landscaping);

(9) Solid waste facilities or sites shall be located outside the 10-year time of travel boundary of a public water system's delineated wellhead protection area;

(10) Solid waste facilities or sites that handle putrescible waste will be located at least 10,000 feet from airports serving turbine-powered aircraft and at least 5,000 feet from airports serving piston-powered aircraft. These buffers shall be measured from the boundary of the Airport Operations Zone or, if the airport is not within an Airport Operations Zone, from the boundary of the airport property;

(11) In addition, the Whatcom County hearing examiner may impose conditions of approval which may be necessary to protect the value and enjoyment of existing adjacent uses.

.188 Mitigation banks as a form of compensatory mitigation for wetland and habitat conservation area impacts when permitted in accordance with the provisions of Chapter 16.16 WCC; provided, applications for mitigation banks shall be processed as a major development project pursuant to Chapter 20.88 WCC.

20.68.200 Prohibited uses.

All uses not listed as permitted, accessory, administrative approval, or conditional uses are prohibited, including but not limited to the following, which are listed here for purposes of clarity:

.201 Reserved.

.202 Adult businesses.

.203 In the Bellingham Urban Growth Area the following uses are prohibited: petroleum refinery and the primary manufacturing of products thereof, primary manufacturing and processing of rubber, plastics, chemicals, paper, asbestos and products derived thereof; and primary metal industries.

.204 New Fossil fuel refineries ~~and the primary manufacturing of products thereof [XXX effective date]~~.

> Rationale for Changes (shown with highlighting): On December 12, 2019, the Planning Commission passed a motion that new fossil fuel refineries should be prohibited, as proposed by Council. "Fossil fuel refinery" is defined by proposed WCC 20.97.160.4. The "primary manufacturing" text is unnecessary. It is also unnecessary to insert the effective date into the code.

.205. New Fossil fFuel tTransshipment fFacilities; provided that, the following uses of facilities are not prohibited: (i) inter-refinery shipments, (ii) transferring petroleum products during emergency scenarios where contingencies require petroleum products to be moved, and (iii) necessary petroleum product transfers during turn-arounds or maintenance periods. ~~, including bulk storage or transfer facilities for fossil fuels [XXX effective date]~~.

> Rationale for Changes (shown with highlighting): On August 13, 2020, in response to the joint Industry/RE Sources proposal, the Planning Commission approved a motion to modify proposed WCC 20.68.205 as shown above.

.206. New piers, docks, or wharves in Cherry Point Industrial District.

> Rationale for Changes (shown with highlighting): Cite the full name of the zoning district.

Discussion/Notes: Prohibit New Fossil Fuel Refineries. Prohibit Crude Oil and Coal Export Facilities – made broader to Fossil Fuel transshipment.

.207 Coal-fired power plants.

(Ord. 2018-006 § 3 (Exh. C), 2018; Ord. 2016-011 § 1 (Exh. L), 2016; Ord. 99-078, 1999; Ord. 99-070 § 2, 1999; Ord. 91-075, 1991).

20.68.250 Minimum lot size.

The minimum lot size shall be consistent with the area required to meet the building setback, lot coverage, buffer and development standards of the district. (Ord. 97-057 § 1, 1997; Ord. 96-046 § 1, 1996).

20.68.255 Minimum lot frontage.

For the purpose of dividing property, minimum lot frontage shall be sufficient to provide adequate access and utility development, and meet applicable building setback, buffer, and development standards of the district. In no case shall the frontage be less than 30 feet. (Ord. 99-045 § 1, 1999).

20.68.350 Building setbacks.

Building setbacks shall be administered pursuant to WCC 20.80.200, 20.80.254 and 20.68.550. (Ord. 99-078, 1999).

20.68.400 Height limitations.

No maximum height is established; however, when a building exceeds 50 feet, the setback requirements of WCC 20.80.200 shall be increased by one foot for each foot of building height in excess of 50 feet, as applicable to all setbacks.

20.68.450 Lot coverage.

The maximum building or structural coverage shall not exceed 60 percent of the lot size.

20.68.500 Open space.

Repealed by Ord. 97-057. (Ord. 96-046, 1996).

20.68.550 Buffer area.

.551 The industrial user shall establish a buffer for building sites adjoining the boundary of the Heavy Impact Industrial District (HII), which shall be located adjacent to the district boundary. The purpose of the buffer is to optimize the visual appearance of the site by obscuring industrial activity from view by passing motorists, to contribute to on-site and off-site impact abatement, and to move towards attaining compatibility with surrounding nonindustrial land uses and character.

.552 To implement the buffer requirements of this district, minimum setbacks for heavy industrial buildings and accessory structures shall be established consistent with the following options:

(1) If a planting screen is not provided by the industrial user and no natural vegetative screening exists, the minimum setback(s) shall be 660 feet, as measured from the edge of the district boundary. The setback area may be used for security roads, parking, or open space.

(2) If natural sight-obscuring and dense vegetation exists, the minimum setback(s) shall be 250 feet, as measured from the district boundary; provided, that a minimum width of 50 feet of natural vegetation is retained. The remainder of the setback(s) may be used for security roads, parking, or open space.

(3) If a 50-foot buffer planting screen is established, pursuant to WCC 20.80.345, the minimum setback(s) shall conform to the setback requirements of WCC 20.80.200, as measured from the district boundary. In addition, security roads may be situated within the minimum buffer setback; provided, that the 50-foot-wide buffer planting is established.

(4) When a parcel situated within this district is located within the Bellingham Urban Growth Area and adjoins an Urban Residential District or residential district within the city limits, setbacks for heavy industrial buildings and/or uses shall be increased to 100 feet and landscaped in accordance with the requirements of WCC 20.80.345.

(5) In no case shall the setback from the northern and western boundaries of the Cherry Point heavy industrial area not contiguous to another industrial zone be less than 660 feet, nor the natural vegetation removed except for parking and security or protective uses.

.553 Uses other than heavy industrial will conform to the normal setback requirements as set forth in WCC 20.80.200 and 20.80.254(3) and the buffering requirements for light impact industrial uses WCC 20.66.551.

.554 If any part of said buffer area is separated from, or sold to any contiguous or adjacent owner, lessee or user, the parcel so separated or sold shall be used only as a buffer area in accordance with the above requirements. (Ord. 2019-013 § 1 (Exh. A), 2019; Ord. 2018-006 § 3 (Exh. C), 2018; Ord. 99-078, 1999; Ord. 97-057 § 1, 1997; Ord. 96-046 § 1, 1996; Ord. 89-117, 1989; Ord. 87-12, 1987; Ord. 87-11, 1987).

20.68.600 Sign regulations.

Sign regulations shall be administered pursuant to WCC 20.80.400.

20.68.650 Development criteria.

(Ord. 96-056 Att. A § A1, 1996).

20.68.651 Landscaping.

Refer to WCC 20.80.300 for landscaping requirements. (Ord. 89-117, 1989).

20.68.652 Off-street parking and loading.

Off-street parking and loading provisions shall be administered pursuant to WCC 20.80.500. In addition, loading areas must be located in such a manner that no loading, unloading and/or maneuvering of trucks associated therewith takes place on public rights-of-way.

20.68.653 Drainage.

All development activities are subject to the stormwater management provisions of WCC 20.80.630 through 20.80.635. No project permit shall be issued prior to meeting those requirements. (Ord. 2019-013 § 1 (Exh. A), 2019; Ord. 96-056 Att. A § A2, 1996; Ord. 94-022, 1994).

20.68.654 Driveways.

Consistent with WCC 20.80.640, driveway plans shall be reviewed by the county engineer or State Department of Transportation, as applicable. (Ord. 2013-057 § 1 (Exh. A), 2013; Ord. 84-38, 1984).

20.68.655 Access.

Access shall conform to the provisions of WCC 20.80.565 and 20.80.660. (Ord. 89-117, 1989).

20.68.656 Maintenance.

The owner, lessee or user shall be responsible for maintaining an orderly appearance of all properties, and shall be responsible for assuring the care and maintenance of any natural growth, where appropriate.

20.68.657 Enclosure.

All manufacturing or fabrication processes which have the potential to produce off-site impacts of a detrimental nature, including light, glare, odors and noise impacts, shall be sufficiently enclosed to mitigate the impacts. (Ord. 99-078, 1999).

20.68.700 Performance standards.

20.68.701 Pollution control and nuisance abatement.

Each industry is required to continuously employ the best pollution control and nuisance abatement technology when reasonably and practicably available for each particular industry; provided, that where federal, state, or regional laws or regulations provide for the level of technology to be employed, the appropriate standards shall apply.

20.68.702 Heat, light and glare.

All operations and facilities producing heat, light or glare, including exterior lights, shall be so constructed, screened or used as to not unreasonably infringe upon the use and enjoyment of property beyond the boundaries of the district.

20.68.703 Ground vibration.

No ground vibration other than that caused by highway vehicles, trains or construction activity shall be permitted, which is discernible without instruments, at or beyond the property line for the use concerned.

20.68.704 Odors.

No odors, dust, dirt, or smoke shall be emitted that are detectable, at or beyond the property line for the use concerned, in such a concentration or of such duration as to cause a public nuisance, or threaten health or safety, or to unreasonably infringe upon the use and enjoyment of property beyond the boundaries of the district. (Ord. 91-075, 1991).

20.68.705 Noise.

No use in this district shall exceed the maximum environmental noise level established by Chapter 173-60 WAC. (Ord. 91-075, 1991).

20.68.706 Toxic gases and fumes.

Any release of toxic gases or fumes must be in compliance with Washington State and Northwest Air Pollution Control Authority standards. (Ord. 91-075, 1991).

20.68.707 Liquid pollutants.

There shall be no off-site release to soil or surface drainage ways of water borne or liquid pollutants. (Ord. 91-075, 1991).

20.68.708 Appearance.

New facilities developed in the Bellingham Urban Growth Area shall be designed, constructed, operated, and maintained so as to be harmonious and appropriate in appearance with the existing or intended character of the general vicinity, and such uses shall not change the essential character of the same area. (Ord. 2018-006 § 3 (Exh. C), 2018; Ord. 99-078, 1999).

20.68.709 Marijuana odor.

For indoor facilities no odor or smoke shall be emitted that is detectable at or beyond the walls of the facility, in such a concentration or of such duration as to cause a public nuisance, or threaten health or safety, or to unreasonably infringe upon the use and enjoyment of neighboring use. The applicant shall install an exhaust system that is designed and constructed to capture sources of contaminants to prevent spreading of contaminants or odors to other occupied parts of the building or surrounding area. The system must be designed by a licensed Washington State professional engineer. (Ord. 2015-006 Exh. A, 2015).

~~20.68.800. Fossil Fuel or Renewable Fuel Refineries or Transshipment Facilities~~

~~This section applies to fossil fuel refineries fossil fuel transshipment facilities, renewable fuel refineries, or renewable fuel transshipment facilities.~~

~~.801. Environmental Review and Greenhouse Gas Mitigation~~

~~(1) State Environmental Policy Act (SEPA) review shall be conducted consistent with WCC Chapter 16.08. Fossil fuel or renewable fuel facility capacity expansions or fossil fuel or renewable fuel transshipment facility expansions are subject to applicable SEPA requirements.~~

~~(2) Greenhouse gas emission analysis required:~~

~~(a) For the first expansion requiring County land usepermits after the date of this ordinance, a baseline calculation of existing facility emissions of greenhouse gases shall be provided by the applicant addressing the average of the prior three-year throughput. See facility emissions definition in WCC 20.97.124.1 for the scope and geography of the analysis. Calculation of baseline greenhouse gas emissions shall follow the methodology used for facility~~

~~greenhouse gas reports to the State of Washington Department of Ecology, and to the US Environmental Protection Agency Electronic Greenhouse Gas Reporting Tool (e-GGRT), or successor state or federal emissions reporting tool or requirements.~~

~~(i) The data used to calculate the current actual throughput average shall be obtained from official government reports from the refinery to federal or state agencies regarding production of the refinery or a particular process unit to be expanded. This information shall be provided by the project applicant and verified by the County at the time of application for any land use or construction permits.~~

~~(ii) For crude oil, refinery capacity is based on atmospheric Crude Distillation Capacity (barrels per calendar day), consistent with data collected by the US Energy Information Administration. The zoning administrator may approve another measure of capacity or source that is consistent with (a) and (a)(i).(b) Facility emissions, defined in WCC 20.97.124.1, shall be quantified for each expansion of refining and storage capacity in the application for land use or construction permits and in SEPA documents analyzing the impacts of an expanded facility.~~

~~(c) The emissions analysis shall identify how mitigation will offset greenhouse gas emissions generated.~~

~~(d) Calculations of the baseline facility emissions and the projected increases shall be consistent with rules and methods adopted by the State of Washington Department of Ecology and shall include upstream greenhouse gas emission calculations for feedstocks used in the refining process as provided in (e) below.~~

~~(e) Emissions generated upstream of the refinery facility for production and transport of raw materials used for refinery expansions shall be quantified using the latest version of the GREET Model developed by Argonne National Laboratories or, for raw materials produced in Canada, the latest version of the GH Genius model developed by Canadian national agencies may be used.~~

~~(f) The County may condition the permit to ensure appropriate mitigation consistent with subsection (3) and may require periodic monitoring of greenhouse gas reduction measure effectiveness. Greenhouse gas mitigation proposed by the permit applicant shall be additional, real and quantifiable and shall not be required under any other regulatory mechanism.~~

~~(g) Should a national or state greenhouse gas mitigation requirement be adopted that pre-empts or would cause duplication through local greenhouse gas mitigation, the County may defer to the national or state program.~~

~~(3) Local mitigation of greenhouse gas emissions shall be required, whenever calculated greenhouse gas emissions above the baseline for a 3-year average (per section .801(2)(a)), after the effective date of this section [XXX].~~

~~(a) The applicant shall identify local carbon offset projects including the type and extent, duration, and expected greenhouse gas reductions, to the satisfaction of the County's SEPA Responsible Official. Greenhouse gas mitigation proposed by the applicant shall be additional, real and quantifiable and shall not be required under any other regulatory mechanism.~~

~~(b) The County may, upon request by the Applicant, approve a fee in lieu of providing a local mitigation project. The County shall use collected fees in lieu of mitigation for local greenhouse gas mitigation projects that are additional, real and quantifiable and not required under any other regulatory mechanism. The in-lieu fee shall be set at $60 per ton of carbon, based on the following document: US Environmental Protection Agency, Technical Update of the Social Cost of Carbon for Regulatory Impact Analysis Under Executive Order 12866 (May 2013, Revised August 2016). The fee shall be collected annually for the life of the fossil fuel facility or fossil fuel transshipment facility.~~

~~(c) Should a national or state greenhouse gas mitigation requirement be adopted that pre-empts or would cause duplication through local greenhouse gas mitigation, the County shall defer to the national or state program.~~

~~*Discussion/Note: Regarding the fee in lieu, per the US EPA, the Social cost of carbon (SC-CO_2) "is a measure, in dollars, of the long-term damage done by a ton of carbon dioxide (CO_2) emissions in a given year. This dollar figure also represents the value of damages avoided for a small emission reduction (i.e., the benefit of a CO_2 reduction)." See: https://19january2017snapshot.epa.gov/climatechange/social-cost-carbon_.html. If the*~~

~~County wishes to increase the mitigation fee it may do so by ordinance with an accompanying rationale such as inflation, updated US EPA guidance or other factors.~~

Rationale for Changes (shown with highlighting): On October 24, 2019, the Planning Commission approved a motion to remove the proposed GHG mitigation requirements from the Zoning Code and keep proposed GHG provisions in SEPA (with further discussion on the SEPA language at a later date). The above changes would delete the proposed GHG provisions from the Zoning Code.

~~*.802 Non-Capacity Improvements*~~

~~(1) Expansions of existing legal fossil fuel refineries, fossil fuel transshipment facilities, renewable fuel refineries, or renewable fuel transshipment facilities for non-capacity purposes are outright permitted uses. Examples of non-capacity improvements include, but are not limited to:~~

~~(a) accessory buildings,~~

~~(b) office space,~~

~~(c) parking lots,~~

~~(d) radio communications facilities,~~

~~() security buildings,~~

~~() storage buildings, and~~

~~() other similar structures or activities.~~

~~(2) Regular equipment maintenance, replacement, safety upgrades, and environmental improvements are outright permitted uses, but shall mitigate greenhouse gas emissions if required by WCC 20.68.801.~~

Rationale for Changes (shown with highlighting): Moving permitted uses associated with existing refineries and transshipment facilities from proposed WCC 20.68.802 above to the permitted use section of the Heavy Impact Industrial Zoning District for consistency with other sections of the Code, where additional items have been inserted as permitted uses to address public comments. Additionally, the reference to GHG mitigation provisions in the Zoning Code has been deleted.

CHAPTER 20.74 CHERRY POINT INDUSTRIAL (CP) DISTRICT

20.74.010 Purpose.

The purpose of the Cherry Point Industrial District is to implement the policies of the Cherry Point Major Industrial Urban Growth Area section of the Whatcom County Comprehensive Plan by establishing a range of land uses and types of development appropriate for the Cherry Point UGA and to encourage large scale master planning of industrial sites to preserve sites of sufficient size to accommodate major port and industrial development. (Ord. 98-083 Exh. A § 57, 1998).

20.74.020 Applicability.

This chapter is applicable to the entire Cherry Point Major Industrial Urban Growth Area. (Ord. 98-083 Exh. A § 57, 1998).

20.74.030 Permitted uses.

(1) Primary permitted uses:

(a) Area south of Grandview: Uses shall include the range of port and large scale industrial uses allowed in the Heavy Impact Industrial District, Chapter 20.68 WCC, as well as large scale high technology businesses.

(b) Area north of Grandview: Uses shall include the range of port and large scale industrial uses allowed in the Light Impact Industrial District, Chapter 20.66 WCC.

(2) Secondary permitted uses shall include smaller scale industrial uses, nonretail commercial uses, and industry-related professional services, provided the secondary use supports or is supported by primary permitted uses in the Cherry Point Industrial Urban Growth Area. (Ord. 98-083 Exh. A § 57, 1998).

20.74.040 Accessory uses.

Accessory uses shall be the same as those permitted in the Heavy Impact Industrial District, Chapter 20.68 WCC. (Ord. 98-083 Exh. A § 57, 1998).

20.74.050 Conditional uses.

Conditional uses shall be the same as those permitted in the Heavy Impact Industrial District, Chapter 20.68 WCC. (Ord. 98-083 Exh. A § 57, 1998).

20.74.055 Prohibited uses.

Prohibited uses shall be the same as those prohibited in the Light Impact Industrial District as applicable (Chapter 20.66), the Heavy Impact Industrial District as applicable~~,~~ (Chapter 20.68 WCC), and the following:

> Rationale for Changes (shown with highlighting): The Cherry Point Industrial District includes both the Heavy Impact Industrial and Light Impact Industrial zone. Therefore, both should be referenced.

(1) New piers, docks, or wharves.

(2) Conversion of Renewable Fuel Refinery or Renewable Fuel Transshipment Facilities to fossil fuel facilities is prohibited, except as allowed under WCC 20.74.115 and WCC 20.68.153.

20.74.060 Master site plan requirements.

(1) Development in the Cherry Point Industrial District requires the review and approval of a master site plan, including SEPA review. Acceptable master site plans include site plans and supporting information submitted and approved for applications for a building permit, a short subdivision, a preliminary plat, a binding site plan, a major project permit or a planned unit development.

(2) The minimum area for a master site plan (planning block) shall be 160 acres, or the entire property under common ownership if the common ownership is less than 160 acres.

(3) Each planning block shall include one lot of not less than 40 acres in size to be designated as the site for a port or major industrial activity; provided, that if the planning block is 40 acres or smaller, the requirement for the major industrial site shall be waived.

(4) Within a planning block, one or more parcels smaller than 40 acres may be created for secondary uses.

(5) Review and approved of a master site plan for a planning block shall be included in the approval of any building permit, short subdivision, preliminary plat, binding site plan, major project permit or a planned unit development and shall be subject to the same review and approval standards, including SEPA review, as the plat, binding site plan or permit. Each master site plan shall identify, as appropriate, the proposed phasing of the development including the construction of public and private facilities and utilities. The master site plan or supporting documentation as appropriate shall also include any mitigation required under SEPA and the county critical areas ordinance. (Ord. 98-083 Exh. A § 57, 1998).

20.74.070 Minimum lot size and parcelization.

The minimum lot size in the Cherry Point Industrial District shall be 40 acres; provided, that lots less than 40 acres may be permitted as follows:

(1) When the lots are to be located within a development approved as a major project under Chapter 20.88 WCC consistent with the master site plan requirements in this chapter.

(2) When the lots are to be located within a development approved as a planned unit development under Chapter 20.85 WCC consistent with the master site plan requirements of this chapter.

(3) When the lots are part of a short subdivision, long subdivision or binding site plan approved as consistent with the master site plan requirements of this chapter.

(4) When the administrator finds that the lot(s) will be developed with a use(s) that is consistent with the intent of the district and will not interfere with the development of the primary large uses intended by the Comprehensive Plan.

(5) When an existing lot of record is less than 40 acres, provided further division is consistent with this section. (Ord. 98-083 Exh. A § 57, 1998).

20.74.080 Design standards.

Unless otherwise modified by this chapter, building height, setbacks, landscaping, open space and other building and site design standards for areas south of Grandview Road shall be the same as those of the Heavy Impact Industrial District, Chapter 20.68 WCC; and for the area north of Grandview Road, the same as those of the Light Impact Industrial District, Chapter 20.66 WCC. (Ord. 98-083 Exh. A § 57, 1998).

20.74.090 Traffic demand management.

RCW 36.70A.365 requires the implementation of traffic demand management (TDM) programs for designating a Major Industrial Urban Growth Area. Any employer in the Cherry Point Urban Growth Area that employs 100 or more full-time employees at a single worksite who begin their regular work day between 6:00 a.m. and 9:00 a.m. on weekdays for at least 12 continuous months during the year are required to meet the TDM requirements of Chapter 16.24 WCC.

(1) Employers located in Cherry Point who have not implemented a TDM program shall implement a TDM program by December 1, 2011.

(2) Employers in Cherry Point meeting the criteria for having to complete a plan after December 1, 2011, shall meet the requirements of this section within one year of having met the criteria. (Ord. 2009-071 § 2 (Exh. B), 2009).

20.74.100 Drainage.

All development activities are subject to the stormwater management provisions of WCC 20.80.630 through 20.80.635. No project permit shall be issued prior to meeting those requirements. (Ord. 2019-013 § 1 (Exh. A), 2019).

~~20.74.110 Change of Use~~

~~A change of use occurs when the occupancy of a building or a site use changes from one use to another in whole or in part. A change of use permit is required to document a change of use,even where no alterations are planned or required by the code. This shall be processed as a Type I permit in Chapter 22.05 WCC. The new use shall ensure:~~

~~(1) Applicable building and construction codes are met per Title 15;~~

~~(2) Consistency with the requirements of the CP-Industrial District, Chapter 20.74, and base zone; and~~

~~(3) Transportation concurrency requirements are met per Chapter 20.78.~~

~~Discussion/Notes: Change of Use Provisions. Focus is on consistency with the CP district where this permit applies.~~

Rationale for Changes (shown with highlighting): On January 30, 2020, the Planning Commission passed a motion to delete the proposed change of use provisions above. Concerns have been expressed relating to the potential conversion of an existing refinery/transshipment facility into a crude oil transshipment facility (e.g. see Resolution 2019-037). The Planning Commission language for proposed WCC 20.68.153 addresses this potential situation by requiring a conditional use permit if shipping capacity of unrefined fossil fuels were to increase over a certain level.

20.74.115 Change of Use of Renewable Fuels Facilities.

A change of use of a Renewable Fuel Refinery or Renewable Fuel Transshipment Facilities to a fossil fuel facility inside the boundary of an existing legal fossil fuel refinery requires a conditional use permit subject to WCC 20.68.153. Other changes of use from Renewable Fuel Refinery or Renewable Fuel Transshipment Facilities to fossil fuel facilities are prohibited.

CHAPTER 20.88 MAJOR PROJECT PERMITS

20.88.100 Major project permits.

.110 All major developments shall, prior to any construction, obtain a major project permit.

.120 A major project permit will be required for mitigation banks proposed in accordance with the provisions of Chapter 16.16 WCC and for any proposed development that meets any two of the following conditions:

Cost	
(estimated construction cost exclusive of land value)	$5,000,000
Size	
Retail	75,000 square feet
office or industrial (gross leasable floor space)	200,000 square feet
Residential	300 dwelling units
motel/hotel	200 units
Number of Employees	250
SEPA Review	An EIS is required

In addition, the zoning administrator may make an administrative determination after receiving a recommendation from the technical review committee that any project be considered a major development, if in the opinion of the administration it is of a nature that council review would be appropriate.

.130 Pursuant to WCC 22.05.120 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 hearing examiner's recommendation and county council's decision 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.~~

(3) Prior to commencement of any site preparation or construction activities, ~~W~~will obtain, if required, a state aquatic lands lease, and all other necessary permit~~s~~ consultations and authorizations, including federal determinations that the project will

not interfere with treaty fishing rights of tribal nations, the limits set forth in the "Magnuson Amendment" under 33 U.S.C. § 476(b) (2004), Section 10 of the Rivers and Harbors Act (for structures in or over navigable waters of the U.S.), the Coastal Zone Management Act (including any state Department of Ecology shoreline conditional use or variance approval), the Clean Air Act, and/or under the Clean Water Act, including but not limited to a federal Section 404 authorization (for fill into waters of the U.S.) and a state Section 401 water quality certification~~, prior to issuance of any site preparation or construction permits necessary to construct a facility authorized under a major project permit~~.

(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. The County decision maker may approve a major project permit with a condition to obtain relevant leases and complete any necessary federal and state permitting requirements, and may restrict the major project permittee from undertaking site preparation or construction activities until it has fulfilled that condition.

.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.

20.88.200 Procedure.

.205 If a major project permit is determined to be required, an application shall be completed and filed along with the appropriate fees, and the application shall be processed in accordance with Chapter 22.05 WCC. A master plan is required as part of the application for a major project permit. The master plan document shall include all elements required per the department's administrative manual.

.210 Development Standards. The ~~master plan~~major project permit may propose standards that will control development of the possible future uses that are in addition to, or substitute for, requirements of this chapter. These may be such things as height limits, setbacks, frontage, landscaping requirements, parking requirements, signage, view corridors or facade treatments. Proposed standards that do not meet the minimum county standards must obtain the appropriate variance prior to county approval of the proposed standards. If the proposed design standards will apply to property located partially or totally within an urban growth area, concurrence of the affected city will be required.

.215 Procedures. ~~Master plan~~ Major project permit review shall be conducted under current review procedures. Other land use reviews may be conducted concurrently with the ~~master plan~~ major project permit 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~~major project permit.

(1) A determination is made by the director. The director is authorized to consult a technical committee at his/her discretion.

(2) Minor changes are those amendments which may affect the dimensions, location and type of improvements of facilities; provided, the amendment maintains the basic character of the major project permit 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, or capacity limits, and maintains required conditions or mitigation.

(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~~Major project permits may include, as a condition of their approval, a requirement for periodic progress reports and mandatory updates on a predetermined interval.

Rationale for Changes (shown with highlighting): A master plan is one component of the major project permit. The procedures above should relate to the entire permit (not just one component of the permit).

.220 through .265 *Reserved.*

.270 Where a project requires a major project permit, that project shall be exempt from the requirement of obtaining a conditional use permit.

.275 Major project permits: Where an applicant has applied for a planned unit development or a development agreement, that project shall be exempt from the requirement to obtain a major project permit except in the Cherry Point Industrial District.

.280 Major project permits in the Cherry Point Industrial District: where a project in the Cherry Point Industrial District requires a major project permit, the major project permit shall be concurrently processed with other required land use permits including but not limited to: ~~Cherry Point master site plan, conditional use permit,~~ planned unit development, or development agreement.

Rationale for Changes (shown with highlighting): The master plan is part of a permit application (not a permit in itself). Additionally, when a major project permit is required, it is exempt from the conditional use permit (WCC 20.88.270 above).

CHAPTER 20.97 DEFINITIONS

Discussion/Notes: Definitions added are based on a review of federal (US Energy Information Administration, US Census, Code of the Federal Register, Revised Code of Washington), County Ordinance NO. 2018-007, Resolution 2019-004 and examples addressed in the White Paper.

20.97.052.1 Change of Use

"Change of use" means when a building or occupancy is altered or replaced, for example from manufacturing to office.

Renumber Section 20.97.052.1 Child care facilities to 20.97.052.2 Child care facilities.

~~20.97.124.1 Facility Emissions.~~

~~"Facility Emissions" are greenhouse gas emissions associated with fossil fuel or renewable fuel refineries or fossil or renewable fuel transshipment facilities based upon:~~

~~(1) the transportation within the borders of Whatcom County of refined and unrefined fossil fuels to and from a facility located within the Cherry Point Heavy Industrial area, and~~

~~(2) the refining and processing of fossil fuels located within the Cherry Point Heavy Industrial area, and~~

~~(3) the upstream emissions generated by the production and transport of raw products to the facility such as crude oil feedstocks or other fuels used in production or energy generation at facilities.~~

Rationale for Changes (shown with highlighting): On October 24, 2019, the Planning Commission approved a motion to remove the proposed GHG mitigation requirements from the Zoning Code and keep proposed GHG provisions in SEPA (with further discussion on the SEPA language at a later date). The term "facility emissions" is no longer is used in the Zoning Code. Therefore, this definition has been moved to the County's SEPA rules, where it would be used.

20.97.160.2 Fossil Fuels.

"Fossil fuels" include coal, petroleum, crude oil, natural gas, oil shales, bitumens, tar sands, propane, butane, and heavy oils. All contain carbon and were formed as a result of geologic processes acting on the remains of organic matter. Renewable fuels are not fossil fuels.

Rationale for Changes (shown with highlighting): The U.S. Energy Information Administration defines "Petroleum" as:

> A broadly defined class of liquid hydrocarbon mixtures. Included are crude oil, lease condensate, unfinished oils, refined products obtained from the processing of crude oil, and natural gas plant liquids. Note: Volumes of finished petroleum products include non hydrocarbon compounds, such as additives and detergents, after they have been blended into the products.

While crude oil is a type of petroleum, it might be useful to insert it in the definition so the reader can know that without going to another source. This would be consistent with the definition of "Fossil-Fuel Refinery" below, which specifically refers to crude oil.

20.97.160.3 Fossil ~~or Renewable~~ Fuel Transshipment Facilities.

"Fossil Fuel Transshipment Facility" is a facility engaging primarily in the process of off-loading ~~of~~ fossil fuels~~or renewable fuel materials, refined or unrefined, refinery feedstocks, products or by products,~~ from one transportation method (such as a ship, truck, or railcar) ~~facility~~ and loading it onto another transportation method~~facility~~ for the purposes of transporting the fossil fuels~~such products~~ into and~~or~~ out of Whatcom County. ~~Examples of transportation facilities include ship, truck, or freight car. Fossil fuel transshipment facilities may also include pump and compressor stations and associated facilities.~~ This definition shall include bulk storage or transfer facilities for the shipment of crude oil without refining or consuming within the Cherry Point Industrial District and shall excludes Small Fossil or Renewable Storage and Distribution Facilities.

> Rationale for Changes (shown with highlighting): On August 13, 2020, in response to the joint Industry/RE Sources proposal, the Planning Commission approved a motion to modify proposed WCC 20.68.160.3 as shown above. Planning Commission also approved a motion to insert a separate definition of Renewable Fuel Transshipment Facilities (proposed WCC 20.97.350.4 below).

20.97.160.4 Fossil-Fuel Refinery.

A "Fossil-Fuel Refinery" means a facility that converts crude oil and other liquids into petroleum products including but not limited to gasoline, distillates such as diesel fuel and heating oil, jet fuel, petrochemical feedstocks, waxes, lubricating oils, and asphalt. Activities that support refineries include but are not limited to: bulk storage, manufacturing, or processing of fossil fuels or by products. This definition excludes Small Fossil or Renewable Storage and Distribution Facilities.

~~20.97.160.5 Fossil-Fuel Refinery Capacity.~~

~~"Fossil-Fuel Refinery Capacity" means the extent of refinery production capacity in relation to storage capacity. "Storage Capacity" is defined as total volume of all tanks at a facility and "Refining Production Capacity" is defined as the current actual throughput averaged over the latest three-year reporting period prior to the date of a completed application for any necessary County permits obtained from official government reports from the refinery to federal or state agencies regarding production of the refinery or a particular process unit to be expanded.~~

> Rationale for Changes (shown with highlighting): "Fossil-Fuel Refinery Capacity" does not occur in the proposal. "Refinery Capacity" appeared one time (proposed WCC 20.68.801(2)(a)(ii)), but the Planning Commission recommends deleting this section of the proposal. Therefore, a definition is not needed.

20.97.163 Greenhouse Gas Emissions

"Greenhouse Gas Emissions" means gases that trap heat in the atmosphere. "Greenhouse gas," "greenhouse gases," "GHG," and "GHGs" includes carbon dioxide, methane, nitrous oxide, hydrofluorocarbons, perfluorocarbons, and sulfur hexafluoride, and any other gas or gases designated by the federal clean air act (United States Code Title 42, Chapter 85), ~~or~~ state clean air act (Chapter 70.94 RCW) or state limiting greenhouse gas emissions law (Chapter 70.235 RCW).

Discussion/Notes: See RCW 70.235.010 and RCW 70.94.030 regarding State laws. See also https://www.epa.gov/ghgemissions/overview-greenhouse-gases.

20.97.201 Lifecycle Greenhouse Gas Emissions

"Lifecycle greenhouse gas emissions" means the aggregate quantity of greenhouse gas emissions (including direct emissions and significant indirect emissions), related to the full fuel lifecycle, including all stages of fuel and feedstock production and distribution, from feedstock generation or extraction through the distribution and delivery and use of the finished fuel to the

ultimate consumer, where the mass values for all greenhouse gases are adjusted to account for their relative global warming potential.

Discussion/Notes: Considers a definition under the Clean Air Act. See: https://www.epa.gov/renewable-fuel-standard-program/lifecycle-analysis-greenhouse-gas-emissions-under-renewable-fuel and https://www.govinfo.gov/content/pkg/USCODE-2010-title42/html/USCODE-2010-title42-chap85.htm.

~~20.97.202 Living Wage~~

~~"Living wage" means the hourly rate that an individual must earn to support their family, if they are the sole provider and are working full-time (2080 hours per year). For the purposes of this definition family includes four individuals.~~

~~*Discussion/Notes: Based on a definition published by Massachusetts Institute of Technology. See http://livingwage.mit.edu/counties/53073. There is a living-wage calculator for each state and each county within. Living wage ordinances vary in their wage rates, and they often set the hourly wage a full-time, year-round worker must earn to bring a family of four out of poverty. See: http://www.forworkingfamilies.org/resources/policy-tools-living-wage.*~~

Rationale for Changes (shown with highlighting): On January 30, 2020, the Planning Commission passed a motion to delete the "living wage" job language from the conditional use permit approval criteria (proposed WCC 20.68.153). This term does not appear elsewhere in the proposal.

20.97.230 Maximum Atmospheric Crude Distillation Capacity

"Maximum Atmospheric Crude Distillation Capacity" or "MACDC" is the maximum number of barrels of input that the atmospheric distillation unit can process within a 24-hour period when running at maximum capacity. Maximum capacity is defined as the physical constraints of the atmospheric distillation process equipment as determined by a professional engineer licensed in the State of Washington and shall be measured in barrels per day.

NOTE: Renumber existing WCC 20.97.230 (definition of "May") to WCC 20.97.231.

Rationale for Changes (shown with highlighting): On January 30, 2020, the Planning Commission approved a motion adding the above definition to the Zoning Code (the definition was proposed by industry). This term is used in proposed WCC 20.68.153.

20.97. 350.1 Renewable Biomass

"Renewable biomass" includes but is not limited to the following:

(1) Planted crops and crop residue harvested from agricultural land.

(2) Planted trees and tree residue from a tree plantation.

(3) Animal waste material and animal byproducts.

(4) Slash and pre-commercial thinnings.

(5) Organic matter that is available on a renewable or recurring basis.

(6) Algae.

(7) Separated yard waste or food waste, including recycled cooking and trap grease.

(8) Items 1 through 7 including any incidental, de minimis contaminants that are impractical to remove and are related to customary feedstock production and transport.

Discussion/Notes: Adapted from based on federal renewable fuel definition, https://www.law.cornell.edu/cfr/text/40/80.1401.

20.97.350.2 Renewable Fuel

"Renewable Fuel" means liquid fuels produced from renewable biomass and limited in terms of blending with fossil fuels. Common renewable fuels include ethanol and biodiesel:

(1) "E85 motor fuel" means an alternative fuel that is a blend of ethanol and hydrocarbon of which the ethanol portion is nominally seventy-five to eighty-five percent denatured fuel ethanol by volume that complies with the most recent version of American society of testing and materials specification D 5798.

(2) "Renewable diesel" means a diesel fuel substitute produced from nonpetroleum renewable sources, including vegetable oils and animal fats, that meets the registration requirements for fuels and fuel additives established by the federal environmental protection agency in 40 Code of Federal Regulations (C.F.R.) Part 79 ~~(2008)~~ and meets the requirements of American society of testing and materials specification D 975.

Rationale for Changes (shown with highlighting): Federal regulations may be amended over time.

(3) Renewable fuels shall include those designed to result in a lifecycle greenhouse gas emission reduction of at least 50% or more under the Federal Clean Air Act. Renewable fuels shall not include products produced from palm oil or other feedstocks that cannot be proven to reduce greenhouse gas emissions utilizing accepted methods of the Washington State Department of Ecology or US EPA.

Discussion/Notes: A basic renewable fuel energy source is biomass. From biomass, common liquid fuel forms include ethanol and biodiesel. See: https://www.eia.gov/energyexplained/?page=renewable_home.

Washington State defines renewable diesel and E85 motor fuel in the motor fuel quality act (Chapter 19.112 RCW), which are integrated in the definition.

Limiting fossil fuel percentages to 5% is workable for buses and power cars. See http://www.cleanairtrust.org/Differences-Between-E85-and-E95.html. E85 includes 15-25% fossil fuels and is used by flexibly fueled vehicles. See https://www.fueleconomy.gov/feg/flextech.shtml.

Under the EPA renewable fuel standard, three of four renewable fuel categories must meet a 50% or 60% lifecycle greenhouse gas (GHG) reduction. A fourth conventional renewable ethanol must meet a 20% lifecycle GHG reduction. See: https://www.epa.gov/renewable-fuel-standard-program/overview-renewable-fuel-standard.

20.97.350.3 Renewable Fuel Refinery

A "Renewable Fuel Refinery" means a facility that processes or produces renewable fuels. This definition excludes Small Fossil or Renewable Storage and Distribution Facilities.

20.97.350.4 Renewable Fuel Transshipment Facilities.

"Renewable Fuel Transshipment Facility" is a facility engaging primarily in the process of off-loading renewable fuel from one transportation method (such as a ship, truck, or railcar) and loading it onto another transportation method for the purposes of transporting the renewable fuel into and out of Whatcom County. This definition shall include bulk storage or transfer facilities for the shipment of renewable fuels without refining or consuming within the Cherry Point Industrial District and shall exclude Small Renewable Storage and Distribution Facilities.

Rationale for Changes (shown with highlighting): On August 13, 2020, the Planning Commission approved a motion to insert a new definition of Renewable Fuel Transshipment Facilities (it was previously combined with the definition of Fossil Fuel Transshipment Facilities).

20.97.425.1 Small Fossil or Renewable Fuel Storage and Distribution Facilities

"Small Fossil or Renewable Fuel Storage and Distribution Facilities" means:

(1) Equipment and buildings used for purposes of direct sale or distribution to consumers of fossil fuels or renewable fuels, or

(2) Accessory equipment that supplies fossil fuels or renewable fuels to an onsite allowed commercial or industrial operation, and that does not meet the definitions of fossil-fuel refinery, renewable fuel refinery, or fossil or renewable fuel transshipment facilities.

Rationale for Changes (shown with highlighting): Buildings may also be needed at small scale facilities.

20.97.434.1 Technical committee.

"Technical committee" or "technical review committee" means the designated representatives of the Whatcom County Planning and Development Services Director, who shall act as chairperson, the Whatcom County Public Works Director, and the Whatcom County Health Department Director.

Exhibit D

CHAPTER 22.05 PROJECT PERMIT PROCEDURES

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 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.

Permit Application Processing Table	WCC Reference for Specific Requirements	Pre-Application Required (see 22.05.040)	Determination of Complete-ness Required (see 22.05.050)	Notice of Application Required (see 22.05.070)	Site Posting Required (see 22.05.080)	Notice of Open Record Hearing Required (see 22.05.090)	Open Record Hearing Held By: (see 22.05.090)	County Decision Maker (see 2.11.210, 22.05.120)	Appeal Body (see 2.11.210, 22.05.160, 23.60.150(H))
Type I Applications (Administrative Decision with No Public Notice or Hearing)									
Boundary Line Adjustment	21.03							Administrator	Hearing Examiner
Building Permit	15.04	(f)						Administrator	Hearing Examiner (i)
Natural Resource Assessment	Title 16							Administrator	Hearing Examiner
~~Change of Use, Cherry Point Industrial District~~	~~Chapter 20.74~~							~~Administrator~~	~~Hearing Examiner~~
Commercial Site Plan Review								Administrator	Hearing Examiner
Exempt Land Division	21.03							Administrator	Hearing Examiner
Floodplain Development Permit	Title 17							Administrator	Hearing Examiner
Land Disturbance Permit	15.04 and 20.80							Administrator	Hearing Examiner
Lot of Record/Lot Consolidation	20.83 and 20.97.220							Administrator	Hearing Examiner
Nonconforming Use	20.83							Administrator	Hearing Examiner
Removal of Development Moratorium	20.80.738(3)								
Shoreline Exemption	23.60	(a)						Administrator	Hearing Examiner
Zoning	22.20							Administrator	Hearing

Permit Application Processing Table	WCC Reference for Specific Requirements	Pre-Application Required (see 22.05.040)	Determination of Complete-ness Required (see 22.05.050)	Notice of Application Required (see 22.05.070)	Site Posting Required (see 22.05.080)	Notice of Open Record Hearing Required (see 22.05.090)	Open Record Hearing Held By: (see 22.05.090)	County Decision Maker (see 2.11.210, 22.05.120)	Appeal Body (see 2.11.210, 22.05.160, 23.60.150(H))
Interpretation									Examiner
Type II Applications (Administrative Decision with Public Notice; No Public Hearing)									
Administrative Use	20.84.235							Administrator	Hearing Examiner
Lot Consolidation Relief	20.83.070							Administrator	Hearing Examiner
Reasonable Use (b)	16.16							Administrator	Hearing Examiner
Shoreline Substantial (c)	23.60	(a)						Administrator (d)	Shorelines Hearings Board (h)
Shoreline Conditional Use (c)	23.60	(a)						Administrator (d)	Hearing Examiner
Short Subdivision	21.04							Administrator	Hearing Examiner
Type III Applications (Hearing Examiner Decision with Public Notice and Public Hearing)									
Conditional Use	20.84.200						Hearing Examiner	Hearing Examiner	Superior Court
Floodplain Development Variance	Title 17						Hearing Examiner	Hearing Examiner	Superior Court
Long Subdivision	21.05						Hearing Examiner	Hearing Examiner (g)	Superior Court
Binding Site Plan	21.07						Hearing Examiner	Hearing Examiner (g)	Superior Court
Reasonable Use (e)	16.16						Hearing Examiner	Hearing Examiner	Superior Court
Removal of Development Moratorium	20.80.738(2)						Hearing Examiner	Hearing Examiner	Superior Court
Shoreline Conditional Use	23.60	(a)					Hearing Examiner	Hearing Examiner (d)	Shorelines Hearings Board (h)
Shoreline Substantial	23.60	(a)					Hearing Examiner	Hearing Examiner (d)	Shorelines Hearings Board (h)
Shoreline Variance	23.60	(a)					Hearing Examiner	Hearing Examiner (d)	Shorelines Hearings Board (h)
Zoning or Critical	20.84.100 or						Hearing	Hearing	Superior Court

Permit Application Processing Table	WCC Reference for Specific Requirements	Pre-Application Required (see 22.05.040)	Determination of Complete-ness Required (see 22.05.050)	Notice of Application Required (see 22.05.070)	Site Posting Required (see 22.05.080)	Notice of Open Record Hearing Required (see 22.05.090)	Open Record Hearing Held By: (see 22.05.090)	County Decision Maker (see 2.11.210, 22.05.120)	Appeal Body (see 2.11.210, 22.05.160, 23.60.150(H))
Areas Ordinance Variance	16.16.270						Examiner	Examiner	
Type IV Applications (County Council Decision with Public Notice and Public Hearing)									
Development Agreement	2.11.205						Hearing Examiner	County Council	Superior Court
Major Project Permit	20.88						Hearing Examiner	County Council	Superior Court
Planned Unit Development	20.85						Hearing Examiner	County Council	Superior Court

Check marks indicate a step is required; reference letters refer to the notes in subsection (2) of this section.

Discussion/Notes: Scrubbing the Existing Code for consistency with new provisions and desired review process.

Rationale for Changes (shown with highlighting): On January 30, 2020, the Planning Commission passed a motion to delete the proposed change of use provisions of WCC 20.74.110. Therefore, the "Change of Use" permit type is no longer needed.

22.05.110 Final decisions – Type I, II, and III applications.

(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 WCC 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) Requirements:

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

(ii) Fossil or Renewable Fuel Refinery or Fossil or Renewable Fuel Transshipment Facilities: The applicant shall provide insurance or other financial assurance acceptable to the prosecuting attorney consistent with Section 22.05.125.

(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 person with standing, 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. (Ord. 2019-013 § 1 (Exh. A); Ord. 2018-032 § 1 (Exh. A)).

22.05.120 ~~Recommended~~Recommendations and final decisions ~~to county council.~~– Type IV applications

(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 22.05.020 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 time frames, except as provided in subsection (4)(c)(iii) of this section:

(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 (4)(c)(i) or (ii) of this section if the county council meeting schedule does not accommodate a meeting within the above time frames, 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.

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

(b) Fossil or Renewable Fuel Refinery or Fossil or Renewable Fuel Transshipment Facilities: The applicant shall provide insurance or other financial assurance acceptable to the prosecuting attorney consistent with Section 22.05.125.

(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.~~applicable ~~state laws and regulations,~~ county code, the county comprehensive plan if applicable, and the county shoreline management program, including ~~but not limited to~~ compliance with SEPA, WAC 197-11 (SEPA Rules) as adopted and modified in the county code, and the county's adopted SEPA policies. (Ord. 2018-032 § 1 (Exh. A)).

Rationale for Changes (shown with highlighting): Other parts of the proposal require that state permits be obtained. However, that is different than the County Council or hearing examiner evaluating criteria in state laws and regulations. It's the applicable state agency's job to evaluate state criteria, determine if those criteria are met, and then issue the permit. A copy of that permit can then be submitted to the County.

22.05.125 Proof of insurance for hazards created in the County

Permit applicant to provide proof of insurance naming Whatcom County as additional insured for any of the following that require a conditional use permit or major project permit:

(1) Expansion of existing fossil fuel refinery or existing fossil fuel transshipment facility;

(2) Expansion of or new renewable fuel refinery or renewable fuel transshipment facility.

Rationale for Changes (shown with highlighting): On November 14, 2019 and June 25, 2020, the Planning Commission approved motions inserting the insurance language above. The Planning Commission recommended deleting the insurance language below from the original Council proposal.

~~At the time of Type I, II, III, or IV applications addressing production capacity or storage tank increases at fossil fuel refineries, fossil fuel transshipment facilities, renewable fuel refineries, or renewable fuel transshipment facilities (Facilities), the applicant shall provide proof of insurance or other financial security acceptable to the prosecuting attorney, which may include a parent company corporate guarantee to cover loss or damages to the County and to County residents from any fire, explosion, spill or other sudden incident from operations of the Facility or from transport of materials, goods, products or waste within the boundaries of Whatcom County. This requirement shall also be met for Type I changes in use from fossil fuel refineries or transshipment facilities to renewable fuel refineries or transshipment facilities. The required policies and any parent company corporate guarantee shall contain the following Coverage Terms:~~

~~(1) Insureds: The Primary Named Insured shall include the Permitted Entity(ies). The County shall be included as additional Insured and shall be provided complete copies of applicable insurance policies and endorsements.~~

~~(2) Insuring Agreements: Insurance shall pay on behalf of the Insured for loss from third-party bodily injury, property damage or environmental remediation and restoration expenses resulting from sudden pollution conditions commencing on or after the Permit effective date, either:~~

~~(a) emanating from and beyond the boundaries of a Permitted Facility, or~~

~~(b) arising from materials or waste during transportation to or from a Permitted Facility.~~

~~(3) Policy Limits: Policy limits shall be no less than $100 million for each Loss / total for all Losses. The required limits may be revised periodically by the County based on factors including inflation adjustments and Permit- or Facility-specific risks.~~

~~*Discussion/Note: Minimum insurance amounts could be increased, but at levels above $50 million to $100 million may not be available in the insurance market. We suggest taking out the $100 million liability limit and substituting language that determines the liability limit as each permit is reviewed and made part of a development agreement. Other forms of financial assurance instruments could be allowed such as a letter of credit a parent company corporate guarantee or other financial assurance acceptable to the County Prosecutor as a substitute for commercial insurance. We have included code language to*~~

~~*that effect in this draft. The County could also indicate that the amount of financial assurance is to be determined at the point of an approval decision for a facility expansion rather than specifying an amount here.*~~

~~(4) Policy Deductibles: If the Policy has a deductible, the Insurer shall be liable for the payment of amounts within any deductible or self-insured retention amount applicable to the policy, with a right of reimbursement by the Insured for any such payment made by the Insurer. If the Policy has a self-insured retention (SIR) amount, the Primary Named Insured shall declare how it intends to provide a financial assurance to the County for such SIR amount, where acceptable forms of financial assurance are letters of credit and certificates of deposit.~~

~~(5) Term and Cancellation Notice:~~

~~(a) Insurance shall be carried for the lifetime of the Permitted Facility.~~

~~(b) Cancellation of the insurance, whether by the Insurer, the Insured, or other entity having an insurable interest in and obtaining insurance on behalf of the owner or operator of the Permitted Facility, will be effective only upon written notice and only after the expiration of 60 days after a copy of such written notice is received by the County as evidenced by the return receipt.~~

~~(6) Bankruptcy: Bankruptcy or insolvency of the Insured shall not relieve the Insurer of its obligations under the policy.~~

~~(7) Choice of Law and Forum: The Policy shall not specify that the laws of a state other than the State of Washington apply in the event of any dispute regarding the validity or formation of the Policy or the meaning, interpretation or operation of any term, condition, definition or provision of the Policy. Policies may remain silent on choice of law and forum.~~

~~(8) Insurance Company Financial Strength – Minimum Rating: The Insurer shall meet or exceed a Financial Strength Rating from A.M. Best of "A" (Excellent) with a minimum Financial Size Category of XIV and a "Stable" or stronger Outlook, or the equivalent from another major financial rating agency.~~

~~(9) Definitions: For the purposes of this section, terms are defined as follows:~~

~~(a) Permitted Facility: Permitted Facility means a location identified in the applicable County Permit, including any fixed conveyances and terminal distribution systems, as well as pump and compressor stations and related facilities.~~

~~(b) Loss shall include:~~

~~(i) monetary awards or settlements of compensatory damages; and~~

~~(ii) where allowable by law, punitive, exemplary, or multiple damages; and~~

~~(iii) civil fines, penalties, or assessments.~~

~~(c) Pollution conditions shall include discharge, dispersal, release or escape, including by fire or explosion, of any solid, liquid, gaseous or thermal irritant or contaminant, including, but not limited to, petroleum hydrocarbons, smoke, vapors, soot, fumes, acids, alkalis, or other chemicals.~~

~~(d) Sudden pollution conditions may be defined by reasonable time limits for discovery and reporting to the insurer.~~

~~(e) Transportation means movement by any vehicle or mode of transit including but not limited to automobile, truck, or watercraft, as well as and is inclusive of loading, temporary placement during transit prior to final delivery, or unloading, of materials goods, products or waste, either:~~

~~(i) intended for delivery to a Permitted Facility, or~~

~~(ii) being sent from a Permitted Facility.~~

August 14, 2020
Whatcom County Council
311 Grand Avenue, Suite 105
Bellingham, WA 98225

Cherry Point Amendments – Planning Commission Minority Opinion

County Council Members

I want to first thank the community, staff and commission members for the work that has been put into improving the Comprehensive Plan Amendments. I believe we came a long way in compromise from what was originally proposed and what effected industry sees as workable regulations. That said, I still cannot support the amendments. Changes in our county regulations and land use policy should show obvious benefit to our community. And while the intentions of environmental improvement and job security at Cherry Point are good, these amendments by their nature will have the opposite effect.

The proposed amendments to the Comprehensive Plan are a substantial shift from historical priorities on land use and will undoubtedly have impacts on the current and future health of our county. These impacts deserve thorough review.

Environmental: Global greenhouse gas emissions are not reduced by limiting local production of fossil fuels. Unchanged demand will likely shift production to facilities with lower efficiency and environmental standards, increasing global emissions. GHG reduction can only be accomplished through a reduction in consumption of fossil fuels. If the goal of these amendments is to reduce GHG emissions, a full environmental review to quantify these benefits should be expected.

Economic: Planning goals stated by the Growth Management Act require both environmental protection as well as economic development – specifically to promote the retention and expansion of existing businesses. Regulatory burden and uncertainty of permit approval increases risk when evaluating investment prospects and threatens the long-term sustainability of existing industry. Projects offering economic opportunity to our county will likely pass without us ever knowing, including renewable fuel developments.

Legality: The current amendments guarantee legal challenge, costing taxpayers while taking time and resources away from staff.

Areas of concern include:
Violation of the Takings Clause – 5th Amendment US Constitution – WA State Constitution
Equal Protections Clause – US Constitution – WA State Constitution
Due Process – Pertaining to property rights – US Constitution – WA State Constitution
Commerce Clause – US Constitution
Gives inappropriate authority to the county, attempting to enforce State and Federal Laws
Conflicts with our own Planning Goals as required by the GMA

I strongly recommend the County Council postpone the passage of the Cherry Point Comprehensive Plan and Code Amendments until a sufficient Environmental Impact Study, Economic Impact Study, and Legal Liability Review have been evaluated.

These actions will come at a cost to our community while the benefit is unknown. Encouraging these industries to thrive locally, under their already strict environmental standards, is best not only for our county's economy but for the global environment.

Jon Maberry

WHATCOM COUNTY
Planning & Development Services
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Mark Personius, AICP
Director

SEPA Distribution List
SEP2019-00083
Date of Re-Issuance: July 28, 2020

Please review this determination. If you have further comments, questions or would like a copy of the SEPA checklist, phone the responsible official at (360) 778-5900. Please submit your response by the comment date noted on the attached notice of determination.

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Mark Personius, AICP
Director

SEPA Determination of Nonsignificance (DNS)

File: SEP2019-00083

Project Description: A proposed non-project action to amend the County's development regulations, State Environmental Policy Act (SEPA) provisions, permit review procedures and Comprehensive Plan relating to fossil fuel facilities, renewable fuel facilities, transshipment fuel facilities and other similar land use activities. The proposal is intended to address the risks to public health, safety, and the environment associated with fossil fuel facilities. The proposal is also intended to address the negative impacts on public safety, transportation, the economy, and environment from crude oil, coal, liquefied petroleum gases, and natural gas transshipments from the Cherry Point Industrial District.

The scope of environmental review includes two proposals: Whatcom County Resolution #: 2019-037 which incorporates recommendations from the Cascadia Law Group's February 23, 2018 report to the Whatcom County Council and the Planning Commission's draft amendments. A copy of Whatcom County Resolution #: 2019-037 and the Planning Commission's draft recommendations can be found on the Whatcom County website at www.whatcomcounty.us/2914/Public-Notice.

Proponent: Whatcom County Council – Contact: Cathy B. Halka, AICP

Address and Parcel #: Cherry Point Urban Growth Area

Lead Agency: Whatcom County Planning & Development Services

Zoning: HII/LII **Comp Plan:** Major/Port Industrial UGA

Shoreline Jurisdiction: Cherry Point Management Area

The lead agency for this proposal has determined that with proper mitigation, no significant adverse environmental impacts are likely. Pursuant to RCW 43.21C.030(2)(c), an environmental impact statement (EIS) is not required. This decision was made following review of a completed SEPA environmental checklist and other information on file with the lead agency. This information is available to the public on request.

__ There is no comment period for this DNS.

X Pursuant to WAC 197-11-340(2), the lead agency will not act on this proposal for 14 days from the date of issuance indicated below. Comments must be received by 4:00 p.m. on August 11, 2020 and should be sent to: Matt Aamot, maamot@whatcomcounty.us.

Responsible Official: Mark Personius, mpersoni@whatcomcounty.us

Title: Director

Telephone: 360-778-5900

Address: 5280 Northwest Drive
Bellingham, WA 98226

Date of Issuance: July 28, 2020 **Signature:** _____

An aggrieved agency or person may appeal this determination to the Whatcom County Hearing Examiner. Application for appeal must be filed on a form provided by and submitted

to the Whatcom County Current Planning Division located at 5280 Northwest Drive, Bellingham, WA 98226, during the ten days following the comment period, concluding August 21, 2019.

You should be prepared to make a specific factual objection. Contact Whatcom County Current Planning Division for information about the procedures for SEPA appeals.

WHATCOM COUNTY
Planning & Development Services
5280 Northwest Drive
Bellingham, WA 98226-9097
360-778-5900, TTY 800-833-6384
360-778-5901 Fax

Mark Personius, AICP
Director

SEPA Determination of Nonsignificance (DNS)
Legal Notice

To be published one time only on: **July 28, 2020**

CHARGE TO: Whatcom County Planning & Development Services
5280 Northwest Drive
Bellingham, Washington 98226
Acct #451232

WHATCOM COUNTY GIVES PUBLIC NOTICE THAT THE FOLLOWING SEPA THRESHOLD DETERMINATION OF NON-SIGNIFICANCE (DNS) HAS BEEN ISSUED TODAY SUBJECT TO THE 14 DAY COMMENT PERIOD CONCLUDING ON, AUGUST 11, 2020.

File: SEP2019-00083

Project Description: A proposed non-project action to amend the County's development regulations, State Environmental Policy Act (SEPA) provisions, permit review procedures and Comprehensive Plan relating to fossil fuel facilities, renewable fuel facilities, transshipment fuel facilities and other similar land use activities. The proposal is intended to address the risks to public health, safety, and the environment associated with fossil fuel facilities. The proposal is also intended to address the negative impacts on public safety, transportation, the economy, and environment from crude oil, coal, liquefied petroleum gases, and natural gas transshipments from the Cherry Point Industrial District.

The scope of environmental review includes two proposals: Whatcom County Resolution #: 2019-037 which incorporates recommendations from the Cascadia Law Group's February 23, 2018 report to the Whatcom County Council and the Planning Commission's draft amendments. A copy of Whatcom County Resolution #: 2019-037 and the Planning Commission's draft recommendations can be found on the Whatcom County website at www.whatcomcounty.us/2914/Public-Notice.

Proponent: Whatcom County Council– Contact: Cathy B. Halka, AICP

Address and Parcel #: Cherry Point Urban Growth Area

Lead Agency: Whatcom County Planning & Development Services

Zoning: HII/LII **Comp Plan:** Major/Port Industrial UGA
Shoreline Jurisdiction: Cherry Point Management Area

ANY PERSON OR AGENCY MAY APPEAL THE COUNTY'S COMPLIANCE WITH WAC 197-11 BY FILING AN APPEAL WITH THE WHATCOM COUNTY PLANNING AND DEVELOPMENT SERVICES LOCATED AT 5280 NORTHWEST DRIVE, BELLINGHAM, WA 98226. APPEALS MUST BE MADE WITHIN 10 DAYS AFTER THE END OF THE COMMENT PERIOD.

WHATCOM COUNTY
Planning & Development Services
5280 Northwest Drive
Bellingham, WA 98226-9097
360-778-5900, TTY 800-833-6384
360-778-5901 Fax

Mark Personius, AICP
Director

REVISED
07/17/2020

SEP 2019 - 00083

SEPA Environmental Checklist

Purpose of Checklist:

Governmental agencies use this checklist to help determine whether the environmental impacts of your proposal are significant. This information is also helpful to determine if available avoidance, minimization or compensatory mitigation measures will address the probable significant impacts or if an environmental impact statement will be prepared to further analyze the proposal.

Instructions for Applicants:

This environmental checklist asks you to describe some basic information about your proposal. Please answer each question accurately and carefully, to the best of your knowledge. You may need to consult with an agency specialist or private consultant for some questions. You may use "not applicable" or "does not apply" only when you can explain why it does not apply and not when the answer is unknown. You may also attach or incorporate by reference additional studies reports. Complete and accurate answers to these questions often avoid delays with the SEPA process as well as later in the decision-making process.

The checklist questions apply to all parts of your proposal, even if you plan to do them over a period of time or on different parcels of land. Attach any additional information that will help describe your proposal or its environmental effects. The agency to which you submit this checklist may ask you to explain your answers or provide additional information reasonably related to determining if there may be significant adverse impact.

Use of Checklist for Non-Project Proposals:

For non-project proposals (such as ordinances, regulations, plans and programs), complete the applicable parts of sections A and B plus the Supplemental Sheet for Non-project Actions (Part C). Please completely answer all questions that apply and note that the words "project", "applicant", and "property or site" should be read as "proposal", "proponent" and "affected geographic area", respectively. The lead agency may exclude (for non-projects) questions in Part B – Environmental Elements that do not contribute meaningfully to the analysis of the proposal.

Reviewed by initials NAG 07/21/2020

412

A Background

1 Name of proposed project, if applicable:

Cherry Point UGA Comprehensive Plan and Zoning Code Amendments

2 Name of applicant: Whatcom County Council

Applicant phone number: 360-778-5010

Applicant address: 311 Grand Avenue, Suite 105

City, State, Zip or Postal Code: Bellingham, WA 98225

Applicant Email address: council@co.whatcom.wa.us

3 Contact name: Cathy B. Halka, AICP

Contact phone number: 360-778-5010

Contact address: 311 Grand Avenue, Suite 150

City, State, Zip or Postal Code: Bellingham, WA 98225

Contact Email address: chalka@co.whatcom.wa.us

4 Date checklist prepared: August 20, 2019 Updated July 17, 2020

5 Agency requesting checklist: Whatcom County

6 Proposed timing or schedule (including phasing, if applicable):

Recommendations by the Planning Commission to the County Council are expected in Summer 2020 and final County Council action is expected in Fall 2020.

7 Do you have any plans for future additions, expansion, or further activity related to or connected with this proposal? Yes ☐ No ☑
If yes, explain:

8 List any environmental information you know about that has been prepared, or will be prepared, directly related to this proposal:

The environmental documents listed in the attached 'Cherry Point Amendments SEPA Checklist - Supporting Documents Incorporated by Reference' are relevant to this proposal and are hereby incorporated by reference.

9 Do you know whether applications are pending for governmental approvals of other proposals directly affecting the property covered by your proposal?
Yes ☐ No ☑
If yes, explain.

10 List any government approvals or permits that will be needed for your proposal, if known.

The Whatcom County Council and Whatcom County Planning Commission, following an extensive public review process, are considering a range of alternative amendments to the Comprehensive Plan and County development regulations related to the Cherry Point Industrial area and other areas of the County. Recommendations by the Planning Commission to the County Council are expected in Summer 2020 and final County Council action is expected in Fall 2020. A summary of the range of proposed amendments is described in Section 11 below. Adoption of an ordinance by the Whatcom County Council is required for approval of the amendments.

11 Give brief, complete description of your proposal, including the proposed uses and the size of the project and site. *There are several questions later in this checklist that ask you to describe certain aspects of your proposal. You do not need to repeat those answers on this page.* (Lead agencies may modify this form to include additional specific information on project description.)

See additional information attached.

12 Location of the proposal. Give sufficient information for a person to understand the precise location of your proposed project, including a street address, if any, and section, township, and range, if known. If a proposal would occur over a range of area, provide the range or boundaries of the site(s). Provide a legal description, site plan, vicinity map, and topographic map, if reasonably available. While you should submit any plans required by the agency, you are not required to duplicate maps or detailed plans submitted with any permit applications related to this checklist.

The proposed amendments cover all areas in Whatcom County, including the Heavy Impact Industrial and Light Impact Industrial Districts, with primary effect on the Cherry Point Industrial District. New SEPA provisions apply county-wide. Responses pertaining to questions pertaining the nature of the site will focus on the Cherry Point Industrial District.

B Environmental Elements

1 Earth

a. General description of the site:

- [x] Flat
- [x] Rolling
- [x] Hilly
- [x] Steep Slopes
- [ ] Mountainous
- [ ] Other

b. What is the steepest slope on the site (approximate percent slope)?

Vertical bluffs along the coastline, 3-8% slopes in other areas

c. What general types of soils are found on the site (for example, clay, sand, gravel, peat, muck)? If you know the classification of agricultural soils, specify them and note any agricultural land of long-term commercial significance and whether the proposal results in removing any of these soils.

There are various soil types throughout the Cherry Point UGA including silt loam, silt clay loam, loess and volcanic ash, and glaciomarine drift.

d. Are there surface indications or history of unstable soils in the immediate vicinity? Yes [x] No [ ]

If so, describe.

There are naturally eroding bluffs along the coastal shore.

e. Describe the purpose, type, total area, approximate quantities and total affected area of any filling excavation or grading proposed.

N/A: non-project

Indicate source of fill.

N/A: non-project

Indicate were excavation material is going.

N/A: non-project

f. Could erosion occur as a result of clearing, construction, or use?
Yes ☐ ☒ No

If so, generally describe.

N/A: non-project

g. About what percent of the site will be covered with impervious surfaces after project construction (for example, asphalt or buildings)?

N/A: non-project

h. Proposed measures to reduce or control erosion, or other impacts to the earth, if any:

N/A: non-project

2. Air

a. What types of emissions to the air would result from the proposal during construction, operation and maintenance when the project is completed (i.e., dust, automobile, odors, or industrial wood smoke)?

N/A: non-project

If any, generally describe and give approximate quantities if known.

N/A: non-project

b. Are there any off-site sources of emissions or odor that may affect your proposal? Yes ☐ No ☒

If so, generally describe.

N/A: non-project

c. Proposed measures to reduce or control emissions or other impacts to air, if any:

See additional information attached.

3. Water

a. Surface:

(1) Is there any surface water body on or in the immediate vicinity of the site (including year-round and seasonal streams, saltwater, lakes, ponds, wetlands)? Yes ☑ No ☐

If yes, describe type and provide names. If appropriate, state what stream or river it flows into.

The Cherry Point UGA abuts the Strait of Georgia to the west and to the east is Lake Terrell. Wetlands are scattered throughout the Cherry Point area.

(2) Will the project require any work over, in, or adjacent to (within 200 feet) the described waters? Yes ☐ No ☑

If yes, please describe and attach available plans.

(3) Estimate the amount of fill and dredge material that would be placed in or removed from surface water or wetlands and indicate the area of the site that would be affected. N/A: non-project

Indicate the source of fill material.

N/A: non-project

(4) Will the proposal require surface water withdrawals or diversions? Yes ☐ No ☑

N/A: non-project

Give general description, purpose, and approximate quantities if known.

N/A: non-project

Does the proposal lie within a 100-year floodplain? Yes ☐ No ☑

If so, note location on the site plan.

(5) Does the proposal involve any discharges of waste materials to surface waters?
Yes ☐ No ☑

If so, describe the type of waste and anticipated volume of discharge

N/A: non-project

b. Ground Water:

(1) Will ground water be withdrawn from a well for drinking water or other purposes? Yes ☐ No ☑

If so, give a general description of the well, proposed uses and approximate quantities withdrawn from the well. Will water be discharged to groundwater? Give general description, purpose, and approximate quantities if known.

N/A: non-project

(2) Describe waste material that will be discharged into the ground from septic tanks or other sources, if any (for example: Domestic sewage; industrial, containing the following chemicals…..; agricultural; etc.). Describe the general size of the system, the number of houses to be served (if applicable), or the number of animals or humans the system(s) are expected to serve.

N/A: non-project

c. Water runoff (including stormwater):

(1) Describe the source of runoff (including storm water) and method of collection and disposal, if any (include quantities, if known).

N/A: non-project

Where will this water flow? N/A: non-project

Will this water flow into other waters? Yes ☐ No ☐

If so, describe.

(2) Could waste materials enter ground or surface waters?
Yes ☐ No ☑

If so, generally describe.

N/A: non-project

(3) Does the proposal alter or otherwise affect drainage patterns in the vicinity of the site: Yes ☐ No ☑

If so, describe.

N/A: non-project

d. Proposed measures to reduce or control surface, ground, and runoff water impacts, if any:

N/A: non-project

4 Plants

a. Check types of vegetation found on the site:

- ☑ Deciduous tree: alder, maple, aspen, other
- ☑ Evergreen tree: fir, cedar, pine, other
- ☑ Shrubs
- ☑ Grass
- ☑ Pasture
- ☐ Crop or grain
- ☐ Orchards, vineyards or other permanent crops
- ☑ Wet soil plants: cattail, buttercup, bullrush, skunk cabbage, other
- ☑ Water plants: water lily, eelgrass, milfoil, other
- ☑ Other types of vegetation

b. What kind and amount of vegetation will be removed or altered?

N/A: non-project

c. List threatened or endangered species known to be on or near the site.

Southern Resident Killer Whale and bocaccio rockfish, canary and yelloweye rockfish, Chinook salmon,marbled murrelet, and steelhead trout

d. Proposed landscaping, use of native plants, or other measures to preserve or enhance vegetation on the site, if any:

N/A: non-project

e. List all noxious weeds and invasive species known to be on or near the site.

N/A: non-project

5. Animals

a. Check any birds and animals, which have been observed on or near the site or are known to be on or near the site:

Birds:

- [x] Hawk,
- [x] Eagle,
- [x] Other: see below
- [x] Heron,
- [ ] Songbirds;

Mammals:

- [x] Deer,
- [ ] Elk,
- [x] Other:
- [ ] Bear,
- [ ] Beaver;

Fish:

- [ ] Bass,
- [x] Trout,
- [x] Shellfish;
- [x] Salmon,
- [x] Herring,
- [x] Other: see below

b. List any threatened or endangered species known to be on or near the site.

The Cherry Point Environmental Aquatic Reserve Management Plans (2010, 2017) identify endangered species including the Southern Resident Killer Whale and bocaccio rockfish. Canary and yelloweye rockfish are listed as threatened, as well as Chinook salmon, marbled murrelet, and steelhead trout.

c. Is the site part of a migration route? Yes [X] No [ ]

If so, explain.

The Cherry Point UGA is a migration point for the marbled murrelet, surf scoter, and other birds. It is also a migration route for killer whales.

d. Proposed measures to preserve or enhance wildlife, if any:

See additional information attached.

e. List any invasive species known to be on or near site.

The Cherry Point Environmental Aquatic Reserve Management Plans (2010, 2017) identify nonnative species such as the European Green Crab (Carcinus maenas) and brown algae (Sargassum)

6. Energy and Natural Resources

a. What kinds of energy (electric, natural gas, oil, wood stove, solar) will be used to meet the completed project's energy needs? Describe whether it will be used for heating, manufacturing, etc.

See additional information attached.

b. Would your project affect the potential use of solar energy by adjacent properties? Yes [ ] No [X]

If so, generally describe.

N/A: non-project

c. What kinds of energy conservation features are included in the plans of this proposal? List other proposed measures to reduce or control energy impacts, if any:

See additional information attached.

7. Environmental Health

a. Are there any environmental health hazards, including exposure to toxic chemicals, risk of fire and explosion, spill, or hazardous waste that could occur as a result of this proposal? Yes [X] No [ ]

If so, describe.

See additional information attached.

(1) Describe any known or possible contamination at the site from present or past uses.

Legacy sources of contamination from historic, unregulated industrial waste exist on uplands adjacent to the Cherry Point Aquatic Reserve (CPAR). Birch Bay Sewage treatment Plant discharges into the Reserve.

(2) Describe existing hazardous chemicals/conditions that might affect project development and design. This includes underground hazardous liquid and gas transmission pipelines located within the project area and in the vicinity.

N/A: non-project

(3) Describe any toxic or hazardous chemicals that might be stored, used, or produced during the projects development or construction, or at any time during the operating life of the project.

N/A: non-project

(4) Describe special emergency services that might be required.

N/A: non-project

(5) Proposed measure to reduce or control environmental health hazards, if any:

N/A: non-project

b. Noise

(1) What types of noise exist in the area which may affect your project (for example: traffic, equipment, operation, other)?

N/A: non-project

(2) What types and levels of noise would be created by or associated with the project on a short-term or a long-term basis (for example: traffic, construction, operation, other)? Indicate what hours noise would come from the site.

N/A: non-project

(3) Proposed measures to reduce or control noise impacts, if any:

N/A: non-project

8 Land and Shoreline Use

a. What is the current use of the site and adjacent properties?

Heavy impact industrial and light impact industrial uses in the Major/Port Industrial UGA

Will the proposal affect current land uses on nearby or adjacent properties? Yes ☑ No ☐
If so, describe.

One intention of the new code is to be consistent with the CPAR Management Plan and to protect marine resources that are currently threatened or endangered.

b. Has the project site been used as working farmlands or working forest lands? Yes ☑ No ☐
If so, describe.

Current users maintain small areas of forests and farmlands.

How much agriculture or forest land of long-term commercial significance will be converted to other uses as a result of the proposal, if any?

N/A: non-project

If resource lands have not been designated, how many acres in farmland or forest land tax status will be converted to non-farm or non-forest use?

N/A: non-project

(1) Will the proposal affect or be affected by surrounding working farm or forest land normal business operations, such as oversize equipment access, the application of pesticides, tilling and harvesting? Yes ☐ No ☑

If so, how:

c. Describe any structures on the site.

Major developments with many structures related to power generation, fuel refining, tank storage, and aluminum smelting, all with rail and port access (3 piers). In additional there are structures that serve as storage and distribution facilities for bulk shipments of LPG by railcar, tank truck, pipeline, and ship. DNR's CPAR restricts additional leases for piers and the new code is consistent with this.

d. Will any structures be demolished? Yes ☐ No ☑
If so, what?

e. What is the current zoning classification of the site?
Heavy Impact Industrial, Light Impact Industrial

f. What is the current comprehensive plan designation of the site?
Major Port, Industrial UGA

g. If applicable, what is the current shoreline master program designation of the site?
Cherry Point Management Area

h. Has any part of the site been classified as a critical area by the city or county? Yes ☒ No ☐

i. If so, specify.
The area includes geological hazards, low/moderate aquifer susceptibility, deciduous forest, wetlands, and wildlife habitat conservation areas.

j. Approximately how many people would reside or work in the completed project?
N/A: non-project

k. Approximately how many people would the completed project displace?N/A: non-project

l. Proposed measures to avoid or reduce displacement impacts, if any:
N/A: non-project

m. Proposed measures to ensure the proposal is compatible with existing and projected land uses and plans, if any:
See additional information attached.

n. Proposed measures to ensure the proposal is compatible with nearby agricultural and forest lands of long-term commercial significance, if any?
Conditional Use Permit and Major Project Permit processes require compatibility with nearby existing uses.

9 Housing

a. Approximately how many units would be provided, if any? Indicate whether high, middle, or low-income housing.

☐ High Number of Units 0
☐ Middle
☐ Low-income

b. Approximately how many units, if any, would be eliminated? Indicate whether high, middle, or low-income housing.

☐ High Number of Units 0
☐ Middle
☐ Low-income

c. Proposed measures to reduce or control housing impacts, if any:

N/A: non-project

10 Aesthetics

a. What is the tallest height of any proposed structure(s), not including antennas; what is the principal exterior building material(s) proposed?

There is no maximum height established in the heavy or light industrial zone, and current height regulations will not change with the new proposal.

b. What views in the immediate vicinity would be altered or obstructed?

N/A: non-project

c. Proposed measures to reduce or control aesthetic impacts, if any:

N/A: non-project

11 Light and Glare

a. What type of light or glare will the proposal produce? What time of day would it mainly occur?

N/A: non-project

b. Could light or glare from the finished project be a safety hazard or interfere with views?

N/A: non-project

c. What existing off-site sources of light or glare may affect your proposal?

N/A: non-project

d. Proposed measures to reduce or control light and glare impacts, if any:

N/A: non-project

12 Recreation

a. What designated and informal recreational opportunities are in the immediate vicinity?

To the north is Birch Pay State Park, Pt. Whitehorn Marine Reserve, Terrell Creek Heron Rookery. To the east is Lake Terrell State Game Refuge and Hovander Park. To the west is the Strait of Georgia

b. Would the proposed project displace any existing recreational uses? If so, describe.

N/A: non-project

c. Proposed measures to reduce or control impacts on recreation, including recreation opportunities to be provided by the project or applicant, if any:

N/A: non-project

13 Historic and Cultural Preservation

a. Are there any buildings, structures, or sites, located on or near the site that are over 45 years old listed in or eligible for listing in national, state or local preservation registers located on or near the site? Yes ☐ No ☑
If so, specifically describe.

b. Are there any landmarks, features, or other evidence of Indian, historic use or occupation, this may include human burials or old cemeteries?
Yes ☑ No ☐
Are there any material evidence, artifacts, or areas of cultural importance on or near the site? Yes ☑ No ☐
Please list any professional studies conducted at the site to identify such resources.

The Cherry Point UGA is near Lummi Reservation and tribal lands. There are treaty fishing rights in the waters off Cherry Point, and the Corps of Eng. reported on the impacts of more piers, vessels- see Docs Incorporated by Ref, #4. This proposal is a non-project action and future archaeological review and study will occur for future project actions at the time of application.

c. Describe the methods used to assess the potential impacts to cultural and historic resources on or near the project site. Examples: Include consultation with tribes and the Department of Archeology and Historic Preservation, archaeological surveys, historic maps, GIS data, etc.

N/A: non-project

d. Proposed measures to avoid, minimize, or compensate for loss, changes to, and disturbance to resources. Please include plans for the above and any permits that may be required.

The new regulations would prohibit new piers in the district to minimize impacts and establish consistency with DNR CPAR regulations.

14 Transportation

a. Identify public streets and highways serving the site or affected geographic area and describe proposed access to the existing street system. Show on site plan, if any.

The Cherry Point UGA is on the coast, accessed from the east via Mountain View Road, Slater Road, and Grandview Road. Additional access is from Blaine Road, Kickerville Road, and Lake Terrell Road.

b. Is site or geographic area currently served by public transit?
Yes ☐ No ☑
If not, what is the approximate distance to the nearest transit stop?

Approximately 4 miles to the Whatcom Transit Authority bus stop on Mountain View Road for Route 27.

c. How many parking spaces would the completed project have? How many would the project eliminate?

N/A: non-project

d. Will the proposal require any new or improvements to existing roads, streets, pedestrian, bicycle or state transportation facilities, not including driveways? Yes ☐ No ☑
If so, generally describe (indicate whether public or private).

e. Will the project use (or occur in the immediate vicinity of)
☑ Water,
☑ Rail, or
☐ Air transportation?
If so, generally describe.

The Cherry Point UGA has rail and water access.

f. How many vehicular trips per day would be generated by the completed project or proposal? If known, indicate when peak volumes would occur and what percentage of the volume would be trucks (such as commercial and non-passenger vehicles). What data or transportation models were used to make these estimates?

N/A: non-project

g. Proposed measures to reduce or control transportation impacts, if any:
See additional information attached.

15 Public Services

a. Would the project result in an increased need for public services (for example: fire protection, police protection, health care, schools, other)?
Yes ☐ No ☑
If so, generally describe.

b. Proposed measures to reduce or control direct impacts on public services, if any.

The conditional use permit provisions and additional SEPA policies are intended to provide for project proposals and mitigation to address public facilities adequacy.

16 Utilities

a. Check utilities currently available at the site:

☑ Electricity,
☑ Water,
☑ Telephone,
☑ Septic system,
☑ Natural gas,
☑ Refuse service,
☑ Sanitary sewer,
☐ Other

b. Describe the utilities that are proposed for the project, the utility providing the service, and the general construction activities on the site or in the immediate vicinity which might be needed.

N/A: non-project

Signature

The above answers are true and complete to the best of my knowledge. I understand that the lead agency is relying on them to make its decision.

Signature: 

Cathy B. Halka, AICP

Date Submitted: August 29, 2019 **Resubmitted July 17, 2020**

FOR OFFICE USE ONLY
Reviewed by Whatcom County Planning & Development Services Staff



Staff Signature

07/21/2020

Date

C Supplemental Sheet for Non-project Actions

(It is not necessary to use this sheet for project actions)

Because these questions are very general, it may be helpful to read them in conjunction with the list of the elements of the environment. When answering these questions, be aware of the extent the proposal or the types of activities likely to result from the proposal, would affect the item at a greater intensity or at a faster rate than if the proposal were not implemented. Respond briefly and in general terms.

1 How would the proposal be likely to increase discharge to water; emissions to air; production, storage, or release of toxic or hazardous substances; or production of noise?

See additional information attached.

Proposed measures to avoid or reduce such increases are:

Reporting of emissions and mitigation above the baseline established at the time of permit is required. Local carbon offsets would be required or a fee in lieu of mitigation would be required which the County would use to provide local greenhouse gas mitigation projects.

2. How would the proposal be likely to affect plants, animals, fish, or marine life?

See additional information attached.

Proposed measures to protect or conserve plants, animals, fish, or marine life are:

In SEPA rules, analysis and mitigation of impacts to priority habitats and species and high biodiversity areas is required. Critical area and shoreline regulations would also apply.

3. How would the proposal be likely to deplete energy or natural resources?

See additional information attached.

Proposed measures to protect or conserve energy and natural resources are:

4. How would the proposal be likely to use or affect environmentally sensitive areas or areas designated (or eligible or under study) for governmental protection; such as parks, wilderness, wild and scenic rivers, threatened or endangered species habitat, historic or cultural sites, wetlands, floodplains, or prime farmlands?

   Both proposals would prohibit new "fossil fuel" refineries and transshipment facilities, and new docks/piers and require conditional use/major project permits for expansions of existing "fossil fuel" facilities, thereby limiting impacts on environmentally sensitive areas and creating consistency with DNR's CPAR Management Plan.

   Proposed measures to protect such resources or to avoid or reduce impacts are:

   In addition to the measures stated above, applicants would be required to demonstrate consistency with federal and state laws and permit requirements, such as consistency with the CPAR Management Plan, federal review of consistency with treaty rights, etc. before any site modifications or construction could occur.

5. How would the proposal be likely to affect land and shoreline use, including whether it would allow or encourage land or shoreline uses incompatible with existing plans?

   Both proposals would affect land and shoreline use by prohibiting new "fossil fuel" refineries and transshipment facilities, requiring conditional use/major project permits for expansions of existing "fossil fuel" facilities, and prohibiting new docks/piers. It would not allow or encourage uses incompatible with existing plans.

   Proposed measures to avoid or reduce shoreline and land use impacts are:

   See above.

6. How would the proposal be likely to increase demands on transportation or public services and utilities?

   The proposal would not increase such demands.

   Proposed measures to reduce or respond to such demand(s) are:

   The intent of the new regulations is to more completely assess projects to ensure they meet the compatibility criteria of the conditional use and major projects permit provisions including providing mitigation for transportation/public service impacts. In addition, insurance/financial assurance provisions offer protection from any disruption to public services as a result of a hazard created by facility operation or transport of materials.

7. Identify, if possible, whether the proposal may conflict with local, state, or federal laws or requirements for the protection of the environment.

   Applicants would be required to demonstrate consistency with federal and state laws and permit requirements aimed at protection of the environment.

ADDITIONAL INFORMATION, INCORPORATED BY REFERENCE

(See Page 3 of 20 - SEPA Environmental Checklist)

A. Background

11. Give brief, complete description of your proposal, including the proposed uses and the size of the project and site. *There are several questions later in this checklist that ask you to describe certain aspects of your proposal. You do not need to repeat those answers on this page.* (Lead agencies may modify this form to include additional specific information on project description.)

The Planning Commission and County Council have been considering a range of possible options to protect county residents and the environment from the impacts of refineries and other fossil fuel facilities in the Cherry Point Heavy Industrial District and other areas of the County. The alternatives have included options from a report to the Council prepared by Cascadia Law Group dated February 23, 2018 (attached by reference to this checklist), draft amendments considered by the County Council between June and August, 2019 forwarded to the Planning Commission by the County Council under Resolution 2019-037, comments received from the public, amendments to the County Council draft considered by the Planning Commission, and recommendations from Whatcom County Planning and Development Services.

1. **Major elements of the proposals forwarded by the County Council to the Planning Commission under Resolution 2019-037 included the following**:
    - **Comprehensive Plan amendments** that add language acknowledging that existing refineries provide significant employment and have produced and shipped fossil fuels for decades; adds language "to act conservatively on land use matters at Cherry Point to prevent further harm to habitat important to Cherry Point Herring stocks and Southern Resident Killer Whales"; adds new language directing the use of adopted SEPA policies to limit the negative impacts on public safety, transportation, the economy and environment from new fossil fuel facilities; amends policy 2CC-17 to provide that existing facilities may have limited expansions consistent with policies 2CC-3 and 2CC-11; adds a new policy 2CC-18 to treat renewable fuel facilities in a similar fashion to fossil fuel facilities; and amends policy 2WW-4 to add language regarding marine terminals at Cherry Point to provide consistency with the State Department of Natural Resource's Cherry Point Aquatic Reserve Management Plan.
    - **Land use code amendments** contained in draft under Resolution 2019-037 include the following major provisions: explicitly retains outright permitted use status for existing refineries at WCC Section 20.68.050; explicitly retains permitted use status for non-capacity increasing maintenance and safety purposes and limited accessory uses such as but not limited to office expansions and environmental improvements at WCC 20.68.802; requires a conditional use permit for capacity expansions of

existing refineries and fossil fuel transshipment facilities at WCC Sections 20.68.150 and 20.68.800; establishes criteria for conditional use permits for expansions of existing refineries and fossil fuel transshipment facilities including those at WCC 20.84.220; requires documentation of the anticipate sources, types and volumes of substances to be transferred in bulk at the facility, requires mitigation of transportation impacts consistent with WCC Chapters 20.78 and 16.24; requires mitigation of impacts to services including fire and emergency response capabilities and water supply and fire flow; demonstrated consistency with applicable state and federal requirements prior to site preparation or construction; greenhouse gas mitigation for permitted expansions if required by WCC 20.68.801 (only if there is a gap in mitigation under state, federal or regional regulations and processes); a demonstration that the proposal will retain living wage jobs or contribute to the Whatcom County economy; prohibits new fossil fuel refineries and transshipment facilities and associated piers, docks and wharves and coal-fired power plants in the Cherry Point Heavy Industrial District at WCC 20.68.204 through 206; at WCC 20.68.801, requires analysis of greenhouse gas emissions above baseline emissions for refinery or fuel transshipment facilities using state of the art models; local mitigation of greenhouse gas emissions is required only where mitigation has not been required under other regulatory mechanisms at the state, federal or regional level WCC 20.68.801(3)(C); provide that non-capacity maintenance, safety and environmental improvements to existing refineries and transshipment facilities are specifically identified as outright permitted uses at WCC 20.68.802 with examples not limited to accessory buildings, office space, parking lots, communications facilities, security buildings, storage buildings and other similar structures or activities; requires greenhouse gas mitigation for accessory improvements if required under the provisions of WCC 20.68.801; establishes a new “change of use” provision at WCC 20.74.110 to ensure that zoning and building code and transportation concurrency requirements are met; establishes a new provision at WCC 20.74.115 requiring a conditional use permit be obtained for conversion of renewable fuels facilities within the boundaries of an existing legal fossil fuel refinery and prohibits other changes of use of renewable fuel refineries and transshipment facilities to fossil fuel facilities; establishes new Major Project Permit provisions at WCC 20.88.100 requiring facilities to obtain all necessary federal and state authorizations for projects prior to issuance of site preparation or construction permits authorized under Major Project Permit procedures; establishes definitions for certain terms at WCC Chapter 20.97; at WCC 22.05.120, establishes new provisions specifying that performance bonds and other security to ensure compliance with the conditions, modifications and restrictions may be required in forms acceptable to the County Prosecuting Attorney; establishes at WCC 22.05.120 that decisions of the County Council on Type IV applications be based on the record established by the hearing examiner and be consistent with the County Code and other applicable regulations; and establishes an insurance requirement for all refinery and fuel transshipment facility expansions at WCC 22.05.125.

- **New State Environmental Policy Act provisions and procedures** are established in WCC Chapter 16.08 which include the following: at WCC 16.08.090, establishes a new "Worksheet for Fossil and Renewable Fuel Facilities" be provided to evaluate air and climate impacts of fossil and renewable fuel facility applications to supplement the required SEPA Checklist pursuant to WAC 197-11-906(1)(c); at WCC 16.08.160E, adds provisions allowing the county to defer to other state, federal and regional agencies for SEPA mitigation unless there is an unanticipated gap making such mitigation inadequate; at WCC 16.08.160F1, establishes new air quality and climate SEPA policies recognizing the impacts of climate change and air pollution and requiring analysis of greenhouse gas emissions and providing authority for mitigation of projects pursuant to the provisions contained in SEPA; at WCC 16.08.160F2, establishes new SEPA policies related to plants and animals and stating the County's policy to minimize or prevent loss of fish and wildlife habitat that have substantial ecological, educational and economic value and recognizing the importance of consistency with federal and state laws regarding water quality, endangered species act requirements and tribal treaty rights.

2. **Major Elements of Planning Commission Draft:**
   - **Recommendations from the Planning Commission regarding proposed Comprehensive Plan Amendments** include amended language in Policy 2CC-17 that reflect the Planning Commission's desire that greenhouse gas analysis and mitigation requirements reside in the SEPA process rather than in the land use code and to amend the policy to "Allow existing operations or maintenance of existing fossil-fuel related facilities operating as of 2020"; addition of a new Comprehensive Plan Policy 2CC-18 that states that the intent of the County is to allow the on-going operation, maintenance and repair of existing facilities, modifications designed to comply with adoption and implementation of new product standards and fuel standards, operational safety and site safety improvements environmental improvements, and regulatory compliance projects; and replacement of Policy 2CC-18 from the County Council draft to reflect the intention of the Planning Commission that renewable fuel refineries and transshipment facilities be outright permitted uses rather than conditional uses.
   - **Planning Commission Recommendations for Modifications to land use code provisions proposed by the County Council in Resolution 2019-037 include**: recommend removing language at WCC 20.66.204 referring to existing refineries as none exist in the Light Impact Industrial Zone; remove language at WCC 20.66.054(3) and replace with expanded permitted use provisions at WCC 20.68.068 to reflect public comments to make it clearer what types of accessory uses, maintenance, environmental improvements, safety improvements and other uses may be modified without requiring conditional use approval; recommend adding renewable fuel refineries and renewable fuel transshipment facilities to the permitted use list at WCC 20.68.070; recommend adding language at WCC 20.68.071 providing that expansions of existing renewable fuel refineries and renewable fuel transshipment

facilities should be treated as permitted uses not requiring conditional use permit approval; recommend modifications at WCC 20.68.153 to conditional use permit requirements for expansion of existing fossil fuel refineries and transshipment facilities to set a threshold for requiring a conditional use permit only for cumulative expansions increasing distillation capacity or transshipment capacity by 10,000 barrels (or 420,000 gallons) per day or increases fossil fuel tank storage capacity by more than 200,000 barrels (or 8,400,000 gallons) for the transshipment of fossil fuels outside of Whatcom County without value added processing; recommendation at WCC 20.68.153 that the baseline for determining the cumulative increases triggering a conditional use permit requirement be reset if a conditional use permit has been obtained; recommend removal of language in the conditional use permit criteria contained at WCC 20.68.153(3) that the "sources" of raw materials be identified; recommend that the conditional use permit criteria at WCC 20.68.153(7) be removed as the Commission considered the criteria at 20.68.153(9) as adequate to address federal and state permitting requirements; recommend removing the criteria at WCC 20.68.153(11) to demonstrate retention or creation of living wage jobs; recommend removing provisions at WCC 20.68.159 requiring a conditional use permit for new renewable fuel refineries or transshipment facilities; recommend at WCC 20.68.204 that language regarding "primary manufacturing of products thereof" be removed as fossil fuel refineries are a defined term at WCC 20.97.160.4 and the language is deemed unnecessary; recommend that the zoning code revisions at WCC 20.68.800 regarding quantification and mitigation of greenhouse gases be removed and that greenhouse gas review and mitigation be conducted as part of the SEPA analysis for projects instead; recommend removing the provisions at WCC 20.68.802 as those provisions have been recommended to be contained in the permitted use section of the Heavy Impact Industrial Zoning District for consistency with other sections of the Code and to reflect public comments; recommend adding language at WCC 20.74.055 to reflect that prohibited uses in the Cherry Point Industrial District should be consistent with both the provisions of the Light Industrial District and the Heavy Industrial District; recommend removal of "change of use" provisions at WCC 20.74.110 from the County Council draft; recommend modifications to language proposed at WCC 20.88.210 and 215 to refer "major project permit" rather than "master plan" to reflect that the provisions of those sections should apply to the entire permit rather than to just the master plan; recommend removal of the definition of "Facility Emissions" from WCC 20.97.124.1 as the Planning Commission has recommended the greenhouse gas provisions be moved to the SEPA requirements and the term would no longer be used in the Zoning Code; recommend expanding the proposed definition of "Fossil Fuels" at WCC 20.97.160.2 to include "crude oil" to be clearer and consistent with other sections of the amendments; recommend adding "or Renewable" to WCC 20.97.160.3 to be consistent with the title of the section; recommends that the definition of "Fossil Fuel Refinery Capacity" at WCC 20.97.160.4 be removed as unnecessary; recommends deleting the definition of "Living Wage" from the definitions at WCC 20.97.202 to be consistent with their recommendation that living

wage job retention and creation be removed from conditional use criteria; recommend adding a new definition of "Maximum Atmospheric Crude Distillation Capacity" at WCC 20.97.230 to be consistent with the Commission's recommendation at WCC 20.68.153; recommends that the definition of "Renewable diesel" be modified to exclude the date of the applicable federal regulation in recognition of the fact that federal regulations may be revised over time; at WCC 20.97.425.1, recommend that the definition of "Small Fossil or Renewable Fuel Storage and Distribution Facilities" include "buildings" in addition to equipment; and recommend that WCC 22.05.125 be simplified to merely require permit applicants provide proof of insurance naming Whatcom County as an additional insured

- **Planning Commission Recommendations for Modifications to State Environmental Policy Act provisions** include the following: changes to the language in the SEPA environmental checklist requirements at WCC 16.08.090 to reflect the process for development of the required supplemental SEPA worksheet for evaluating greenhouse gas emissions for fossil and renewable fuel facilities to include a commitment that the SEPA Responsible Official will consult with the Planning Commission when preparing or updating the worksheet; amendments to the language at WCC 16.08.160E to more closely align with language in the state SEPA Rules regarding consultation with and deferral to other agencies' SEPA mitigation decisions; language changes at WCC 16.08.160F to reflect that the Washington Department of Ecology has jurisdiction over PSD permits and to change "criteria pollutants" to just "air pollutants"; changes to the language in WCC 16.08.160F(1)(b) to reflect the Planning Commission's desire to place requirements for greenhouse gas analysis in the SEPA provisions and remove them from land use code requirements;

(See Page 5 of 20 - SEPA Environmental Checklist)

B. Environmental Elements

2 Air.

c. Proposed measures to reduce or control emissions or other impacts to air, if any:

One intent of the code revisions is to ensure that greenhouse gas and air emissions have been mitigated through state, federal or regional greenhouse gas mitigation regulations of other agencies such as the Department of Ecology or the Northwest Clean Air Agency or by Whatcom County. These federal, state, and regional agencies currently have jurisdiction to regulate air emissions through permitting programs and other authorities granted under the Washington Clean Air Act at RCW 70.94. The County Council draft of the regulations includes both SEPA policies and Zoning Code provisions to backstop the authorities of state, federal and regional air regulations but provides for deference to those agencies where they have provided comprehensive mitigation. The Planning Commission draft recommendations are to take the greenhouse gas quantification and mitigation provisions from the Council draft out of the Zoning Code and rely on the SEPA review provisions. Both express the intent that the County should defer to other agencies with expertise where emissions have been effectively regulated

and mitigated. However, the new provisions both provide mitigation authority for the County should there be a significant gap in the regulation and mitigation at the other levels of government.

Some commenters have suggested that the effect of the new regulations on existing refineries would create greenhouse gas emissions through "leakage". That is, they speculate that if the regulations prevent the current refineries and associated transshipment facilities from meeting demand for fuels that the fuels would be produced elsewhere by refineries that are not as modern or efficient as the existing Cherry Point refineries. This is highly speculative and is not the intent of the County with the proposed regulations. The proposed regulations explicitly recognize the existing refineries as outright permitted uses and provide for expansions to occur through a conditional use permit review and approval process. In addition, both the County Council draft and Planning Commission recommendations include provisions allowing outright permitted use status for safety, routine maintenance and other accessory improvements to continue. The Planning Commission recommendation includes a threshold for expansions of both existing refinery and transshipment facilities while the County Council draft merely requires a discretionary approval with mitigation prior to facility expansions beyond safety, routine maintenance and other accessory improvements. The creation of "leakage" emissions is not a probable consequence of the proposed action and is a remote and speculative consequence given that existing refineries continue as outright permitted uses, are allowed to do maintenance and safety and accessory improvements and may expand in the future either under the threshold proposed by the Planning Commission or if they meet proposed conditional use approval criteria.

(See Page 10 of 20 - SEPA Environmental Checklist)

B. Environmental Elements
5. Animals
d. Proposed measures to preserve or enhance wildlife, if any:

The revised code and SEPA proposals contain provisions to be consistent with the Washington State Department of Natural Resources' Cherry Point Aquatic Reserve Management Plan. The State Department of Natural Resources has also, by Order of the State Lands Commissioner, prohibited issuance of aquatic land leases for any new docks or piers outside of the footprint of existing structures. The new plan and code provisions therefore provide that new docks and piers in the Cherry Point Heavy Industrial District are prohibited uses. The revisions also require that state and federal regulatory requirements be met prior to issuance of site clearing or construction permit issuance. This is to ensure that project applicants demonstrate that they have received federal and state authorizations for consistency with federal and state permitting requirements. These include evaluations by those agencies regarding Endangered Species Act for listed species in the vicinity of Cherry Point, consistency with enforceable treaty fishing rights, the Magnuson Amendment regarding transport of fossil fuel shipments in Puget Sound and other regulatory requirements. Additional SEPA policies and code provisions regarding

protection of habitat and species should ensure environmental protection of animals is addressed for future land use activities authorized once the amendments are adopted.

(See Page 10 of 20 - SEPA Environmental Checklist)

B. Environmental Elements
6. Energy and Natural Resources
a. What kinds of energy (electric, natural gas, oil, wood stove, solar) will be used to meet the completed project's energy needs? Describe whether it will be used for heating, manufacturing, etc.

While this is a non-project action, the new provisions are directed, at least in part, at the existing and future of fuel production and transshipment from the Cherry Point Heavy Industrial Area. The revisions are intended to allow the existing fossil fuel refining and transshipment facilities to continue as outright permitted uses and to allow expansions of those facilities to occur through obtaining conditional use permit review and SEPA review. There are also a number of provisions allowing safety, maintenance and accessory uses to continue for existing facilities as outright permitted uses. The County Council and Planning Commission have considered a range of alternative approaches to the new regulations including the alternatives discussed in the attached report from Cascadia Law Group and have considered a range of comments on alternative treatments under the land use code received in public comments.

The County Council draft allows existing refinery and transshipment operations to continue as outright permitted uses but require conditional use permit review and approval for expansions beyond pre-existing production levels. The Planning Commission draft recommends an alternative under which the existing facilities would remain outright permitted uses and development would be allowed under a threshold for increases in maximum atmospheric distillation capacity of fossil fuels by more than 10,000 barrels per day (or 420,000 gallons per day). A new provision is also recommended by the Planning Commission to allow increases in tank capacity of by less than 200,000 barrels (8,400,000 gallons) without value added processing to be permitted outright where the County Council draft would require conditional use permit approval for all tank capacity expansions. Coal fired power plants are also now proposed to be a prohibited use as are additional piers and docks to be consistent with recent decisions of the Washington Department of Natural Resources to prohibit additional aquatic land leases in the Cherry Point Aquatic Reserve.

The County Council draft proposes that new renewable fuel refineries and transshipment facilities obtain a conditional use permit while the Planning Commission recommends that such facilities be outright permitted uses at Cherry Point. While both would allow new renewable fuel facilities to be established, the County Council draft would require discretionary review of new facilities under the County's conditional use permit processes. Under the existing Zoning Code, a Major Project Permit is required for either a permitted use or conditional use, if the criteria of WCC 20.88.120 are met (neither alternative would change this). Both alternatives

would continue to receive reviews under SEPA as specific project proposals come before the county for permit review.

Under the most stringent of the alternatives, there are no probable significant adverse effects on energy supplies as the existing refineries are allowed to continue as outright permitted uses and may continue to expand with a discretionary review under the county's conditional use permit process. Renewable fuel facilities would be allowed as outright permitted uses under the Planning Commission recommendation but would also be allowed through the conditional use permit process under the County Council's draft proposal. Quantification and mitigation of greenhouse gas impacts from specific energy production projects may be required under SEPA review under either the Planning Commission or County Council drafts when mitigation is not accomplished under federal, state or regional reviews by entities such as the Washington Department of Ecology or the Northwest Clean Air Agency. The County Council draft would require quantification and mitigation of greenhouse gases under the zoning code provisions as well as SEPA provisions.

(See Page 10 of 20 - SEPA Environmental Checklist)

B. Environmental Elements
6. Energy and Natural Resources
c. What kinds of energy conservation features are included in the plans of this proposal? List other proposed measures to reduce or control energy impacts, if any:

New zoning code provisions in the Council proposal require mitigation of greenhouse gas impacts from facilities that could be allowed through the conditional use/major project permit processes. The Planning Commission draft recommends removing the greenhouse gas quantification and mitigation provisions from the zoning code and rely on the SEPA review provisions. Both express the intent that the County should defer to other agencies with expertise where emissions have been effectively regulated and mitigated. However, the new provisions both provide mitigation authority for the County should there be a significant gap in the regulation and mitigation at the other levels of government.

(See Page 10 of 20 - SEPA Environmental Checklist)

B. Environmental Elements

7. Environmental Health

a. Are there any environmental health hazards, including exposure to toxic chemicals, risk of fire and explosion, spill, or hazardous waste that could occur as a result of this proposal? If so, describe:

A principal intention of the County Council's proposed revisions is to protect human and environmental health by quantifying and evaluating the impacts of expansions of existing fossil fuel refining and transshipment facilities and prohibiting the establishment of entirely new fossil fuel refining and transshipment facilities. New fossil fuel refining and transshipment facilities create the potential for air and climate pollution, risks of fire, explosion and hazardous substance releases and the County Council has determined under its police power that the County has taken its fair share of the risks of such facilities. The Council proposal allows the existing facilities to expand with appropriate conditional use review and environmental mitigation. The lifecycle greenhouse gas emissions of these facilities and the products shipped to, processed and shipped out of the facilities are a significant component of the State of Washington and Whatcom County's greenhouse gas emissions. Emissions from transportation produce between 40 and 50 percent of the total greenhouse gas emissions in the state's inventory and the existing facilities are two of the four largest refineries in the state. The land use code and SEPA provisions in the proposal require the quantification and mitigation of the impacts of facility expansions but allow the facilities to continue as outright permitted uses and expand under a discretionary review process under the County Council option. The County Council has expressed its intention in the whereas clauses of Resolution 2019-037 that existing facilities be allowed to continue and prosper but that expansions of those facilities be required to demonstrate that the impacts have been quantified and addressed by state, federal or regional regulations. And if that can't be demonstrated, that the impacts be mitigated through the gap filling provisions of SEPA and the land use code. It is anticipated that for most facility expansions the existing federal state and regional regulations will be adequate. The County Council has also expressed through the Resolution that the county has accepted its fair share of fossil fuel refineries and fossil fuel transshipment facilities and that no completely new facilities be permitted at Cherry Point. In addition, the Council has proposed that no new coal fired power plants be established at Cherry Point. The County Council is exercising its police powers to protect human and environmental health by limiting the impacts on the County to those from existing facilities and to make sure that expansions of the existing facilities and permitting processes for establishment of new renewable fuel facilities demonstrate compatibility and mitigation of impacts through the discretionary processes available under SEPA and the conditional use permit review process. As discussed above, the Planning Commission recommendations would establish thresholds for expansion of existing fossil fuel refining facilities under which no conditional use permit would be required.

(See Page 13 of 20 - SEPA Environmental Checklist)
B. Environmental Elements
8. Land and Shoreline Use
l. Proposed measures to ensure the proposal is compatible with existing and projected land uses and plans, if any:

New code provisions will require conditional use/major project permits for expansions of refinery capacity and storage. Permit review will address compatibility and impacts, and consistency with plans. In contrast to the Council proposal, the Planning Commission proposal allows for the expansion of existing renewable fuel refineries and renewable fuel transshipment facilities and new renewable fuel refineries and renewable fuel transshipment facilities as permitted uses not requiring conditional use permit approval, except that new piers, docks, or wharves are prohibited in the Cherry Point Industrial District (see proposed WCC 20.68.070).

(See Page 17 of 20 - SEPA Environmental Checklist)

B. Environmental Elements
14. Transportation
g. Proposed measures to reduce or control transportation impacts, if any:

The proposed code amendments require consideration of transportation impacts and mitigation when individual projects are proposed. SEPA review and mitigation of specific project transportation impacts may be required and financial assurance (e.g. insurance) would be required under the new land use code provisions. The new provisions will also limit potential impacts from marine transportation on Cherry Point herring stocks, endangered salmon species and the Southern Resident Orca by prohibiting additional docks and piers to be consistent with the State Department of Natural Resources Cherry Point Aquatic Reserve Management Plan and recent decisions to prohibit further aquatic lands leases for such facilities.

(See Page 19 of 20 - SEPA Environmental Checklist)

C. Supplemental Sheet for Non-Project Actions
1. How would the proposal be likely to increase discharge to water; emissions to air; production, storage, or release of toxic or hazardous substances; or production of noise.

The Council's proposed zoning code amendments require reporting of emissions and mitigation above the baseline established at the time of permit. Local carbon offsets would be required or a fee in lieu of mitigation would be required which the County would use to provide local greenhouse gas mitigation projects. The County Council draft of the regulations includes both

SEPA policies and zoning code provisions to backstop the authorities of state, federal and regional air regulations but provides for deference to those agencies where they have provided comprehensive mitigation. The Planning Commission draft recommends removing the greenhouse gas quantification and mitigation provisions from the zoning code and rely on the SEPA review provisions. Both express the intent that the County should defer to other agencies with expertise where emissions have been effectively regulated and mitigated. However, the new provisions both provide mitigation authority for the County should there be a significant gap in the regulation and mitigation at the other levels of government.

(See Page 19 of 20 - SEPA Environmental Checklist)

C. Supplemental Sheet for Non-Project Actions
2. How would the proposal be likely to affect plants, animals, fish, or marine life?

The proposed amendments would prohibit new fossil fuel refineries, new docks and piers and coal fired power plants within the Cherry Point Heavy Industrial Zone. This would eliminate the potential impacts on plants, animals, fish and marine life from such facilities. The amendments may also require the quantification and mitigation of air, climate and other impacts under SEPA and establish new substantive policies and procedures for ensuring impacts have been quantified for expansions of existing facilities. The proposal also includes language requiring a review of consistency with federal, state and regional permitting requirements to ensure that environmental impacts have been addressed under those processes. Additional SEPA policies are added to ensure that gaps in mitigation are filled if County officials determine that is necessary during individual project permitting reviews.

(See Page 19 of 20 - SEPA Environmental Checklist)

C. Supplemental Sheet for Non-Project Actions
3. How would the proposal be likely to deplete energy or natural resources?

The proposed amendments would allow existing refineries to continue in operation and therefore there would be some continuing depletion of crude oil resources worldwide. Because the proposed amendments would allow both existing refineries to continue in operation and to expand under conditional use or Major Project Permit discretionary reviews it is not expected there would be any reduction in the ability to meet regional fuel production demands.

REFERENCE DOCUMENTS, INCORPORATED BY REFERENCE

Cherry Point Amendments SEPA Checklist – Supporting Documents Incorporated by Reference

1. Commissioner's Order Dated 1/3/2017 Regarding Cherry Point Aquatic Reserve - https://www.dnr.wa.gov/publications/aqr_resv_cp_cplorder_201701.pdf?cn6va
2. Cherry Point Aquatic Reserve Map - https://www.dnr.wa.gov/sites/default/files/publications/aqr_resv_cp_ownership_map_20161205.pdf?cn6va
3. DNR's Cherry Point Environmental Aquatic Reserve Management Plan - https://www.dnr.wa.gov/publications/aqr_resv_cp_mgmtplan_amend_201702.pdf?cn6va
4. U.S. Army Corps of Engineers Memorandum For Record dated May 9, 2016 finding more than a de minimis impact on treaty fishing rights for Gateway Pacific Terminal - http://www.nws.usace.army.mil/Portals/27/docs/regulatory/NewsUpdates/160509MFRUADeMinimisDetermination.pdf
5. Northwest Sea Farms v. U.S. Army Corps of Engineers, 931 F. Supp 1515 (W.D. Wash. 1996), holding that more than a de minimis impact on treaty fishing rights precludes issuance of a Corps permit.
   https://scholar.google.com/scholar_case?case=14211548503198922436&q=Northwest+Seafarms+v.+U.S.+Army+Corps+of+Engineers&hl=en&as_sdt=6,48&as_vis=1
6. 2015 Ecology Vessel Traffic Risk Assessment;
   https://fortress.wa.gov/ecy/publications/documents/1708009.pdf
7. February 12, 2018 Cascadia Law Group Report to the County Council:
   http://www.co.whatcom.wa.us/DocumentCenter/View/32762/ab2018-076?bidId=
8. County Council Draft Amendments Referred to the County Planning Commission under Resolution 2019-037:
   http://documents.whatcomcounty.us/weblink8/0/doc/4451795/Page1.aspx?searchid=d1af0c6d-d6bf-42fa-be07-fcc87960b08d
9. Planning Commission's Final Recommendations for Amendments to County Council Dated July 10, 2020:
   - Exhibit A: https://www.whatcomcounty.us/DocumentCenter/View/48821/12a-Exhibit-A-Comp-Plan-Amendments---July-10-2020
   - Exhibits B – D: https://www.whatcomcounty.us/DocumentCenter/View/48822/12b-Exhibits-B---D-Code--Amendments---July-10-2020

Proposed Cherry Point Amendments
Requested Clarifications and Other Items from Councilmembers
Updated 9.22.2020

From 9.15.2020

Definition of inter-refinery
Clarification on what triggers CUP requirements

From Councilmember Donovan

Additional findings of fact
Additional discussion regarding change of use
Differential treatment of renewal and non-renewal fuels
Discussion/revision of greenhouse gas mitigation language
Inter-refinery matter related to transshipment exemption

UPDATED

Councilmember Browne's Cherry point comments. Updated October 10 to provide background for each comment, see boxes below.

Throughout this process my legislative focus has focused on areas where I believe the County Government has clear legitimate authority and responsibility related to health, public safety, and transportation:

Transportation

We have a responsibility to advocate for our community not to permit facilities that will result rail traffic beyond the capacity of our rail/road intersections capacity to accommodate other business uses, residents, and emergency response needs. If industry wants to increase rail capacity beyond what our crossings can accommodate, then industry, not local taxpayers, should shoulder the cost.

Climate Change

Climate change is real and is already affecting the health and welfare of our community, including the economic interests of our local fishing and farming businesses. Global warming is caused in large part by increased CO2 emissions, as refineries are emitting large amounts of CO2 as part of their processing, any increase of local emissions should be offset by local mitigation.

Insurance

The oil-by-rail transportation system has demonstrated an inability to operate accident free and failures have resulted in significant loss of life and economic damage to communities including businesses. Therefore, it is our responsibility to advocate that if an accident occurs within the borders of Whatcom County our taxpayers will not be left to bear the cost.

Comments

16.08.090

Line 16

Retain consultation with "*Climate Impacts Advisory Group and its members*".

Add "*with final approval of county council*"

Explanation: The community is fortunate to have very well qualified members volunteering their time to serve on the Climate Impacts Advisory Group and we would be well served to have their ongoing contribution to the SEPA checklist. Final approval of which should be subject to County Council approval.

Green House Gas & SEPA

Retain Green House language but have it sunset once equivalent language is provided for in State law

Explanation: Until the State law is established the County's greenhouse gas language should apply. If and when the State regulations are enacted the County language should sunset.

16.08.160

Line 164

Delete "*that create specific adverse environmental*"

Explanation: A ton of CO2 produced in Whatcom County will over time be dispersed around the world, the specific adverse environmental impact to Whatcom County of the amount that remains in Whatcom County will be small. However, the cumulative sources of all greenhouse gas from emissions around the world is having a significant impact to Whatcom County as demonstrated by increased sea water acidity, reduced snow pack and longer drier summers. We should avoid any language that could suggest mitigation of greenhouse gas emissions should be limited to only that portion of GHG emissions produced in Whatcom that remains to have a "specific adverse environmental" impact.

20.68.150

Line 551

.153 Expansion of existing legal Fossil or renewable Fuel or expansion of existing legal Fossil or renewable Fuel Transshipment Facilities. For purposes of this section, an expansion is any Fossil Fuel Refinery and/or Fossil Fuel Transshipment Facility development (including otherwise permitted or accessory uses), vested after the effective date of this ordinance, that meets any one of the following thresholds:

A. Cumulatively increases its maximum atmospheric crude distillation capacity of fossil fuels by more than 10,000 barrels (or 420,000 gallons) per day based upon an evaluation of physical equipment limitations conducted by a licensed professional engineer; or

B. Cumulatively increases the maximum transshipment capacity of the facility by more than 10,000 barrels (or 420,000 gallons) per day; or

C. Cumulatively increases the maximum ~~transshipment~~ fossil fuel storage capacity of ~~unrefined fossil fuels from~~ the facility by more than 10,000 barrels (or 420,000 gallons) ~~per day~~.

If a conditional use permit is obtained, the baseline for determining the cumulative increases is reset.

Explanation: The proposed language allows industry the flexibility to increase it's refining and transshipment capacity by up to 9,999 barrels as an outright permitted use. However, as proposed it would allow for unlimited permitted increases in the number of barrels of crude oil storage without a conditional use permit provided it:

1. Does not increase in refining capacity at the time it is permitted. As storage capacity can be increased without the need to increase refining capacity this would not be difficult.

2. Does not increase transshipment capacity at the time it is permitted. As storage capacity can be increased without increasing transshipment facility at the time this would also not be difficult

However, once built these storage tanks could later be repurposed to expand either refining or transshipment outside of the conditional use process which is contrary to the intent of the language.

As industry has proposed an increase in refining or transshipment capacity of 10,000 barrels as a reasonable threshold for a Conditional Use permit related to refining or transshipment it should logically apply to increases in fossil fuel storage capacity as well.

Line 598

Retain (10) Minimization of greenhouse gas emissions and inclusion of local carbon offset mitigation projects; and

Explanation: Until the State law is established the County's greenhouse gas language should apply. If and when the State regulations are enacted the County language should sunset.

20.68.200 Prohibited uses.

Line 708

.205. New Fossil Fuel Transshipment Facilities; provided that, the following uses of facilities are not prohibited: (i) inter-refinery shipments of refined petroleum products, (ii) transferring petroleum products during emergency scenarios where contingencies require petroleum products to be moved, and (iii) necessary petroleum product transfers during turn-arounds or maintenance periods., including bulk storage or transfer facilities for fossil fuels [XXX effective date].

Explanation: As proposed the amendments to WCC 20.68.205 would allow any previously permitted, currently existing, Fossil Fuel Transshipment Facilities (including storage tanks accessory to existing Fossil Fuel Refineries) to be converted and used for "inter-refinery shipments" of fossil fuels (including crude oil) without further permitting.

As the ideal destination for all crude oil located in a "storage tank" is a "refinery" it seems logical the ability to build an unrestricted amount of storage capacity would facilitate increasing shipments of crude oil-by-rail which in turn will lead impacts to the rest of the community.

While it is reasonable and normal to permit the refineries to store and transship refined products as a part of their normal operations, the community should retain the right to require a Conditional Use permit prior to allowing any substantive increase in inter-refinery shipments of crude oil-by-rail or oil-by-sea because these could result in significant new risks to the health, safety and public transportation infrastructure within the community.

.206 …

.207 …

.208. New Unrefined Fossil Fuel Transshipment Facilities

Explanation: New Unrefined Fossil Fuel Transshipment Facilities should be prohibited, as the risks associated with increasing the volume of oil-by-rail to support such a facility is greater than the benefit it brings the community.

20.68.800

Line 830

.801 Environmental Review and Greenhouse Gas Mitigation

Retain Green House language but have it sunset once equivalent language is provided for in State law

Retain local mitigation requirement after state law is updated

Explanation: Until the State law is established the County's greenhouse gas language should apply. If and when the State regulations are enacted the County language should sunset. Any mitigation should be done locally

20.74.110 Change of Use

Line 996

Retain

A change of use occurs when the occupancy of a building or a site use changes from one use to another in whole or in part. A change of use permit is required to document a change of use, even where no alterations are planned or required by the code. This shall be processed as a Type I permit in Chapter 22.05 WCC. The new use shall ensure:

(1) Applicable building and construction codes are met per Title 15;

(2) Consistency with the requirements of the CP Industrial District, Chapter 20.74, and base zone; and

(3) Transportation concurrency requirements are met per Chapter 20.78.

Explanation: The community should retain the right to require a Conditional Use permit prior to allowing any substantive change of use that could increase in crude oil-by-rail or oil-by-sea traffic because these could result in significant new risks to the health, safety and public transportation infrastructure within the community.

20.88.100 Major project permits.

.110 All major developments shall, prior to any construction, obtain 1030 a major project permit.
.120 A major project permit will be required for mitigation banks proposed in accordance with the provisions of Chapter 16.16 WCC and for any proposed development that meets any two of the following conditions:

- Cost (estimated construction cost exclusive of land value) $5,000,000
- Size Retail 75,000 square feet office or industrial (gross leasable floor space) 200,000 square feet
- Residential 300 dwelling units
- motel/hotel 200 units
- Number of Employees 250
- SEPA Review An EIS is required

- Increases the maximum cumulative fossil fuels transshipment capacity by more than 10,000 barrels per day
- Increases the maximum cumulative storage capacity of fossil fuels by more than 10,000 barrels.

Explanation: As industry has proposed an increase in refining or transshipment capacity of 10,000 barrels as a reasonable threshold for a Conditional Use permit related to refining or transshipment it should logically apply to the "*any two of the following conditions*" threshold test for a Major project permit as well.

20.97.124.1 Facility Emissions.

Retain

Explanation: Until the State law is established the County's greenhouse gas language should apply. If and when the State regulations are enacted the County language should sunset.

20.97.160.5 Fossil-Fuel Refinery Capacity.

Retain

Explanation: Until the State law is established the County's greenhouse gas language should apply. If and when the State regulations are enacted the County language should sunset.

22.05.125 Proof of insurance for hazards created in the County

Retain for further discussion

Need to establish who responsible party is for all scenarios. If it's not clear who will pay to clean up and compensate it likely means the community will have to

Rail engine failure – likely BNSF

Rail employee negligence – likely BNSF

Rail track failure – likely BNSF

Leased rail car failure – often Third Party rail car leasing companies

Inside refinery fence line - likely Refinery

- BNSF - likely has adequate assets/insurance to compensate
- Refinery - likely has adequate assets/insurance to compensate
- Third Parties – multiple companies, assets/insurance to compensate may be zero. If so the Refinery should provide guarantee to cover any uncovered liability because they have control over the choice of provider

The County has an obligation to ensure the potentially responsible parties are identified in all possible scenarios that could result in significant loss of life, personal injury, environmental, economic and property damage at a level large enough to require our Emergency Operations Center to respond. County residents have the right to expect all potentially responsible parties related to an oil-by-rail disaster to have the financial capacity to provide adequate compensation in the event of a catastrophe.

The County has no say, knowledge or oversight as to whether the third parties used to transport materials by rail have adequate insurance or assets in the event of a catastrophe. The refineries have control over the means of transportation and the carriers they select to use to ship product in and out of their facilities. It is therefore only reasonable to require the refineries to provide corporate guarantees to make up any shortfall in the event there is an accident that is beyond any third party's capacity to pay for.

As proposed section 22.05.125 allows for the refineries to provide a "*parent company corporate guarantee*" in lieu of an additional insurance policy. This option will place no additional financial burden on the refineries unless the third parties they use are negligent and held responsible for an accident they have inadequate insurance to cover the damage.

If the transportation of oil-by-rail continues to operate without incident within the county there will be no additional cost to refineries.

If however the refineries are unwilling to assume this liability, other businesses, citizens, and taxpayers within Whatcom County will by definition be asked to fund any shortfall on behalf of the refineries.

From:	Dana Brown-Davis
To:	"Barry Buchanan (BBuchana@co.whatcom.wa.us)" (BBuchana@co.whatcom.wa.us); Ben Elenbaas; Carol Frazey; Kathy Kershner; Rud Browne; Todd Donovan; Tyler Byrd
Subject:	Cherry Point Amendments - PDS Issues for Industry/Environmental Work Group
Date:	Monday, October 05, 2020 3:44:00 PM

I just saw that Matt's email did not go to you all, so forwarding to you.

I will send a separate email with proposed dates for a work session.

Dana

From: Matt Aamot
Sent: Wednesday, September 30, 2020 2:27 PM
To: Dana Brown-Davis <DBrown@co.whatcom.wa.us>
Cc: Mark Personius <MPersoni@co.whatcom.wa.us>; Nick Smith <NSmith@co.whatcom.wa.us>
Subject: Cherry Point Amendments - PDS Issues for Industry/Environmental Work Group

Hi Dana:

PDS raised three issues @ Council Committee of the Whole yesterday. Below, we set forth in more detail the issues we would like the Industry/Environmental Work Group to consider:

- Clarify Definition of Fossil Fuel Transshipment Facilities - Are the existing rail and pier facilities associated with the refineries considered "Fossil Fuel Transshipment Facilities" under proposed WCC 20.97.160.3? If a refinery takes in crude oil, refines it on-site, and ships out refined product, are the related shipping facilities "Transshipment Facilities" under the proposed code? Or are transshipment facilities limited to facilities that take in fossil fuels (e.g. crude oil, propane, butane, etc.) and ship them out in essentially the same form?

- Definition of Facility Emissions – The Planning Commission moved the originally proposed definition of "Facility Emissions" to SEPA code and modified it (proposed WCC 16.08.175(C)). If Council restores the original definition of "Facility Emissions" in the Zoning Code (WCC 20.97.124.1), as proposed by a councilmember, there will be two different definitions.

- Change of Use – A councilmember is proposing to restore the "Change of Use" provisions (proposed WCC 20.74.110). We would ask the Work Group to consider:

    - To what extent will the County regulate different liquids or

substances that are shipped in, stored in tanks, processed on site, and/or shipped out under the change of use provisions? What constitutes a change of use? If 5%, 10%, 25%, 50%, or some other percentage of the liquids or substances is changed?

- How these provisions fit with the regular zoning scheme of permitted uses, conditional uses, and prohibited uses. For example, proposed WCC 20.74.110 requires a Type I change of use permit application. If a use is listed as a conditional use (Type III application), would the applicant have to obtain both permits? What if a Type I permit application, such as a building permit, is already required? Does the proponent also need to submit a Type I change of use application?

Matt

Link to Cherry Point Public Comments

Cherry Point Amendments Joint-Stakeholder Revisions

Requesting consideration by Whatcom County Council on October 20th, 2020, authorized representatives of the following parties have agreed that our respective interests would be served by revising the Planning Commission's Aug 13th draft of Cherry Point Amendments as shown below:

RE Sources, Stand, Washington Environmental Council

bp, Phillips 66, Petrogas

Laborers International Union of North America (LiUNA)- local 292

These revisions aim to address facility use changes that could be identified as conditional uses or prohibited uses. In the Aug 13th draft code amendments, the definition of the term "Change of Use" in WCC 20.97.052.1 does not meaningfully align with the term's apparent purpose in the two clauses where it appears. We are proposing to remove the term from these code amendments, and address its purpose through an alternative approach. Our collective request for these revisions to the draft amendments should not be construed as support for adopting the amendments into county code, nor does it indicate the full extent of revisions that respective parties would like to see.

Key:

Council-proposed amendments
Planning Commission-proposed revisions
Stakeholder-proposed additions and ~~deletions~~
Unconfirmed edits for consideration
Current unamended Whatcom County Code
Commentary or explanation

Additions:

20.68.050 Permitted Uses [Heavy Impact Industrial District]

20.68.068 Existing Fossil Fuel Refineries, Fossil Fuel Transshipment Facilities, renewable fuel refineries, renewable fuel transshipment facilities, piers and docks legally established as of [XXX effective date of ordinance], provided that when a permit is sought for a project proposed within or attached to a facility of such classification, the applicant must disclose any capacity changes defined under WCC 20.68.153 to the county permitting authorities. P~~p~~rovided that a conditional use permit is not required by WCC 20.68.153, permitted uses includ~~e~~ing repairs, improvements, maintenance, modifications, remodeling or other changes including but not limited to the following:

[numerated 1 – 22]

Note: Per proposed WCC 20.68.153, conditional use permits will be required when certain cumulative capacity increases occur at a fossil fuel refinery or a fossil fuel transshipment facility. To measure baselines and track cumulative increases, beginning with the first land use permit sought after the effective date of the amended rule, a permittee shall provide the following information and update the information provided upon every subsequent land use permit application:

- Types of fuels or feedstock[1]
- Mode of shipment[2]
- Maximum transshipment capacity[3]
- Maximum atmospheric crude distillation capacity[4]

20.68.150 Conditional Uses

The following uses require a conditional use permit in the HII Zoning District

.153 Expansion of existing legal Fossil Fuel Refineries or expansion of existing legal Fossil Fuel Transshipment Facilities. For purposes of this section, an expansion is any Fossil Fuel Refinery and/or Fossil Fuel Transshipment Facility development (including otherwise permitted or accessory uses), vested after the effective date of this ordinance that meets any one of the following applicable thresholds:

A. Cumulatively increases its maximum atmospheric crude distillation capacity of fossil fuels by more than 10,000 barrels (or 420,000 gallons) per day based upon an evaluation of physical equipment limitations conducted by a licensed professional engineer; or
B. Cumulatively increases it's ~~the~~ maximum transshipment capacity ~~of the facility~~ by more than 10,000 barrels (or 420,000 gallons) per day.
C. Cumulatively increases it's ~~the~~ maximum transshipment capacity of unrefined fossil fuels from the facility by more than 10,000 barrels (or 420,000 gallons) per day.

Determination of "maximum transshipment capacity" under this WCC 20.68.153, shall be the maximum capacity resulting from an evaluation by a licensed professional engineer of the facility's storage, transfer, or shipment capacities and which may include, or be solely based on, other transshipment limitations that can be demonstrated by the applicant.[5]

If a conditional use permit is obtained, the baseline for determining the cumulative increases is reset.

Such expansions shall be subject to the conditional use criteria below:

(1) The conditional use permit approval criteria listed under WCC 20.84.220 are met;

(2) Within shorelines, if applicable, County approval shall be contingent upon approval of a shoreline permit;

[1] Disclosures cannot include trade secrets, i.e. locational origin of feedstock sources.
[2] Shipment mode categorized generally i.e. tanker, barge, truck, unit train, etc.
[3] This term is defined in the Aug 13th draft code and disclosed calculations may incorporate the throughput and capacity of multiple fuel production units.
[4] a definition of "maximum transshipment capacity" has been discussed by stakeholders but have not reached full consensus.
[5] Petrogas proposed this definition. Particularly, "be solely based upon" raised concerns for Stand.

(3) The applicant has documented to ~~the satisfaction of~~ the County decision maker all of the anticipated types, and volumes of substances to be processed, stored, or transferred in bulk at the facility, the maximum transshipment capacity or the maximum atmospheric crude distillation capacity (as applicable), and the mode of shipment vessels to be loaded or unloaded at the facility. The permit shall be limited exclusively to those types and volumes of materials or products as documented and approved.

(4) Insurance requirements meet the provisions of WCC Section 22.05.125.

(5) Mitigation of transportation impacts consistent with Chapter 20.78 WCC, Transportation Concurrency Management, and Chapter 16.24 WCC, Commute Trip Reduction

(6) Mitigation of impacts to other services including fire and emergency response capabilities, water supply and fire flow, to address risks created by expansions.

(7) Plans for stormwater and wastewater releases have been approved.

8) Prior to commencement of any site preparation or construction activities, all necessary state leases shall be acquired for any piers or aquatic lands improvements, and it shall be demonstrated to the satisfaction of the zoning administrator that the project applicant has met any federal or state permit or consultation requirements, including tribal treaty rights or the provisions of the Magnuson Amendment through state and federal permitting decisions; and

(9) The County decision maker may approve a conditional use permit with a condition to obtain relevant leases and complete any necessary federal and state permitting requirements, and may restrict the conditional use permittee from undertaking site preparation or construction activities until it has fulfilled that condition

(10) The permittee must inform the county permitting authorities of a change in the aforementioned disclosures so that the department can document current capacity levels to ensure that the cumulative thresholds under 20.68.153 have not been exceeded.

20.68.200 Prohibited Uses

.205. New Fossil Fuel Transshipment Facilities; provided that, the following uses of facilities are not prohibited: (i) inter-refinery shipments of refined products and intermediate materials such as unfinished oils and blendstocks, (ii) transferring ~~petroleum products~~ Fossil Fuels during emergency scenarios where contingencies require ~~petroleum products~~ Fossil Fuels to be moved, and (iii) necessary ~~petroleum product~~ Fossil Fuels transfers during turn-arounds or maintenance periods., ~~including bulk storage or transfer facilities for fossil fuels [XXX effective date]~~.

Note: We believe this change would satisfy the concerns expressed by Councilmembers about this provision without functionally changing the intended effect of this provision. As we understand it, any project that meets the codified definition of "New Fossil Fuel Transshipment Facilities" would be prohibited outright, regardless of the three identified activities, but this language serves to clarify that facilities which do not meet that definition would not be prohibited from engaging in these activities to the extent that they do not meet the definition specified in draft WCC 20.97.160.3.

We suggest this change on the condition that satisfactory definitions of "refined products and intermediate materials" be added, which we will submit accordingly if this suggestion is accepted by Council.

“Intermediate Materials” refers to refined or partially refined products that are produced at a refinery by processing crude oil and other petroleum-based feedstocks that can be further processed to produce refined products or other blending components.

We are recommending the term "Fossil Fuels" in place of "petroleum products" in 20.68.205 because a specific definition for Fossil Fuels is already in place within the draft amendments proposal, WCC 20.97.160.2. This definition may also warrant revisions to ensure the intended meaning is appropriately captured. Stakeholders discussed possible changes but have not yet reached consensus. Other definitions may also be worth revisiting in addition to the one below.

Definitions

20.97.160.4 Fossil-Fuel Refinery

A “Fossil-Fuel Refinery” ~~means~~ is ~~a~~ facility that receives and converts ~~crude oil~~ fossil fuels into products including but not limited to gasoline, distillates such as diesel fuel and heating oil, jet fuel, petrochemical feedstocks, waxes, lubricating oils, intermediate materials and asphalt. ~~Activities that support~~ ~~refineries~~ Fossil Fuel Refinery facility uses include but are not limited to: bulk storage, manufacturing, or processing of fossil fuels, intermediate materials or byproducts, and shipment of those processed materials to downstream customers. This definition excludes Small Fossil or Renewable Storage and Distribution Facilities.

Deletions or substitutions of “Change of Use” terminology:

SEPA Chapter: 16.08.090 Environmental checklist

E. … “For any proposed ~~change of use or~~ expansion of facilities pursuant to and in accordance with WCC 20.68.153 ~~that manufacture, process, store or transport any fossil fuel, renewable fuel, or hydrocarbon feedstock~~, the proponent will provide an expert evaluation or fill out the County’s SEPA “Worksheet for Fossil and Renewable Fuel Facilities.” …

~~20.97.052.1 Change of Use [definition]~~

~~“Change of use” means when a building or occupancy is altered or replaced, for example from manufacturing to office.~~

~~20.74.115 Change of Use of Renewable Fuels Facilities.~~

~~A change of use of a Renewable Fuel Refinery or Renewable Fuel Transshipment Facilities to a fossil fuel facility inside the boundary of an existing legal fossil fuel refinery requires a conditional use permit subject to WCC 20.68.153. Other changes of use from Renewable Fuel Refinery or Renewable Fuel Transshipment Facilities to fossil fuel facilities are prohibited.~~

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A. Cumulatively increases its maximum atmospheric crude distillation capacity of fossil fuels by more than 10,000 barrels (or 420,000 gallons) per day based upon an evaluation of physical equipment limitations conducted by a licensed professional engineer; or
B. Cumulatively increases it's ~~the~~ maximum transshipment capacity ~~of the facility~~ by more than 10,000 barrels (or 420,000 gallons) per day.
C. Cumulatively increases it's ~~the~~ maximum transshipment capacity of unrefined fossil fuels from the facility by more than 10,000 barrels (or 420,000 gallons) per day.

Determination of "maximum transshipment capacity" under this WCC 20.68.153, shall be the maximum capacity resulting from an evaluation by a licensed professional engineer of the facility's storage, transfer, or shipment capacities and which may include, or be solely based on, other transshipment limitations that can be demonstrated by the applicant.[5]

If a conditional use permit is obtained, the baseline for determining the cumulative increases is reset.

Such expansions shall be subject to the conditional use criteria below:

(1) The conditional use permit approval criteria listed under WCC 20.84.220 are met;

(2) Within shorelines, if applicable, County approval shall be contingent upon approval of a shoreline permit;

[1] Disclosures cannot include trade secrets, i.e. locational origin of feedstock sources.
[2] Shipment mode categorized generally i.e. tanker, barge, truck, unit train, etc.
[3] This term is defined in the Aug 13th draft code and disclosed calculations may incorporate the throughput and capacity of multiple fuel production units.
[4] a definition of "maximum transshipment capacity" has been discussed by stakeholders but have not reached full consensus.
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(3) The applicant has documented to ~~the satisfaction of~~ the County decision maker all of the anticipated types, and volumes of substances to be processed, stored, or transferred in bulk at the facility, the maximum transshipment capacity or the maximum atmospheric crude distillation capacity (as applicable), and the mode of shipment vessels to be loaded or unloaded at the facility. The permit shall be limited exclusively to those types and volumes of materials or products as documented and approved.

(4) Insurance requirements meet the provisions of WCC Section 22.05.125.

(5) Mitigation of transportation impacts consistent with Chapter 20.78 WCC, Transportation Concurrency Management, and Chapter 16.24 WCC, Commute Trip Reduction

(6) Mitigation of impacts to other services including fire and emergency response capabilities, water supply and fire flow, to address risks created by expansions.

(7) Plans for stormwater and wastewater releases have been approved.

8) Prior to commencement of any site preparation or construction activities, all necessary state leases shall be acquired for any piers or aquatic lands improvements, and it shall be demonstrated to the satisfaction of the zoning administrator that the project applicant has met any federal or state permit or consultation requirements, including tribal treaty rights or the provisions of the Magnuson Amendment through state and federal permitting decisions; and

(9) The County decision maker may approve a conditional use permit with a condition to obtain relevant leases and complete any necessary federal and state permitting requirements, and may restrict the conditional use permittee from undertaking site preparation or construction activities until it has fulfilled that condition

(10) The permittee must inform the county permitting authorities of a change in the aforementioned disclosures so that the department can document current capacity levels to ensure that the cumulative thresholds under 20.68.153 have not been exceeded.[6]

20.68.200 Prohibited Uses

.205. New Fossil Fuel Transshipment Facilities; provided that, the following uses of facilities are not prohibited: (i) inter-refinery shipments of refined products and intermediate materials such as unfinished oils and blendstocks, (ii) transferring ~~petroleum products~~ Fossil Fuels during emergency scenarios where contingencies require ~~petroleum products~~ Fossil Fuels to be moved, and (iii) necessary ~~petroleum product~~ Fossil Fuels transfers during turn-arounds or maintenance periods., ~~including bulk storage or transfer facilities for fossil fuels [XXX effective date]~~.

Note: We believe this change would satisfy the concerns expressed by Councilmembers about this provision without functionally changing the intended effect of this provision. As we understand it, any project that meets the codified definition of "New Fossil Fuel Transshipment Facilities" would be prohibited outright, regardless of the three identified activities, but this language serves to clarify that facilities which do not meet that definition would not be prohibited from engaging in these activities to the extent that they do not meet the definition specified in draft WCC 20.97.160.3.

[6] Criteria (10) could be moved to fit within criteria (3) and/or be duplicated to be clear as to which aforementioned disclosures are the permittee's responsibility to update the county on changes to after approval of a CUP.

We suggest this change on the condition that satisfactory definitions of "refined products and intermediate materials" be added, which we will submit accordingly if this suggestion is accepted by Council.

“Intermediate Materials” refers to refined or partially refined products that are produced at a refinery by processing crude oil and other petroleum-based feedstocks that can be further processed to produce refined products or other blending components.

We are recommending the term "Fossil Fuels" in place of "petroleum products" in 20.68.205 because a specific definition for Fossil Fuels is already in place within the draft amendments proposal, WCC 20.97.160.2. This definition may also warrant revisions to ensure the intended meaning is appropriately captured. Stakeholders discussed possible changes but have not yet reached consensus. Other definitions may also be worth revisiting in addition to the one below.

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Deletions or substitutions of “Change of Use” terminology:

SEPA Chapter: 16.08.090 Environmental checklist

E. … “For any proposed ~~change of use or~~ expansion of facilities pursuant to and in accordance with WCC 20.68.153 ~~that manufacture, process, store or transport any fossil fuel, renewable fuel, or hydrocarbon feedstock~~, the proponent will provide an expert evaluation or fill out the County’s SEPA “Worksheet for Fossil and Renewable Fuel Facilities.” …

~~20.97.052.1 Change of Use~~ [definition]

~~“Change of use” means when a building or occupancy is altered or replaced, for example from manufacturing to office.~~

~~20.74.115 Change of Use of Renewable Fuels Facilities.~~

~~A change of use of a Renewable Fuel Refinery or Renewable Fuel Transshipment Facilities to a fossil fuel facility inside the boundary of an existing legal fossil fuel refinery requires a conditional use permit subject to WCC 20.68.153. Other changes of use from Renewable Fuel Refinery or Renewable Fuel Transshipment Facilities to fossil fuel facilities are prohibited.~~

Note: 20.74.115 would be inoperable as written and otherwise redundant to retain. Existing Fossil Fuel Refineries would already be required to obtain CUPs for increasing their capacity to refine crude oil. It should be clear that a standalone Renewable Fuel facility could not change its use to what is barred in 20.68.200 for new facilities. If that meaning is not unequivocal enough with the above additions included, it should be further clarified in the Prohibited Use section that any existing facility cannot alter itself in such a way that it meets the definition of a new prohibited facility. Moreover, there is no generalized definition of “fossil fuel facilities” in the code, and this clause appears to imply that a Renewable Fuel Refinery or a Renewable Fuel Transshipment Facility could exist separately within the boundary of a Fossil Fuel Refinery, which further convolutes the defined construct of a Refinery being defined as a singular facility containing various interrelated structural units within its complex.

We’ve sought to remove ambiguities and equivocations of the term “facility” throughout the code amendments to distinguish a cohesive intended meaning. To that end, we have made a point to capitalize all terms that correspond to codified definitions. Any such instance where a specifically defined term is uncapitalized should be understood as an error to be corrected.

From: Carol Frazey
To: Dana Brown-Davis
Subject: CP Concerns
Date: Monday, October 19, 2020 4:48:20 PM

Hi Dana,

These concerns were already shared by other councilmembers, but I realized that I never sent you my concerns with the Cherry Point amendments. These are the concerns that I have shared with the refineries.

Here are my main concerns:

1. Change of Use: Make sure that there are restrictions in place so that a permitted Renewable Energy facility (State definition of Renewable Energy) cannot be repurposed or changed to a Fossil Fuel Energy Facility
2. Do not want unrefined fuels being passed through our county without being refined at the refinery

I like Councilmember Browne's Change: "20.68.200 Prohibited uses. Line 708 .205. New Fossil Fuel Transshipment Facilities; provided that, the following uses of facilities are not prohibited: (i) inter-refinery shipments of **refined petroleum products**, (ii) transferring petroleum products during emergency scenarios where contingencies require petroleum products to be moved, and (iii) necessary petroleum product transfers during turn-arounds or maintenance periods., including bulk storage or transfer facilities for fossil fuels [XXX effective date]. "

3. I would like to see very strong language for Consistency with Federal laws and Treaties.
4. Still concerned about who will FULLY pay (insurance) if accident/explosion happens on our rails as fuels pass through our county (Same concern from Councilmember Browne).

Thanks,

Carol Frazey
Councilmember for At Large Position B
Whatcom County Council
311 Grand Ave. Suite 105
Bellingham, WA 98225

Phone: 360-778-5024
Email: CFrazey@whatcomcounty.us

NOTICE: All emails and attachments sent to and from Whatcom County are public records and may be subject to disclosure pursuant to the Public Records Act (RCW 42.56)

Whatcom County

COUNTY COURTHOUSE
311 Grand Avenue, Ste #105
Bellingham, WA 98225-4038
(360) 778-5010

Agenda Bill Master Report

File Number: MIN2020-097

File ID:	MIN2020-097	**Version:**	1	**Status:**	Agenda Ready
File Created:	10/07/2020	**Entered by:**	KFelbing@co.whatcom.wa.us		
Department:	Council Office	**File Type:**	Minutes Consent		
Assigned to:	Council			**Final Action:**	
Agenda Date:	10/27/2020			**Enactment #:**	

Primary Contact Email: KFelbing@co.whatcom.wa.us

TITLE FOR AGENDA ITEM:

Health Board for October 6, 2020

SUMMARY STATEMENT OR LEGAL NOTICE LANGUAGE:

None

HISTORY OF LEGISLATIVE FILE

Date:	Acting Body:	Action:	Sent To:

Attachments: Draft Minutes Health Board Oct 6 2020

Whatcom County
Council as the Health Board

COUNTY COURTHOUSE
311 Grand Avenue, Ste #105
Bellingham, WA 98225-4038
(360) 778-5010

Minutes - Draft Minutes

VIRTUAL MEETING - VIEW ONLINE

Tuesday, October 6, 2020
10:45 AM
Virtual Meeting

COUNCILMEMBERS
Rud Browne
Barry Buchanan
Tyler Byrd
Todd Donovan
Ben Elenbaas
Carol Frazey
Kathy Kershner

CLERK OF THE COUNCIL
Dana Brown-Davis, C.M.C.

Call To Order

Council Chair Barry Buchanan called the meeting to order at 10:46 a.m. in a virtual meeting.

Roll Call

Present: 7 - Rud Browne, Barry Buchanan, Tyler Byrd, Todd Donovan, Carol Frazey, Ben Elenbaas and Kathy Kershner

Absent: None

Public Session

Buchanan gave instruction for how people can speak in the meeting.

He opened the public session and the following people spoke:

- Ken Gas spoke in favor of the Resolution affirming Racism as a Public Health Crisis and the Ordinance Creating a Child and Family Task Force.
- Heather Flaherty spoke in favor of the Resolution affirming Racism as a Public Health Crisis.

Cathy Halka, Council Office, gave instruction on how to speak at the meeting and the following additional people spoke:

- Shu-Ling Zhao spoke in favor of the Resolution affirming Racism as a Public Health Crisis.
- Emily O'Connor spoke in favor of the Resolution affirming Racism as a Public Health Crisis.
- April Barker spoke in favor of the Resolution affirming Racism as a Public Health Crisis.

Hearing no one else, Buchanan closed the Public Session.

Ordinance: Creating a Child and Family Task Force

Sterling Chick, Public Health Advisory Board Vice-Chair and Catholic Community Services, briefed the Councilmembers on the proposed Ordinance.

Donovan moved to recommend advancement of the Ordinance to the County Council for adoption. The motion was seconded by Frazey.

Erika Lautenbach, Health Department Director, answered a question about the Exhibit section titled “Staff and Funding Support” and whether the

Health Department has or will, after funding, have the staff capacity, and whether any thought was given to including in the task force membership the faith-based community and other community members that maybe have solutions for working through some of the issues that are identified.

Byrd moved to recommend an amendment to the Ordinance to remove the list of permanent members from Exhibit A. The motion was seconded by Kershner.

Councilmembers discussed the motion to amend and the following people spoke:

- Chi-Na Stoane, Public Health Advisory Board Chair, answered how the list of proposed task force members was determined, and what her thoughts are on the proposed amendment.
- Satpal Sidhu, County Executive, spoke about the diversity represented in the proposed list of permanent task force members.
- Sterling Chick stated the task force includes members that focus on upstream prevention for children before entering school and who offer a lot of expertise. He answered what ages this Ordinance would target, and whether the two groups of task force members (permanent and additional appointed members) should be divided into two groups.

The motion to recommend an amendment failed by the following vote:
Aye: 3 - Byrd, Elenbaas, and Kershner
Nay: 4 - Browne, Buchanan, Donovan, and Frazey

Kershner moved to recommend an amendment to the Ordinance to include under the list of Additional Appointed Members the following list:

- Faith community
- Law enforcement
- Homeschool/private school
- Foster care mom or Dad
- Fathers
- High School Student
- College Age Student
- Elderly representative
- Hispanic/Black/Asian members
- Homeless teen
- Single Mom
- Two parent families

The motion was seconded by Byrd.

Councilmembers discussed the motion to amend and whether the discussion should be referred to the Public Works and Health Committee.

Kershner amended her motion to say 25 members including all of those categories.

Councilmembers continued to discuss the motion to amend.

Buchanan moved to table the motion to recommend an amendment until they have a chance to refer the item to Committee. The motion was seconded by Donovan.

The motion to table the motion to recommend an amendment carried by the following vote:
Aye: 6 - Buchanan, Byrd, Donovan, Frazey, Kershner, and Browne
Nay: 1 - Elenbaas

Buchanan moved to table the main motion and refer it to the Public Works and Health Committee on October 13, 2020. The motion was seconded by Browne.

The motion carried by the following vote:
Aye: 7 - Byrd, Donovan, Elenbaas, Frazey, Kershner, Browne, and Buchanan
Nay: 0

Resolution: Racism as a Public Health Crisis

AB2020-431 Resolution Affirming Racism as a Public Health Crisis

Steve Bennett, Public Health Advisory Board (PHAB), presented and briefed the Councilmembers on the proposed Resolution.

Donovan moved that the Resolution be approved. The motion was seconded by Frazey.

Clerk's note: Browne had to leave the meeting during the following discussion.

Councilmembers, Bennett, and Erika Lautenbach, Health Department Director, discussed the Resolution.

Lautenbach provided a brief Health Department Director report and stated

that in the next six to eight months three senior leaders in the Health Department are set to retire and the department is beginning recruitment for those positions soon. She then had to leave the meeting.

Astrid Newell, Health Department, answered which staff members are planning to retire.

Bennett and Chi-Na Stoane, PHAB Chair, answered questions about the data and definitions used in the presentation and the Resolution.

Councilmembers discussed how to proceed with the Resolution.

Byrd moved that they form a sub-committee with two Councilmembers, Stoane, and Bennett to update the Resolution and bring it back to the Health Board. The motion was seconded by Kershner.

Buchanan suggested a friendly amendment that Byrd split the motion into two parts: to hold the item and then to form the sub-committee.

Byrd accepted the friendly amendment, Kershner seconded, and Councilmembers voted on the ***the first motion*** to hold the item.

The motion to hold the item failed by the following vote:
Aye: 3 - Elenbaas, Kershner, and Byrd
Nay: 3 - Donovan, Frazey, and Buchanan
Out of the Meeting: 1 - Browne

Dana Brown-Davis, Clerk of the Council, and the Councilmembers discussed possible ways to proceed with the Resolution as the Health Board or in Committee of the Whole and then the Council acting as the Health Board.

Tammy Axlund, Health Department, stated the next Health Board meeting is December 1, 2020.

Councilmembers and Brown-Davis discussed how to proceed with the Resolution.

Donovan moved to hold the Resolution and to refer it to the Committee of the Whole or Public Works and Health Committee on October 13, 2020 or October 27, 2020. The motion was seconded by Frazey.

Councilmembers discussed the motion.

The motion to hold and refer the item to Committee carried by the following vote:
Aye: 5 - Elenbaas, Frazey, Buchanan, Byrd, and Donovan
Nay: 1 - Kershner
Out of the Meeting: 1 - Browne

Councilmembers, Stoane and Bennett discussed the second part of Byrd's motion which was to form a subcommittee with two Councilmembers, Stoane, and Bennett to update and bring forward a new proposed Resolution.

Buchanan moved to appoint Elenbaas and Browne as representatives of the Health Board and request two people from the PHAB also work on updating the Resolution. The motion was seconded by Byrd.

Elenbaas requested that the timeline be moved to the 27th of October.

Buchanan withdrew his motion and ***moved*** to reconsider Donovan's motion to hold the Resolution and to refer it to Committee on October 13, 2020 or October 27, 2020. The motion was seconded by Donovan.

Buchanan withdrew his motion to reconsider and again ***moved*** to nominate and appoint Browne and Elenbaas and request two people from the PHAB to work on updating the Resolution. The motion was seconded by Byrd.

The motion carried by the following vote:
Aye: 6 - Frazey, Kershner, Buchanan, Byrd, Donovan, and Elenbaas
Nay: 0
Out of the Meeting: 1 - Browne

Buchanan moved to reconsider the motion to hold the Resolution and to refer it to the Committee on October 13, 2020 or October 27, 2020. The motion was seconded by Donovan.

The motion to reconsider carried by the following vote:
Aye: 6 - Kershner, Buchanan, Byrd, Donovan, Elenbaas, and Frazey
Nay: 0
Out of the Meeting: 1 - Browne

Donovan moved to hold the item and to refer it to the Committee of the Whole or Public Works and Health Committee on October 27, 2020. The motion was seconded by Frazey.

Councilmembers and Stoane discussed the motion

The motion carried by the following vote:
Aye: 5 - Buchanan, Byrd, Donovan, Elenbaas, and Frazey
Nay: 1 - Kershner
Out of the Meeting: 1 - Browne

Approved motions:

Buchanan's motion to nominate and appoint Browne and Elenbaas and request two people from the PHAB to work on updating the Resolution carried 6-0-1 with Browne out of the meeting
and
Donovan's motion that the Resolution be REFERRED TO COMMITTEE and sent to Committee of the Whole or Public Works and Health Committee on October 27, 2020 carried by the following vote:

Aye: 5 - Buchanan, Byrd, Donovan, Frazey and Elenbaas

Nay: 1 - Kershner

Absent: 0

Temp Absent: 1 - Browne

Public Health Advisory Board (PHAB) Update

Chi-Na Stoane stated they have already covered their updates.

Director/Health Officer Report

There was no report but Buchanan reiterated that there are three Health Department staff vacancies coming up.

Other Business

Elenbaas thanked Stoane for being welcoming.

Adjournment

The meeting adjourned at 2:04 p.m.

ATTEST:

WHATCOM COUNTY COUNCIL
WHATCOM COUNTY, WA

_____ _____

Dana Brown-Davis, Council Clerk Barry Buchanan, Health Board Chair

_____

Kristi Felbinger, Minutes Transcription

Whatcom County

COUNTY COURTHOUSE
311 Grand Avenue, Ste #105
Bellingham, WA 98225-4038
(360) 778-5010

Agenda Bill Master Report

File Number: MIN2020-098

File ID:	MIN2020-098	**Version:**	1	**Status:**	Agenda Ready
File Created:	10/07/2020	**Entered by:**	KFelbing@co.whatcom.wa.us		
Department:	Council Office	**File Type:**	Minutes Consent		
Assigned to:	Council			**Final Action:**	
Agenda Date:	10/27/2020			**Enactment #:**	

Primary Contact Email: KFelbing@co.whacom.wa.us

TITLE FOR AGENDA ITEM:

Special Joint Health Board/PHAB Meeting for October 6, 2020

SUMMARY STATEMENT OR LEGAL NOTICE LANGUAGE:

None

HISTORY OF LEGISLATIVE FILE

Date:	Acting Body:	Action:	Sent To:

Attachments: Draft Minutes Special Health Board Joint PHAB meeting Oct 6 2020

Whatcom County
Council as the Health Board (Special)

COUNTY COURTHOUSE
311 Grand Avenue, Ste #105
Bellingham, WA 98225-4038
(360) 778-5010

Minutes - Draft Minutes

JOINT MEETING OF HEALTH BOARD/PUBLIC HEALTH ADVISORY BOARD

Tuesday, October 6, 2020
9 AM
Virtual Meeting

COUNCILMEMBERS
Rud Browne
Barry Buchanan
Tyler Byrd
Todd Donovan
Ben Elenbaas
Carol Frazey
Kathy Kershner

CLERK OF THE COUNCIL
Dana Brown-Davis, C.M.C.

Call To Order

Health Board Chair Barry Buchanan called the meeting to order at 9 a.m. in a virtual meeting and opened the meeting by singing a song.

Roll Call

Present: 7 - Rud Browne, Barry Buchanan, Tyler Byrd, Todd Donovan, Carol Frazey, Ben Elenbaas and Kathy Kershner

Absent: None

Welcome, Intended Outcomes and Introductions

Chi-Na Stoane, Public Health Advisory Board Chair, introduced Erika Lautenbach, Health Department Director.

Erika Lautenbach, Health Department Director, spoke about the following proposed outcomes of this meeting:

- Clarify the roles and responsibilities of the Health Board, the Public Health Advisory Board (PHAB), and the Health Department.
- Reflect and have a conversation about how to have civil dialogue about challenging public health conversations.

Holly O'Neil facilitated the meeting and started with introductions. The following participants stated their name and what public health issue they are especially interested in right now and why:

- Chi-Na Stoane - PHAB Chair - Health-related issues such as obesity, health care-associated infections, and air pollution addressed through the lens of equity by being in a harmonious place.
- Sterling Chick - PHAB Vice Chair - Promoting the interest of children and families through an equity lens.
- Astrid Newell - Health Department - Focusing on the wellbeing of children and families and the healthy development of the youngest children.
- Kathleen Roy - Health Department - Children and families and the opportunities to make big changes in people’s lives and building foundational public health services that meet the gaps in the community.
- Steve Bennett - PHAB - The social and environmental structures that increase or decrease the risk of infectious disease for specific populations as well as effective interventions and transmission.

- Carol Frazey - Health Board/County Councilmember - Kindergarten readiness, children and families, and how we can make changes in hiring practices so that everyone is represented.
- Barry Buchanan - Health Board Chair /County Council Chair - Serving populations that are vulnerable (seniors, people with disabilities, and the homeless).
- Todd Donovan - Health Board/County Councilmember - The COVID-19 crisis.
- Erika Lautenbach - Health Department Director - How we in government create or remove barriers, help or hurt, and can staff in order to make sure our policies and structures can provide the most good to the greatest number of people and not create more barriers for those who need additional support.
- Cindy Hollinsworth - Health Department - What's behind the scenes in people's access to living wage jobs and education which will help them have opportunities for stable housing and health care.
- Anne Deacon - Health Department - Historic and current under funding of behavioral health support and services to American citizens, how that impacts our criminal justice system, and other Federal issues that communities have the burden of resolving.
- Leah Wainman - PHAB - Impacts of COVID-19, issues concerning families and children right now, and the increasing disparities in households.
- Rud Browne - Health Board/County Councilmember - Foundational public health, mental health and early interventions.
- Ben Elenbaas - Health Board/County Councilmember - Mental Health and the negative health impacts of fatherless homes.
- John Wolpers - Health Department - How the environment affects people and how people affect the environment, how to bring everybody together to address all the different issues that come up, and the COVID-19 crisis.
- Kathy Kershner - Health Board/County Councilmember - The well-being of students from high school to young adults, the foster care system, Vitamin D deficiencies of people in Northwest, and making good policy decisions to help people who are on the edge.
- Tyler Byrd - Health Board/County Councilmember - How we lead our community as a first line of defense through the COVID-19 crisis.

Review Role & Responsibilities of PHAB, the Health Board, and the Health Department

O'Neil, facilitator, referred participants to the Roles and Responsibilities

Matrix on Agenda page 2.

Buchanan gave a history and outlined the roles and responsibilities of the Health Board.

Stoane gave a history and outlined the roles and responsibilities of the PHAB.

Lautenbach outlined the roles and responsibilities of the Health Department and shared on the screen national guidelines, core services, and priorities of Public Health. She spoke about how the three bodies communicate and coordinate their efforts.

O'Neil opened the floor for participants to share insights on how the groups do well working together and how they could improve and the following people spoke:

- Frazey spoke about the COVID Employer Support Task Force created by the PHAB and how the Health Department has stepped up in dealing with COVID-19.
- Bennett spoke about his appreciation for the opportunity for the PHAB to present their research and to Health Board for facilitating the formation of community task forces. He would like to see more communication between the PHAB and the Health Board.
- Stoane spoke about the COVID Employer Support Task Force and described how collaboration of all three bodies is what made it successful.
- Newell spoke about being thankful for the work the Health Board has done around children and families and stated ongoing support of all the entities would be valuable.

Clerk's note: Satpal Sidhu, County Executive, joined the meeting.

- Elenbaas stated he appreciates opportunity to meet everyone in the three groups, and the chance to have dialogue and respect opinions of those we do not normally surround ourselves with.
- Kershner spoke about having proposals brought forward from the Health Department that come with data in a usable format and Anne Deacon's steadfast work on projects that she promotes.
- Deacon stated they try to find ways to measure their work with evidenced-based practices, but they could improve on being able to communicate their complex and detailed information with the Health Board and helping each other understand the other's world.

How Do We Model and Encourage Civil Dialogue Around Challenging Public Health Conversations?

Sterling Chick spoke to the participants about why having a civil dialogue is so difficult, especially when the topic is important to everyone. In dealing with conflict, how we explain why something is happening completely drives what we think should be done. It is about "what is the problem" and not "why it is the problem." To have healthy dialogue you have to have the same vision and use the same language when talking about that vision.

The following people spoke:

- Buchanan stated he appreciates what Sterling said about speaking the same language.
- Frazey spoke about shared language and asked for examples of how a conversation can be about the "what" and not about the "why."
- Lautenbach spoke about how she learned that it is more important to understand why someone believes something and not just what they believe. Experiences shape belief and that can be the start of conversation and of understanding each other. Building relationships is important.
- Donovan spoke about looking at other counties and how they structure their Health Boards and having a health professional on the Board.
- Browne spoke about all of the new leadership within the County and the City of Bellingham when we started dealing with COVID-19 and acknowledged and thanked those leaders including Lautenbach.

Wrap Up - Set the Stage for the Health Board Meeting, Closing Comments and Appreciations

Buchanan thanked everyone for being there and stated he would like to do this type of meeting twice a year and he looks forward to discussions in the Health Board.

Stoane stated we do have a shared vision. We have to agree to come together and struggle together.

Other Business

There was no other business.

Adjournment

The meeting adjourned at 10:34 a.m.

ATTEST:

WHATCOM COUNTY COUNCIL
WHATCOM COUNTY, WA

_____ _____

Dana Brown-Davis, Council Clerk Barry Buchanan, Health Board Chair

_____

Kristi Felbinger, Minutes Transcription

Whatcom County

COUNTY COURTHOUSE
311 Grand Avenue, Ste #105
Bellingham, WA 98225-4038
(360) 778-5010

Agenda Bill Master Report

File Number: MIN2020-099

File ID:	MIN2020-099	**Version:**	1	**Status:**	Agenda Ready
File Created:	10/14/2020	**Entered by:**	KFelbing@co.whatcom.wa.us		
Department:	Council Office	**File Type:**	Minutes Consent		
Assigned to:	Council			**Final Action:**	
Agenda Date:	10/27/2020			**Enactment #:**	

Primary Contact Email: KFelbing@co.whatcom.wa.us

TITLE FOR AGENDA ITEM:

Committee of the Whole Executive Session for October 13, 2020

SUMMARY STATEMENT OR LEGAL NOTICE LANGUAGE:

None

HISTORY OF LEGISLATIVE FILE

Date:	Acting Body:	Action:	Sent To:

Attachments: Draft Minutes Committee of the Whole Exec Oct 13 2020

Whatcom County
Council Committee of the Whole-Executive Session

COUNTY COURTHOUSE
311 Grand Avenue, Ste #105
Bellingham, WA 98225-4038
(360) 778-5010

Committee Minutes - Draft Minutes

VIRTUAL MEETING - ENDS NO LATER THAN 9 A.M.

Tuesday, October 13, 2020
8:30 AM
Virtual Meeting

COUNCILMEMBERS
Rud Browne
Barry Buchanan
Tyler Byrd
Todd Donovan
Ben Elenbaas
Carol Frazey
Kathy Kershner

CLERK OF THE COUNCIL
Dana Brown-Davis, C.M.C.

Call To Order

Council Chair Barry Buchanan called the meeting to order at 8:30 a.m. in a virtual meeting.

Roll Call

Present: 7 - Rud Browne, Barry Buchanan, Tyler Byrd, Todd Donovan, Carol Frazey, Ben Elenbaas and Kathy Kershner

Absent: None

Committee Discussion

Attorney Present: Karen Frakes.
Buchanan stated that discussion of agenda item one may take place in executive session pursuant to RCW 42.30.140(4)(a)]. Executive session will conclude no later than 9 a.m. If the meeting extends beyond the stated conclusion time, Council staff will make a public announcement.

Byrd moved to go into executive session until no later than 9 a.m. to discuss the agenda items pursuant to the RCW citations as announced by the Council Chair. The motion was seconded by Browne.

The motion carried by the following vote:
Aye: 6 - Browne, Buchanan, Byrd, Donovan, Elenbaas, and Frazey
Nay: 0
Temporarily out of the meeting: 1 - Kershner

Clerk's note: Kathy Kershner joined the meeting right after the start of the meeting.

1. AB2020-438 Update on negotiations and planning strategy discussion regarding collective bargaining [Discussion of this item may take place in Executive Session (closed to the public) pursuant to RCW 42.30.140(4)(a)]

This agenda item was DISCUSSED.

Items Added by Revision

Other Business

Adjournment

The meeting adjourned at 9 a.m.

ATTEST:

WHATCOM COUNTY COUNCIL
WHATCOM COUNTY, WA

_____ _____

Dana Brown-Davis, Council Clerk Barry Buchanan, Council Chair

_____

Kristi Felbinger, Minutes Transcription

Whatcom County

COUNTY COURTHOUSE
311 Grand Avenue, Ste #105
Bellingham, WA 98225-4038
(360) 778-5010

Agenda Bill Master Report

File Number: MIN2020-100

File ID:	MIN2020-100	**Version:**	1	**Status:**	Agenda Ready
File Created:	10/15/2020	**Entered by:**	KFelbing@co.whatcom.wa.us		
Department:	Council Office	**File Type:**	Minutes Consent		
Assigned to:	Council			**Final Action:**	
Agenda Date:	10/27/2020			**Enactment #:**	

Primary Contact Email: KFelbing@co.whatcom.wa.us

TITLE FOR AGENDA ITEM:

Committee of the Whole a.m. for October 13, 2020

SUMMARY STATEMENT OR LEGAL NOTICE LANGUAGE:

None

HISTORY OF LEGISLATIVE FILE

Date:	Acting Body:	Action:	Sent To:

Attachments: Draft Minutes Committee of the Whole AM Oct 13 2020

Whatcom County
Council Committee of the Whole

COUNTY COURTHOUSE
311 Grand Avenue, Ste #105
Bellingham, WA 98225-4038
(360) 778-5010

Committee Minutes - Draft Minutes

VIRTUAL MEETING - ENDS NO LATER THAN 12:15 P.M.

Tuesday, October 13, 2020
11:10 AM
Virtual Meeting

COUNCILMEMBERS
Rud Browne
Barry Buchanan
Tyler Byrd
Todd Donovan
Ben Elenbaas
Carol Frazey
Kathy Kershner

CLERK OF THE COUNCIL
Dana Brown-Davis, C.M.C.

Call To Order

Council Chair Barry Buchanan called the meeting to order at 11:15 a.m. in a virtual meeting.

Roll Call

Present: 7 - Rud Browne, Barry Buchanan, Tyler Byrd, Todd Donovan, Carol Frazey, Ben Elenbaas and Kathy Kershner

Absent: None

Special Presentation

1. AB2020-411 Report and request for a motion by the County Council Committee of the Whole to send final draft Countywide Planning Policy amendments to the cities for review and approval

Matt Aamot, Planning and Development Services Department, briefed the Councilmembers and answered if there is anything new in the packet or new policies since they last discussed this, whether there were any changes in policies concerning the adjudication process, and the timeline for the whole process.

Byrd moved approval. The motion was seconded by Frazey.

Kershner suggested a friendly amendment to the wording of the motion as follows: move that County Council Committee of the Whole to send final draft Countywide Planning Policy amendments to the cities for review and approval.

Byrd accepted the friendly amendment.

The motion carried by the following vote:
Aye: 7 - Browne, Buchanan, Byrd, Donovan, Elenbaas, Frazey, and Kershner
Nay: 0

This agenda item was DISCUSSED AND MOTION(S) APPROVED.

Committee Discussion

1. AB2020-219 Discussion and update on strategies and other items related to COVID-19 (Council and Health Board)

The following people spoke and answered questions:

- Erika Lautenbach, Health Department Director
- Scott McCreery, Whatcom Unified Command Incident Commander

- Satpal Sidhu, County Executive
- Karen Frakes, Prosecuting Attorney's Office
- Kathleen Roy, Health Department
- Tyler Schroeder, Executive's Office

Lautenbach and McCreery updated Councilmembers on the plan to create a longer term and more sustainable structure for the joint response to the COVID-19 crisis by moving the Incident Command to be within the Health Department and described the impacts on the organizational structure.

Councilmembers and the speakers discussed the duration of response and the timeline for how long the Health Department anticipates the structure will be in place, whether the County needs to start looking at permanent funding and staffing models for long term management of COVID-19, whether needed funding is something they should anticipate including in next year's budget should State or Federal funding not be available to fill the needs, how this plan aligns with the Whatcom County Code and Charter and the need for more guidance on that, concerns that having it in the Health Department can address all aspects (including financial concerns) of the crisis and whether they could also work with the Business and Commerce Advisory Committee to build out a more strategic plan, whether the Executive Board should exist or have decision-making capacity if the Unified Command is part of the Health Department, and having more conversation before making a decision.

Sidhu stated it would be an operational change as opposed to a change to a department.

Buchanan stated he would like to see Karen Frakes and the Executive's Legal Counsel sit down and look at the Whatcom County Charter with the proposed changes and come up with some guidance.

Sidhu agreed that he and legal counsel could sit down and have that discussion and then get back to the Council and he and Councilmembers discussed whether Councilmembers should also be a part of those conversations.

Kathleen Roy shared a document on the screen (on file) and updated Councilmembers about CARES Act funding. She stated the Health Department is looking for a commitment to the budget so they can start drafting contracts. Councilmembers, Roy, Schroeder, and Lautenbach discussed what a commitment to the budget means and a concern that they would be giving money to the Whatcom Business Alliance.

Councilmembers concurred that the Health Department could move forward.

This agenda item was DISCUSSED.

2. AB2020-345 Discussion of proposed Cherry Point amendments

Dana Brown-Davis, Clerk of the Council, updated the Councilmembers on a proposed date and time for a work session.

Councilmembers discussed the list of anticipated topics for discussion and who should be able to attend and participate in the work session.

This agenda item was DISCUSSED.

Items Added by Revision

There were no agenda items added by revision.

Other Business

There was no other business.

Adjournment

The meeting adjourned at 12:20 p.m.

ATTEST:

WHATCOM COUNTY COUNCIL
WHATCOM COUNTY, WA

_____ _____

Dana Brown-Davis, Council Clerk Barry Buchanan, Council Chair

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Kristi Felbinger, Minutes Transcription

Whatcom County

COUNTY COURTHOUSE
311 Grand Avenue, Ste #105
Bellingham, WA 98225-4038
(360) 778-5010

Agenda Bill Master Report

File Number: MIN2020-101

File ID:	MIN2020-101	**Version:**	1	**Status:**	Agenda Ready
File Created:	10/15/2020	**Entered by:**	KFelbing@co.whatcom.wa.us		
Department:	Council Office	**File Type:**	Minutes Consent		
Assigned to:	Council			**Final Action:**	
Agenda Date:	10/27/2020			**Enactment #:**	

Primary Contact Email: KFelbing@co.whatcom.wa.us

TITLE FOR AGENDA ITEM:

Committee of the Whole p.m. for October 13, 2020

SUMMARY STATEMENT OR LEGAL NOTICE LANGUAGE:

None

HISTORY OF LEGISLATIVE FILE

Date:	Acting Body:	Action:	Sent To:

Attachments: Draft Minutes Committee of the Whole PM Oct 13 2020

Whatcom County
Council Committee of the Whole

COUNTY COURTHOUSE
311 Grand Avenue, Ste #105
Bellingham, WA 98225-4038
(360) 778-5010

Committee Minutes - Draft Minutes

VIRTUAL MEETING - ENDS NO LATER THAN 2 P.M.

Tuesday, October 13, 2020
1 PM
Virtual Meeting

COUNCILMEMBERS
Rud Browne
Barry Buchanan
Tyler Byrd
Todd Donovan
Ben Elenbaas
Carol Frazey
Kathy Kershner

CLERK OF THE COUNCIL
Dana Brown-Davis, C.M.C.

Call To Order

Council Chair Barry Buchanan called the meeting to order at 1 p.m. in a virtual meeting.

Roll Call

Present: 7 - Rud Browne, Barry Buchanan, Tyler Byrd, Todd Donovan, Carol Frazey, Ben Elenbaas and Kathy Kershner

Absent: None

Special Presentation

1. AB2020-422 Presentation on the CPacer Program

The following people presented (on file) and discussed the item with Councilmembers:

Seth Vidana, Climate and Energy Manager, City of Bellingham
Amy Wheeless, Northwest Energy Coalition/Shift Zero
John MacLean, President, Energy Efficiency Finance Corporation
Dan Clarkson, EEFC, Energy Efficiency Finance Corporation
Emily Larson Kubiak, Sustainable Connections
Mark Schofield, Opportunity Council
Michael Yaki, CPACE Alliance

The presenters answered questions about the "How it Works" diagram in the presentation and what parts of the financing process it relates to, how long the tax assessment for financing stays in place, why a County ordinance is needed to adopt the program whether the Council could get a copy of a model ordinance, how new the program is and whether anyone else has adopted it, the potential risks for a participating property owner, and being able to see real-life examples of the economics and financing associated with the program.

This agenda item was DISCUSSED.

Items Added by Revision

There were no agenda items added by revision.

Other Business

There was no other business.

Adjournment

The meeting adjourned at 1:59 p.m.

ATTEST:

WHATCOM COUNTY COUNCIL
WHATCOM COUNTY, WA

_____ _____

Dana Brown-Davis, Council Clerk Barry Buchanan, Council Chair

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Kristi Felbinger, Minutes Transcription

Whatcom County

COUNTY COURTHOUSE
311 Grand Avenue, Ste #105
Bellingham, WA 98225-4038
(360) 778-5010

Agenda Bill Master Report

File Number: MIN2020-102

File ID:	MIN2020-102	**Version:**	1	**Status:**	Agenda Ready
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Department:	Council Office	**File Type:**	Minutes Consent		
Assigned to:	Council			**Final Action:**	
Agenda Date:	10/27/2020			**Enactment #:**	

Primary Contact Email: KFelbing@co.whatcom.wa.us

TITLE FOR AGENDA ITEM:

Regular County Council for October 13, 2020

SUMMARY STATEMENT OR LEGAL NOTICE LANGUAGE:

None

HISTORY OF LEGISLATIVE FILE

Date:	Acting Body:	Action:	Sent To:

Attachments: Draft Minutes Council Oct 13 2020

Whatcom County Council

COUNTY COURTHOUSE
311 Grand Avenue, Ste #105
Bellingham, WA 98225-4038
(360) 778-5010

Minutes - Draft Minutes

VIRTUAL MEETING - VIEW ONLINE

Tuesday, October 13, 2020
6 PM
Virtual Meeting

COUNCILMEMBERS
Rud Browne
Barry Buchanan
Tyler Byrd
Todd Donovan
Ben Elenbaas
Carol Frazey
Kathy Kershner

CLERK OF THE COUNCIL
Dana Brown-Davis, C.M.C.

COUNTY COUNCIL

CALL TO ORDER

Council Chair Barry Buchanan called the meeting to order at 6 p.m. in a virtual meeting.

ROLL CALL

Present: 7 - Rud Browne, Barry Buchanan, Tyler Byrd, Todd Donovan, Carol Frazey, Ben Elenbaas, and Kathy Kershner

Absent: None

FLAG SALUTE

ANNOUNCEMENTS

Buchanan gave brief announcements.

COUNTY EXECUTIVE'S REPORT

Satpal Sidhu, County Executive, stated he did not have a report.

MINUTES CONSENT

Donovan moved to accept the minutes consent items. The motion was seconded by Byrd (see votes on individual items below).

1. MIN2020-093 Water Work Session for September 22, 2020

Donovan moved and Byrd seconded that the Minutes Consent be APPROVED BY CONSENT. The motion carried by the following vote:

Aye: 6 - Browne, Buchanan, Byrd, Donovan, Frazey, and Kershner

Nay: 0

Absent: 0

Temp Absent: 1 - Elenbaas

2. MIN2020-095 Committee of the Whole for September 29, 2020

Donovan moved and Byrd seconded that the Minutes Consent be APPROVED BY CONSENT. The motion carried by the following vote:

Aye: 6 - Browne, Buchanan, Byrd, Donovan, Frazey, and Kershner

Nay: 0

Absent: 0

Temp Absent: 1 - Elenbaas

3. MIN2020-096 Regular County Council for September 29, 2020

Donovan moved and Byrd seconded that the Minutes Consent be APPROVED BY CONSENT. The motion carried by the following vote:

Aye: 6 - Browne, Buchanan, Byrd, Donovan, Frazey, and Kershner

Nay: 0

Absent: 0

Temp Absent: 1 - Elenbaas

PUBLIC HEARINGS

1. AB2020-390 Ordinance regarding installation of a stop sign on Homesteader Road

Jim Karcher, Public Works Department, stated he did not have a staff report.

Dana Brown-Davis, Clerk of the Council, answered a question about whether AB2020-409 should have a Public hearing.

Councilmembers discussed whether to move AB2020-409 earlier in the agenda.

Council Staff played a short instructional video on how to speak at a meeting.

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

Donovan moved and Byrd seconded that the Ordinance Requiring a Public Hearing be ADOPTED. The motion carried by the following vote:

Aye: 7 - Browne, Buchanan, Byrd, Donovan, Frazey, Elenbaas, and Kershner

Nay: 0

Absent: 0

Enactment No: ORD 2020-050

2. AB2020-391 Ordinance to Establish Speed Limits on Marine Drive

Buchanan opened the public hearing and the following person spoke:

- Gary Malick

Councilmembers acknowledged the work of Malick on this item.

Byrd moved and Frazey seconded that the Ordinance Requiring a Public Hearing be ADOPTED. The motion carried by the following vote:

Aye: 7 - Browne, Buchanan, Byrd, Donovan, Frazey, Elenbaas, and Kershner

Nay: 0

Absent: 0

Enactment No: ORD 2020-051

3. AB2020-393 Ordinance amending Whatcom County Code 16.30 Lake Whatcom Stormwater Utility Service Area

Cathy Craver, Public Works Department, briefed the Councilmembers.

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

Donovan moved that the Ordinance Requiring a Public Hearing be adopted. The motion was seconded by Kershner.

Craver answered what the issues were in the original ordinance and how they got fixed.

Councilmembers discussed the motion.

Kraig Olason, Public Works Department, answered what the Capital Facilities Charge money is used for, whether people currently living in the watershed are contributing to the costs that have already been incurred but the County is charging people who have not built yet, whether the County assesses each parcel in the watershed for costs associated with mitigating phosphorus in the lake, how much a typical fee is for one Equivalent Service Unit (ESU) and whether it is a one-time fee, and what people affected by this ordinance are currently paying for stormwater.

Donovan's motion that the Ordinance Requiring a Public Hearing be ADOPTED carried by the following vote:

Aye: 5 - Browne, Buchanan, Donovan, Frazey, and Kershner

Nay: 2 - Byrd, and Elenbaas

Absent: 0

Enactment No: ORD 2020-052

OPEN SESSION (20 MINUTES)

Buchanan explained and Council staff played a short instructional video on

how to speak at open session.

Buchanan opened the Open Session and the following people spoke:

- Richard Waits spoke in opposition to the Ordinance increasing community oversight and transparency to establish fair contract negotiations.
- Miguel Perry spoke in opposition to the Ordinance increasing community oversight and transparency to establish fair contract negotiations and spoke about the proposed Cherry Point amendments.
- Rick Eggerth spoke in opposition to the Ordinance increasing community oversight and transparency to establish fair contract negotiations.
- Rich Ewing spoke in opposition to the Ordinance increasing community oversight and transparency to establish fair contract negotiations.
- John Traynor spoke in opposition to the Ordinance increasing community oversight and transparency to establish fair contract negotiations.
- Hannah Fishman spoke in opposition to the Ordinance increasing community oversight and transparency to establish fair contract negotiations.
- Peter Starzynski spoke in opposition to the Ordinance increasing community oversight and transparency to establish fair contract negotiations.
- Michele Stelovich spoke in opposition to the Ordinance increasing community oversight and transparency to establish fair contract negotiations.
- Christine Reid spoke in opposition to the Ordinance increasing community oversight and transparency to establish fair contract negotiations.
- Trevor Smith spoke in opposition to the Ordinance increasing community oversight and transparency to establish fair contract negotiations, about proposed Cherry Point amendments and his support of the confirmation of Leora Province to the Whatcom County Commission on Salaries for Elected Officials.
- Maxford Nelsen spoke in favor of the Ordinance increasing community oversight and transparency to establish fair contract negotiations.
- Leora Province spoke in opposition to the Ordinance increasing community oversight and transparency to establish fair contract

negotiations.

- Barney Smith spoke in opposition to the Ordinance increasing community oversight and transparency to establish fair contract negotiations.
- Randy Ambuehl spoke in opposition to the Ordinance increasing community oversight and transparency to establish fair contract negotiations.
- Brian Estes spoke in opposition to the Ordinance increasing community oversight and transparency to establish fair contract negotiations.
- Janet McKinney spoke in opposition to the Ordinance increasing community oversight and transparency to establish fair contract negotiations.
- Zachary Graham spoke in opposition to the Ordinance increasing community oversight and transparency to establish fair contract negotiations.
- Eddy Ury spoke in opposition to the Ordinance increasing community oversight and transparency to establish fair contract negotiations.
- Steve Garey spoke in opposition to the Ordinance increasing community oversight and transparency to establish fair contract negotiations.
- Bill Angel spoke in opposition to the Ordinance increasing community oversight and transparency to establish fair contract negotiations.
- Chanan Suarez spoke in opposition to the Ordinance increasing community oversight and transparency to establish fair contract negotiations.
- Alexis Young spoke in opposition to the Ordinance increasing community oversight and transparency to establish fair contract negotiations.
- Michael Stoothoff spoke in opposition to the Ordinance increasing community oversight and transparency to establish fair contract negotiations and spoke about a new Whatcom County jail and Sheriff's Office.
- Heather Lee spoke in opposition to the Ordinance increasing community oversight and transparency to establish fair contract negotiations.
- Stacy Martin spoke in opposition to the Ordinance increasing community oversight and transparency to establish fair contract negotiations.
- David (inaudible) spoke in opposition to the Ordinance increasing

community oversight and transparency to establish fair contract negotiations.

- Marcus Stidham spoke about the Homeless Strategies Workgroup and the need for emergency shelters.

Hearing no one else, Buchanan closed the Open Session.

OTHER ITEMS (Part 1)

Clerk's note: Buchanan stated they would discuss AB2020-409 out of the agenda order.

1. AB2020-409 Ordinance increasing community oversight and transparency to establish fair contract negotiations

Byrd moved that the Ordinance be withdrawn. The motion was seconded by Elenbaas.

Councilmembers and Satpal Sidhu, County Executive, discussed the motion.

Dana Brown-Davis, Clerk of the Council, answered whether Byrd can withdraw the item on his own or whether the Councilmembers need to vote on it.

Byrd's motion that the Ordinance be WITHDRAWN carried by the following vote:

Aye: 7 - Browne, Buchanan, Byrd, Donovan, Frazey, Elenbaas, and Kershner

Nay: 0

Absent: 0

CONSENT AGENDA

Byrd reported for the Finance and Administrative Services Committee and ***moved*** to approve Consent Agenda items one through four. Councilmembers discussed and voted on those items (see votes on individual items below).

(From Council Finance and Administrative Services Committee)

1. AB2020-423 Request authorization for the County Executive to enter into an interlocal agreement between Whatcom County and Western Washington University to employ eligible students participating in the Federal Off-Campus Work Study Program, at an estimated amount between $500 to $2,000 per per student, per quarter

Byrd reported for the Finance and Administrative Services Committee and moved that the Interlocal be AUTHORIZED BY CONSENT. The motion

carried by the following vote:

Aye: 7 - Browne, Buchanan, Byrd, Donovan, Frazey, Elenbaas, and Kershner

Nay: 0

Absent: 0

2. AB2020-420 Request authorization for the County Executive to enter into a contract between Whatcom County and Maul Foster & Alongi, Inc. to update the Comprehensive Solid and Hazardous Waste Management Plan, in the amount of $113,000

Byrd reported for the Finance and Administrative Services Committee and moved that the Contract be AUTHORIZED BY CONSENT. The motion carried by the following vote:

Aye: 7 - Browne, Buchanan, Byrd, Donovan, Frazey, Elenbaas, and Kershner

Nay: 0

Absent: 0

3. AB2020-425 Request authorization for the County Executive to enter into an interlocal agreement between Whatcom County and Snohomish Health District to provide prevention services for tobacco and vapor devices to Whatcom County residents, in the amount of $12,500

Byrd reported for the Finance and Administrative Services Committee and moved that the Interlocal be AUTHORIZED BY CONSENT. The motion carried by the following vote:

Aye: 7 - Browne, Buchanan, Byrd, Donovan, Frazey, Elenbaas, and Kershner

Nay: 0

Absent: 0

4. AB2020-427 Resolution in the matter of the sale of surplus personal property and setting a date for public hearing, pursuant to WCC 1.10

Byrd reported for the Finance and Administrative Services Committee and moved that the Resolution be APPROVED. The motion carried by the following vote:

Aye: 7 - Browne, Buchanan, Byrd, Donovan, Frazey, Elenbaas, and Kershner

Nay: 0

Absent: 0

Enactment No: RES 2020-041

OTHER ITEMS (Part 2)

(From Council Finance and Administrative Services Committee)

2. AB2020-394 Request authorization for the County Executive to enter into an Interagency Agreement between Whatcom County Flood Control Zone District and Puget Sound Partnership for coordination of the Whatcom County Local Integrating Organization (LIO), in the amount of $125,000.00 (Council acting as the Whatcom County Flood Control District Board of Supervisors)

Byrd reported for the Finance and Administrative Services Committee and moved that the Contract (FCZDBS) be AUTHORIZED. The motion carried by the following vote:

Aye: 6 - Browne, Buchanan, Byrd, Donovan, Frazey, and Kershner

Nay: 1 - Elenbaas

Absent: 0

3. AB2020-424 Request permission for the County Executive and the County Council to enter into a Joint Funding Agreement between the Whatcom County Flood Control Zone District (FCZD) and the United States Geological Survey (USGS); (Council acting as the FCZD Board of Supervisors)

Byrd reported for the Finance and Administrative Services Committee and moved that the Contract (FCZDBS) be AUTHORIZED. The motion carried by the following vote:

Aye: 7 - Browne, Buchanan, Byrd, Donovan, Frazey, Elenbaas, and Kershner

Nay: 0

Absent: 0

(From Council Planning and Development Committee)

4. AB2020-421 Discussion and Council motion to approve the Public Participation Plan for Whatcom County Comprehensive Plan and Development Regulation Amendments

Elenbaas reported for the Planning and Development Committee and ***moved*** that the following recommended motion be approved:

To approve the Public Participation Plan as proposed with the amendment proposed by the Planning Commission and reflected in the memo to replace "Planning and Development Staff" with "The County" in the following:

Remote Participation - New Section 1.2 in Chapter 1 (p. 1-3):

~~Planning and Development staff~~ The County should identify methods for remote public participation for all public hearings (for example, online or

telephonic participation).

Tyler Schroeder, Executive's Office, answered a question about how docketed items are prioritized and whether the wind farm issue will be on the Planning Commission agenda in the near future.

Elenbaas's motion carried by the following vote:

Aye: 7 - Browne, Buchanan, Byrd, Donovan, Frazey, Elenbaas, and Kershner

Nay: 0

Absent: 0

COUNCIL APPOINTMENTS TO BOARDS, COMMISSIONS, AND COMMITTEES

1. AB2020-362 Appointment to the Climate Impact Advisory Committee, Applicant(s): Stevan Harrel, Sue Gunn, Hunter Hassig

Buchanan stated there was a late application and that it would require a motion to consider. There was no motion.

Donovan moved to nominate and appoint the three applicants. The motion was seconded by Byrd.

Dana Brown-Davis, Clerk of the Council, answered a question about the deadline for applications to be turned in.

Cathy Halka, Council Legislative Analyst stated the deadline for applications is referenced in the Whatcom County Code.

Councilmembers, Brown-Davis, and Jill Nixon, Council Office, discussed the item, whether they have extended the deadline in the past, and the fact that there are two different terms for the appointees to fill. One will expire on January 31, 2021 and the other two will expire on January 31, 2023. They discussed letting the late applicant know that one of the terms expires in 2021 and that the Council could reconsider the application if he would like to apply again.

Councilmembers discussed how to assign the terms to the three applicants.

Byrd moved to amend the motion to assign Hassig to the term ending 1/31/2021 and the other two to the term ending 1/31/2023 based on when their applications were submitted. The motion was seconded by Browne.

Browne withdrew his second.

Jill Nixon, Council Office, clarified the time stamps of the applications for when they were emailed to the Council Office.

Browne reinstated this second.

Councilmembers discussed the motion to amend.

The motion to amend carried by the following vote:
Aye: 6 - Frazey, Kershner, Browne, Buchanan, Byrd, and Donovan
Nay: 0
Abstain: 1 - Elenbaas

Donovan's motion that the three applicants be APPOINTED with the approved amendment carried by the following vote:

Aye: 6 - Browne, Buchanan, Byrd, Donovan, Frazey, and Kershner

Nay: 0

Absent: 0

Abstain: 1 - Elenbaas

2. AB2020-407 Appointment to the Birch Bay Watershed and Aquatic Resources Management Advisory Committee (BBWARM), Applicant(s): Theresa Coe, Michael Allan (Council acting as the Whatcom County Flood Control Zone District Board of Supervisors)

Jill Nixon, Council Office, answered a question about and stated that Theresa Coe is not qualified since she does not live in the district so she can be removed from consideration. She clarified that there is then only one application. to consider.

Byrd moved and Donovan seconded that Michael Allan be APPOINTED. The motion carried by the following vote:

Aye: 6 - Browne, Buchanan, Byrd, Donovan, Frazey, and Kershner

Nay: 0

Absent: 0

Abstain: 1 - Elenbaas

EXECUTIVE APPOINTMENTS TO BOARDS, COMMISSIONS, AND COMMITTEES

1. AB2020-429 County Executive requests confirmation of his appointments (per attached list) to the Whatcom County Commission on Salaries for Elected Officials (Salary Commission)

Donovan moved that the appointments be confirmed. The motion was seconded by Byrd.

Councilmembers discussed the item with the following people:

- Satpal Sidhu, County Executive
- Dana Brown-Davis, Clerk of the Council
- Karen Frakes, Prosecuting Attorney's Office

They discussed whether this is all of the applicants, whether the applicants that the Auditor puts forward by lot are done using the voter registration rolls, whether Councilmembers should vote on people who decide their salary, whether the applicants would be able to serve if the Council did not participate in their confirmation, whether the Salary Commission is in the Whatcom County Code or the State Code, the process for appointment to the Commission as adopted by ordinance, and whether the process should be changed.

Donovan's motion that the Executive Appointments be CONFIRMED carried by the following vote:

Aye: 6 - Browne, Buchanan, Byrd, Donovan, Frazey, and Kershner

Nay: 0

Absent: 0

Abstain: 1 - Elenbaas

ITEMS ADDED BY REVISION

There were no agenda items added by revision.

INTRODUCTION ITEMS

Byrd moved to introduce items one through six. The motion was seconded by Browne (see votes on individual items below).

1. AB2020-430 Ordinance amending the project budget for the Birch Bay Drive and Pedestrian Facility Project Fund, Request No. 6, in the amount of $841,786

Byrd moved and Browne seconded that the Ordinance be INTRODUCED. The motion carried by the following vote:

Aye: 6 - Browne, Buchanan, Byrd, Donovan, Frazey, and Kershner

Nay: 1 - Elenbaas

Absent: 0

2. AB2020-433 Ordinance amending the 2020 Whatcom County Budget, request no. 19, in the amount of $7,904,575

Byrd moved and Browne seconded that the Ordinance be INTRODUCED. The motion carried by the following vote:

Aye: 6 - Browne, Buchanan, Byrd, Donovan, Frazey, and Kershner

Nay: 1 - Elenbaas

Absent: 0

3. AB2020-373 Ordinance adopting interim zoning regulations for the siting, establishment, and operation of temporary homeless facilities

Byrd moved and Browne seconded that the Ordinance Requiring a Public Hearing be INTRODUCED FOR PUBLIC HEARING. The motion carried by the following vote:

Aye: 6 - Browne, Buchanan, Byrd, Donovan, Frazey, and Kershner

Nay: 1 - Elenbaas

Absent: 0

4. AB2020-432 Receipt of application for the Drainage Improvement District #6, Supervisor Position 3 - Applicant(s): Thomas Shaffer (Deadline for additional applications for this position is 10:00 a.m. on October 20, 2020)

Byrd moved and Browne seconded that the Council Appointment Requiring Introduction be INTRODUCED. The motion carried by the following vote:

Aye: 6 - Browne, Buchanan, Byrd, Donovan, Frazey, and Kershner

Nay: 1 - Elenbaas

Absent: 0

5. AB2020-428 Resolution authorizing the sale of surplus personal property pursuant to WCC 1.10

Byrd moved and Browne seconded that the Resolution Requiring a Public Hearing be INTRODUCED FOR PUBLIC HEARING. The motion carried by the following vote:

Aye: 6 - Browne, Buchanan, Byrd, Donovan, Frazey, and Kershner

Nay: 1 - Elenbaas

Absent: 0

6. AB2020-435 Resolution adopting the 2021 Annual Road Construction Program (ACP)

Byrd moved and Browne seconded that the Resolution Requiring a Public

Hearing be INTRODUCED FOR PUBLIC HEARING. The motion carried by the following vote:

Aye: 6 - Browne, Buchanan, Byrd, Donovan, Frazey, and Kershner

Nay: 1 - Elenbaas

Absent: 0

COMMITTEE REPORTS, OTHER ITEMS, AND COUNCILMEMBER UPDATES

Councilmembers gave committee reports and updates on recent activities and upcoming events.

ADJOURN

The meeting adjourned at 8:58 p.m.

ATTEST:

WHATCOM COUNTY COUNCIL
WHATCOM COUNTY, WA

_____ _____

Dana Brown-Davis, Council Clerk | Barry Buchanan, Council Chair

_____

Kristi Felbinger, Minutes Transcription

Whatcom County

COUNTY COURTHOUSE
311 Grand Avenue, Ste #105
Bellingham, WA 98225-4038
(360) 778-5010

Agenda Bill Master Report

File Number: AB2020-308

File ID:	AB2020-308	**Version:**	1	**Status:**	Introduced for Public Hearing
File Created:	07/21/2020	**Entered by:**	AHester@co.whatcom.wa.us		
Department:	Public Works Department	**File Type:**	Resolution Requiring a Public Hearing		
Assigned to:	Council			**Final Action:**	
Agenda Date:	10/27/2020			**Enactment #:**	

Primary Contact Email: Sdraper@co.whatcom.wa.us

TITLE FOR AGENDA ITEM:

Resolution vacating a portion of Horton Road

SUMMARY STATEMENT OR LEGAL NOTICE LANGUAGE:

The attached resolution vacating a portion of Horton Road is submitted per RCW 36.87 and WCC 12-20.

The County Engineer's report has been prepared and is being submitted in favor of this road vacation. A public hearing will need to be scheduled.

HISTORY OF LEGISLATIVE FILE

Date:	Acting Body:	Action:	Sent To:
08/05/2020	Council	INTRODUCED FOR PUBLIC HEARING	Council

Attachments: Memo, Proposed Resolution, Affidavit of Posting

WHATCOM COUNTY
PUBLIC WORKS DEPARTMENT

JON HUTCHINGS
DIRECTOR

CIVIC CENTER
322 N. Commercial Street, Suite 210
Bellingham, WA 98225-4042
Telephone: (360) 778-6200
FAX: (360) 778-6201
www.whatcomcounty.us

MEMORANDUM

To: The Honorable County Executive Satpal Singh Sidhu and Honorable Members of the County Council

Through: Jon Hutchings, Director

From: Andrew Hester, Real Estate Coordinator AH

Date: July 21, 2020

Re: A Resolution Vacating a Portion of Horton Road

The attached petition asks for vacation of a portion of Horton Road.

Based on a Fair Market Valuation (FMV) of surrounding comparable properties, the estimated value of the area to be vacated is approximately $15,840.00.

Recommended Action
The County Engineer's report has been prepared and is being submitted as in favor of this road vacation. It is recommended that the County Council set a hearing date for the requested vacation request, publish the vacation request and direct County staff to post the appropriate public notices.

Please contact me at extension 6216 if you have any questions regarding this action.

Encl.

SPONSORED BY: _____

PROPOSED BY: Public Works

INTRODUCTION DATE: _____

RESOLUTION NO. _____

A RESOLUTION VACATING A PORTION OF HORTON ROAD

WHEREAS, on April 26, 2019, Chad TerWisscha and Ken Jorgensen submitted a petition for the vacation of a portion of Horton Road lying within the unincorporated area of Whatcom County, accompanied by the penal sum of $790.00; and,

WHEREAS, as described in RCW 36.87.010, when a county road or any part thereof is considered useless, the Whatcom County Council may declare by resolution its intention to formally consider vacation; and

WHEREAS, the County Council voted 7-0 on October 8, 2019, to consider this vacation request and directed the County Engineer's office to report; and

WHEREAS, the County Engineer's office has reviewed the portion of the street which is a Class B-2 right-of-way, wherein no public expenditures were made or they are non-ascertainable from records, and part or all lies within a platted subdivision, and in the exercise of his judgment has determined that the public will benefit from said vacation; and

WHEREAS, it is unknown if there are public utilities located within the portion of the right-of-way to be vacated, but an easement for said utilities will be retained by the County, and

WHEREAS, the fair market value has been determined to be $0.40 per square foot for the approximately 39,600 square feet of Horton Road, making the total value of the area to be vacated $15,840.00; and

WHEREAS, the County Engineer has reviewed said compensation and determined it to be fair value; and

WHEREAS, the petitioner has met all of the petition requirements, as set forth by Chapter 12.20 Whatcom County Code, and all other applicable laws; and

WHEREAS, the applicant has six calendar months from the date of the Preliminary Order of Vacation to pay any remaining fees to the Whatcom County Council office, which checks should be made payable to the Whatcom County Treasurer, prior to the vacation becoming effective, including but not limited to the appraised value of the area sought to be vacated; and

WHEREAS, this vacation does not become effective until the fees are paid and the Final Order and Resolution are recorded with the County Auditor;

NOW, THEREFORE, BE IT RESOLVED that it is the intention of the Whatcom County Council to vacate the following described right of way:

That portion of Horton Road adjacent to Lot 5, Block 73 and Lot 12, Block 72, "Bakerview Addition to the City of Bellingham", recorded in Volume 7 of Plats, Page 40-45, Section 1, Township 38 North, Range 2 East, W.M. Situate in Whatcom County, Washington.

SUBJECT TO and/or together with all easements, covenants, restrictions, and/or agreements of record or otherwise; and

SUBJECT TO an easement retained by the County in respect to the vacated portion of right-of-way for the construction, repair, and maintenance of any and all public utilities and services, now located on or in the vacated portion.

BE IT FURTHER RESOLVED that upon applicants' completion of payment for the property and of all other fees, a Final Order of Vacation shall be prepared by Council Staff, signed by the appropriate parties, and recorded with the County Auditor; and

BE IT FURTHER RESOLVED that if the conditions set forth above are not fulfilled within six months from the date of the passage of this Resolution, the Preliminary Order of Vacation which is hereby authorized shall be withdrawn, and the right-of-way shall not be deemed to have been vacated.

APPROVED this _____ day of _____, 2020

ATTEST:
WASHINGTON

WHATCOM COUNTY COUNCIL
WHATCOM COUNTY,

_____
Dana Brown-Davis, County Clerk

_____
Barry Buchanan, Council Chair

APPROVED AS TO FORM:

Christopher Quinn
Civil Deputy Prosecutor
(authorized via email 7/21/2020)

BEFORE THE WHATCOM COUNTY COUNCIL

IN THE MATTER OF VACATION OF THE COUNTY ROAD KNOWN AS

HORTON RD

Petitioned for by:

CHAD TERWISSCHA & et.al. KEN JORGENSEN

PETITION FOR VACATION OF PLATTED ROAD

(RCW 58.17 AND 36.87)

Pursuant to Whatcom County Ordinance No. 1-72, dated February 14, 1972, the undersigned and those signing attached petition, which bears signatures and property descriptions of five land owners residing in the vicinity of said road, request vacation of the county road hereinafter described, and agree with the statements below:

1. Petitioners are residents of Whatcom County and owners of real property in the vicinity of the road sought to be vacated.

2. The road sought to be vacated is legally described as follows:
   PORTION OF HORTON RD. ADJACENT TO LOT 5 BLK 73 & LOT 12 BLK 72

3. The pertinent facts in support of this petition are:

4. The road to be vacated is useless as a part of the County road system and the public will benefit by its vacation and abandonment.

5. Petitioners will pay all costs and expenses incurred by the Count in examination, report, notice and proceedings pertaining to this petition.

6. A bond in the penal sum of $790.00, payable to Whatcom County Treasurer, accompanies this petition.

7. The application fee accompanies this petition.

WHEREFORE, petitioners request the County Road Engineer to report upon this petition, that a hearing take place on this report, and that an order be entered vacating and abandoning said road.

CONTACT PERSON:

CHAD TERWISSCHA
360 303 7000
Chad542@gmail.com

Signed this 26th day of April, 2019.

WHEREFORE, petitioners request the County Road Engineer to report upon this petition, that a hearing take place on this report, and an order be entered vacating and abandoning said road. (NOTE: A minimum of five signatures is required by law; see statement near the beginning of page 1).

PETITIONERS' NAMES: Property owned by petitioner (part of sec. or name of plat, see (lot), TWP, (Blk) Range):

CHAD TERWISSCHA 4610 ALDRICH RD
38020103515000000

KEN JORGENSEN 4592 ALDRICH RD
Kenneth Jorgensen
380201030119 0000

A map of the road proposed to be vacated and surrounding properties, with each of the above signed petitioners properties indicated thereon, shall be attached to this petition in order for it to be accepted in the County Council Office.

Horton Rd Vacation

Darin Peterson 2-22-19
Dai Peterson 3802010322540000
4686 Aldrich Rd.
Bellingham, WA 98226

Brandon Osgoodby 2/23/19
3802024481710000
568 Wiltse Ln
Bham WA 98226

Bret Wiltse
4581 Aldrich Rd
Bham WA 98226
3802024971130000

Frank R Wilke
Frank R Wiltse 3-23 19
505 Wiltse Lane 3802024951280000
Bellingham Wash

Dustin Masters 3/23/19
3802024921450000
Rebecca Masters 3/23/19
R Masters
4607 Aldrich RD 98226

Horton Rd. vacation South of 4610 Aldrich Rd. and North of 4592 Aldrich Rd.

Chad TerWisscha and Keneth Jorgensen would like to vacate this ROW because it has no value to Whatcom County for numerous reasons.

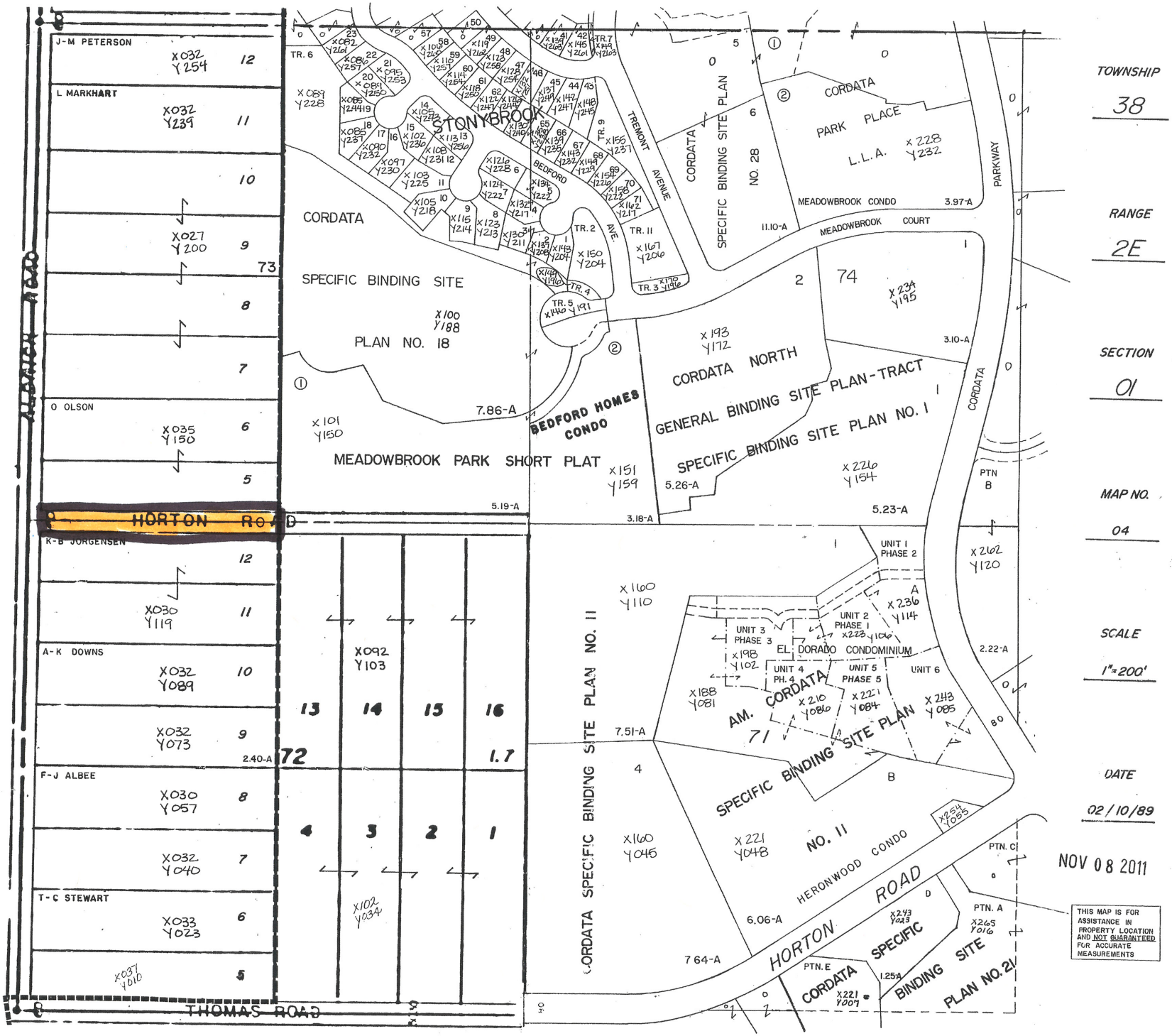
-The topography of the terrain makes it a non-cost effective option for any type of roadway or access to be built due to the enormous gully/creek and embankment height. This would also create a huge environmental impact and disturbance.

-The City of Bellingham has a confirmed location for Horton Road to be laid from Cordata to Aldrich and is approximately 1500 feet south of said ROW.

-There is no road access from the East side of this property and does not lock any property owners from access to their land. It is adjacent to City of Bellingham property.

-The size of this property (approx.. 60' x 660') gives no option for building or any other use.

-Appears to be wetlands and must be preserved.


TOWNSHIP
38
RANGE
2E
SECTION
01
MAP NO.
04
SCALE
1"=200'
DATE
02/10/89
NOV 08 2011
THIS MAP IS FOR ASSISTANCE IN PROPERTY LOCATION AND NOT GUARANTEED FOR ACCURATE MEASUREMENTS
J-M PETERSON
L MARKHART
O OLSON
K-B JORGENSEN
A-K DOWNS
F-J ALBEE
T-C STEWART
ALBANY ROAD
HORTON ROAD
THOMAS ROAD
STONYBROOK
TREMONT AVENUE
BEDFORD AVE.
CORDATA
SPECIFIC BINDING SITE
PLAN NO. 18
BEDFORD HOMES CONDO
MEADOWBROOK PARK SHORT PLAT
CORDATA NORTH
GENERAL BINDING SITE PLAN-TRACT
SPECIFIC BINDING SITE PLAN NO. 1
CORDATA SPECIFIC BINDING SITE PLAN NO. II
CORDATA SPECIFIC BINDING SITE PLAN NO. 28
CORDATA PARK PLACE
L.L.A.
MEADOWBROOK CONDO
MEADOWBROOK COURT
PARKWAY
EL DORADO CONDOMINIUM
UNIT 1 PHASE 2
UNIT 2 PHASE 1
UNIT 3 PHASE 3
UNIT 4 PH. 4
UNIT 5 PHASE 5
UNIT 6
AM. CORDATA
SPECIFIC BINDING SITE PLAN NO. II
HERONWOOD CONDO
HORTON ROAD
CORDATA SPECIFIC BINDING SITE PLAN NO. 21
PTN. A
PTN. B
PTN. C
PTN. E
72
73
74
71
13
14
15
16
4
3
2
1



REPORT OF THE COUNTY ENGINEER

(Whatcom County Code 12.20.050)

IN THE MATTER OF THE VACATION OF A COUNTY ROAD

COUNTY ENGINEER'S REPORT

Portion of Horton Road within plat of "Bakerview Addition to the City of Bellingham"

PETITIONED BY Chad TerWisscha and Ken Jorgensen

I, the undersigned County Engineer of Whatcom County, State of Washington, being duly directed by the Whatcom County Council to examine and report on County Road

Portion of Horton Road within plat of "Bakerview Addition to the City of Bellingham", proposed for vacation by the petition of: Chad TerWisscha and Ken Jorgensen

did examine said road and report as follows:

IN FAVOR X

Said road should be vacated.

Fair Market Value (12.20.060 E)
0.91ac+- (39,600sf+-) acres @ $15,840

NOT IN FAVOR ____

Said road should not be vacated.
Said road is now in use as a County road. 1.
It will be advisable to preserve this road.
The public will not be benefited by this vacation.

2. Classification (12.20.060 F)

Class A		Public expenditures made
Class B	X	No public expenditures made or non-ascertainable from records
Class 1		No part thereof lies in any plat
Class 2	X	Part or all lies within a platted subdivision
Class 3		Did not remain unopened for public use for five or more years after the order made or authority granted for opening it.
Class 4		Remained unopened for public use for five or more years after the order made or authority granted for opening it.
Class 5		Is contained within that portion of a plat which is to be replatted
Class 6		Abandoned in fact due to relocation of right-of-way
Class 7		Informalities exist in the records of title which are construed to invalidate and divest the public of any right, title, or interest in the right-of-way.

The public will be benefited by this vacation. yes X no _____

James P. Karcher

James P. Karcher, P.E.
Whatcom County Engineer

7-21-2020

Date

WHATCOM COUNTY
PUBLIC WORKS DEPARTMENT

Phone: (360) 778-6200
FAX: (360) 778-6201

COMPARATIVE MARKET ANALYSIS – CHETS ROAD VACATION PETITION

PETITIONER: Chad Terwisscha and Ken Jorgensen
PROPERTY LOCATION: Horton Road Right of Way adjacent to 4592 Aldrich Road and 4610 Aldrich Road
OWNER NAME: Whatcom County
CURRENT USE: Vacant (unopened right-of-way)
AREA ZONING: Rural 1 Unit/5 Acres

BACKGROUND:
Pursuant to Whatcom County Ordinance No. 1-72, dated February 14, 1972, Chad Terwisscha and Ken Jorgensen are petitioning the County to vacate an area of approximately 39,600 square feet, more or less, consisting of the unopened right-of-way of Horton Road.

SALES RELIED ON:

Five comparable land sales were used to prepare this market evaluation of the subject property and they sold between April 2018 to July 2018. Sale prices ranged from $0.26 to $0.50 per square foot.

Five property sales were used to compute Fair Market Valuation (FMV), and they sold between November 22, 2019 and April 9, 2019. Sale prices ranged from a high of $0.85 per square foot to a low of $0.74 per square foot.

Comparable #1 is located at 859 E 51st Street, approximately 3 ½ miles northeast of the subject property. It is approximately 4.61 acres and is vacant land. It sold on November 22, 2019 for $169,999 or $0.85 per square foot. The property is zoned "R5A".

Comparable #2 is located at 5351 Dinkel Road, approximately 6 miles northeast of the subject property. It is approximately 5.21 acres and is vacant land. It sold on November 20, 2019 for $169,900 or $0.75 per square foot. The property is zoned "R5A".

Comparable #3 is located at 1420 Marietta Avenue, approximately 1 ½ miles southwest of the subject property. It is approximately 4.78 acres and is vacant land. It sold on June 26, 2019 for $175,000 or $0.84 per square foot. The property is zoned "R5A".

Comparable #4 is located at 4950 Yellow Brick Road, approximately 3 miles east of the subject property. It is approximately 4.94 acres and is vacant land. It sold on May 7, 2019 for $160,000 or $0.74 per square foot. The property is zoned "R5A".

WHATCOM COUNTY
PUBLIC WORKS DEPARTMENT

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Comparable #5 is located at 1413 Wynn Ridge Lane, approximately1 mile southwest of the subject property. It is approximately 5.01 acres and is vacant land. It sold on April 9, 2019 for $175,000 or $0.80 per square foot. The property is zoned "R5A".

Averaging those five sales together arrives at $0.80 per square foot. However, due to the topography and condition of the property and the likely presence of wetlands an adjustment is necessary to establish an estimated Fair Market Value (FMV). It is estimated that the subject property should be valued at 50% of $0.80 per square foot value, arriving at an estimated FMV of $0.40.

RECOMMENDED COMPENSATION TO COUNTY for 39,600 net square feet X $0.40 PSF = **$15,840.00**

Prepared By: Andrew Hester Date: 6-30-20

Andrew Hester, Real Estate Coordinator
Whatcom County Public Works

This market analysis does not constitute an appraisal as defined by USPAP.

AFFIDAVIT OF POSTING

IN THE MATTER OF VACATING A WHATCOM COUNTY ROAD KNOWN AS A PORTION OF HORTON ROAD, filed in the Whatcom County Council Office under AB2020-308:

I, J. Spencer Robbins, on the 2nd day of October, 2020 posted two notices of hearing concerning the proposal to vacate a road as described above.

The notices were posted at the following locations:

1. At approximately the NE corner of the intersection of Aldrich Rd. and Horton Rd. R.O.W.

2. At approximately the SE corner of the intersection of Aldrich Rd. and Horton Rd. R.O.W.

Signature: _____

Please return original to the Council Office when completed.

Whatcom County

COUNTY COURTHOUSE
311 Grand Avenue, Ste #105
Bellingham, WA 98225-4038
(360) 778-5010

Agenda Bill Master Report

File Number: AB2020-310

File ID:	AB2020-310	**Version:**	1	**Status:**	Introduced for Public Hearing
File Created:	07/21/2020	**Entered by:**	AHester@co.whatcom.wa.us		
Department:	Public Works Department	**File Type:**	Ordinance Requiring a Public Hearing		
Assigned to:	Council			**Final Action:**	
Agenda Date:	10/27/2020			**Enactment #:**	

Primary Contact Email: Sdraper@co.whatcom.wa.us

TITLE FOR AGENDA ITEM:

Ordinance granting Gordon Montgomery and John Milobar, a non-exclusive franchise for the provision of sewer services

SUMMARY STATEMENT OR LEGAL NOTICE LANGUAGE:

RCW 36.55.040, Whatcom County Charter Section 9.30, and Whatcom County Code 12.24 provides for the granting of franchises to public and private utility companies for use of County Rights-of-Way. This is a new franchise allowing for the use and presence in County Rights-of-Way for the provision of sewer services

HISTORY OF LEGISLATIVE FILE

Date:	Acting Body:	Action:	Sent To:
08/05/2020	Council	INTRODUCED FOR PUBLIC HEARING	Council

Attachments: Staff Memo, Proposed ordinance

WHATCOM COUNTY
PUBLIC WORKS DEPARTMENT

JON HUTCHINGS
DIRECTOR

CIVIC CENTER
322 N. Commercial Street, Suite 210
Bellingham, WA 98225-4042
Telephone: (360) 778-6200
FAX: (360) 778-6201

MEMORANDUM

TO: The Honorable Satpal Singh Sidhu, County Executive,
Honorable Members of the Whatcom County Council

THROUGH: Jon Hutchings, Director

FROM: Andrew Hester, Public Works Real Estate Coordinator AH

RE: Franchise for Gordon Montgomery and John Milobar

DATE: July 21, 2020

- **Requested Action**
  Adopt an ordinance that grants a franchise to Gordon Montgomery and John Milobar, allowing for the use of County Rights of Way to lay, construct, maintain, and repair sewer lines to provide sewer service from the City of Blaine to the Ridge at Semiahmoo, a 26-lot plat per the terms of the franchise agreement, under RCW 36.55 and § 9.30 of the Home Rule Charter.

- **Background and Purpose**
  Gordon Montgomery and John Milobar have applied for a new franchise agreement for the purposes of utilizing County rights of way to provide sewer service.

  Please contact Chris Quinn at extension 5729 if you have any questions or concerns regarding the terms of this agreement.

  Encl.

SPONSORED BY: _____

PROPOSED BY: Executive

INTRODUCTION DATE: _____

ORDINANCE NO. _____

GRANTING GORDON MONTGOMERY AND JOHN MILOBAR A FRANCHISE AND THE RIGHT, PRIVILEGE, AND AUTHORITY THEREUNDER TO LOCATE, SET, ERECT, LAY, CONSTRUCT, EXTEND, SUPPORT, ATTACH, CONNECT, MAINTAIN, REPAIR, REPLACE, ENLARGE, OPERATE AND USE FACILITIES IN, UPON, OVER, UNDER, ALONG, ACROSS AND THROUGH THE FRANCHISE AREA TO ALLOW FOR THE PROVISION OF SEWER SERVICES.

WHEREAS, Gordon Montgomery and John Milobar ("Grantees") have applied for a twenty-five (25) year franchise; and

WHEREAS, the Home Rule Charter for Whatcom County authorizes the County Council to grant non-exclusive franchises for a fixed term not to exceed 25 years for the use of any street, road, or public place;

WHEREAS, RCW 36.55.010, Whatcom County Charter Section 9.30, and Whatcom County Code Chapter 12.24 address the requirements pertaining to the granting of franchises by the County; and

WHEREAS, Gordon Montgomery and John Milobar seek a non-exclusive twenty-five (25) year franchise to construct, erect, alter, lay, support, connect, improve, renew, replace, repair, operate and maintain a sanitary sewer main upon, under, over, across and along certain roads and other areas in Whatcom County, Washington; and

WHEREAS, the application of Gordon Montgomery and John Milobar having come on regularly to be heard by the County Council on the ___ day of _____, 2020, and notice of this hearing having been duly published on the _____ day of _____, 2020, and the ____ day of _____, 2020, in the Bellingham Herald, a daily newspaper published in Whatcom County having county-wide circulation; and

WHEREAS, it appears to the Council that notice of said application and hearing thereon has been given as required by law in RCW 36.55.040; and

WHEREAS, this Council finds, after having considered said application and being otherwise fully advised in the premises, that it is in the public interest for this Council to grant the franchise for a period of twenty-five (25) years; and

NOW, THEREFORE, BE IT ORDAINED by the Whatcom County Council that the language set forth below, in Sections 1 through 20, shall constitute the franchise agreement between Whatcom County and Gordon Montgomery and John Milobar (hereinafter "Grantees"), which shall be and become effective as set forth in Section 13 of this agreement:

Section 1. Definitions.

1.1 Where used in this franchise agreement ("Franchise"), the following terms shall mean:

1.1.1 "County" means the County of Whatcom, a political subdivision of the State of Washington, and its successors and assigns.

1.1.2 "Franchise Area" means that portion of Semiahmoo Drive extending southerly from Shearwater Road 2,000 feet more or less as depicted on Figure 1.

1.1. 3 "Facilities" means, collectively, any and all sewer transmission and distribution systems, including but not limited to tanks, meters, pipes, mains, services, valves, manholes, pressure reducing valves ("PRVs"), pump stations, meter stations and any and all other equipment, appliances, attachments, appurtenances and other items necessary, convenient, or in any way appertaining to any and all of the foregoing, whether the same be located over or under ground.

1.1.4 "Grantees" means Gordon Montgomery and John Milobar, and their successors and assigns.

1.1.5 "Ordinance" means Ordinance No. _____, which sets forth the terms and conditions of this Franchise.

1.1.6 "Right-of-Way": As used herein shall refer to the surface of and space along, above, and below any public street, road, way, lane, drive, alley or easement within the Franchise Area;

1.1.7 "Relocation": As used herein shall mean to protect, support, temporarily disconnect, relocate and/or remove Grantees' facilities within or from within the County right-of-way.

Section 2. Facilities Within Franchise Area.

2.1 The County does hereby grant to Grantees a Franchise, and the right, privilege, and authority thereunder, to construct, operate, maintain, replace, and use all necessary equipment and facilities for a sanitary sewer main, in, under, on, across, over, through, along, or below the public rights-of-way located in the Franchise Area.

2.2 This Franchise is subject to the terms and conditions hereinafter set forth.

Section 3. County Authority.

3.1 The County, in granting this Franchise, does not waive any rights which it now has or may hereafter acquire with respect to the Franchise Area, and this Franchise shall not be construed to deprive the County of any powers, rights, or privileges which it now has, or may hereafter acquire, to regulate the use of and to control the Franchise Area.

Section 4. Noninterference of Facilities.

4.1 As to new Facilities, Grantees' Facilities shall be placed and maintained within the Franchise Area so as not to unreasonably interfere with the free passage of traffic and in accordance with all applicable laws, rules, and regulations. Prior to the installation of new Facilities within the Franchise Area, Grantees may request that the County determine whether the proposed placement of the Facilities will unreasonably interfere with the free and safe passage of traffic, and the County shall make such determination in writing within a reasonable period of time. If the proposed location is not approved by the County Engineer, the County Engineer shall advise in writing what reasonable modifications to the proposed location of the Facilities are necessary for the County Engineer to issue a determination that the proposed location of the Facilities will not unreasonably interfere with the free and safe passage of traffic.

If Grantees proceed to install new Facilities without first obtaining the County Engineer's determination that the proposed location of the Facilities will then unreasonably interfere with the free and safe passage of traffic then, upon determination by the County that current placement of particular Facilities unreasonably interferes with free or safe passage of traffic, the County shall notify Grantees which shall, at its own expense, act promptly to rectify the problem in consultation with the County. Grantees shall exercise its rights under this Franchise and within the Franchise Area in accordance with all County codes and ordinances governing use and occupancy of the Franchise Area; provided, however, in the event of any conflict or inconsistency of such codes and ordinances with the terms and conditions of this Franchise, the terms and conditions of this Franchise shall govern and control to the extent authorized by law; provided, further, nothing herein shall be deemed to waive, prejudice or otherwise limit any right of appeal afforded Applicant by such County codes and ordinances.

4.2 Grantees' Facilities shall be maintained within the Franchise Area so as not to unreasonably interfere with the free passage of traffic and in accordance with all applicable laws, rules, and regulations. Upon a determination by the County that the placement of particular Facilities unreasonably interferes with free or safe passage of traffic, the County shall notify Grantees which shall, at its own expense, act promptly to rectify the problem in consultation with the County. Grantees shall exercise its rights under this Franchise and within the Franchise Area in accordance with all County codes and ordinances governing use and occupancy of the Franchise Area; provided, however, in the event of any conflict or inconsistency of such codes and ordinances with the terms and conditions of this Franchise, the terms and conditions of this Franchise shall govern and control to the extent authorized by law; provided, further, nothing herein shall be deemed to waive, prejudice or otherwise limit any right of appeal afforded Grantees by such County codes and ordinances.

4.3 All construction or installation of such Facilities, service, repair, or relocation of the same, performed over, above, along or under the Franchise Area shall be done in such a manner as not to interfere unreasonably with the construction and maintenance of other existing utilities, lines, public or private, drains, drainage ditches and structures, irrigation ditches and structures, located therein, nor with the grading or improvement of the Franchise Area. The owners of all utilities, public or private, installed in the Franchise Area prior in time to the Facilities of Grantees shall have preference as to the positioning and location of such utilities so installed with respect to Grantees. Such preference shall continue in the event of the necessity of relocating or changing the grade of the Franchise Area. Grantees shall have such preference as to owners of all utilities, public or private, initially installed in the Franchise Area subsequent in

time to Grantees' Facilities.

4.4 The locating, laying, construction, operation and maintenance of Grantees' Facilities authorized by this Franchise shall not preclude the County, its agents or its contractors from blasting, grading, excavating, or doing other necessary road work contiguous to Grantees' Facilities, provided that Grantees' and the County shall first check with the locator service to determine whether or not any of Grantees' lines are located in the proposed work area. Upon finding from the locator service that Grantees do have lines located within the proposed work area, the County shall provide Grantees with seventy-two (72) hours notice of proposed work, except if a lesser time for notice is warranted by emergency, in order that the Grantees may protect its Facilities. Failure of Grantees to properly notify the locator service of the location of its lines and Facilities shall relieve County of its duty to provide Grantees the otherwise-required advance notice of proposed work.

4.5 Grantees shall maintain all above-ground Facilities that it places in the Franchise Area. In order to avoid interference with the County's ability to maintain the Franchise Area, Grantees shall provide a clear zone of five (5) feet on all sides of such above-ground Facilities. If Grantees fail to comply with this provision, and by its failure, property is damaged, then Grantees shall be deemed responsible for all damages caused thereby and the County shall be released from any responsibility therefore. For these purposes, "clear zone" means an area that is mowed or otherwise maintained so that the Facilities are readily visible to County maintenance operations.

Section 5. Construction Within the Franchise Area.

5.1 All construction and installation work within the Franchise Area shall be subject to the approval and pass the inspection of the County Engineer, and shall conform to all applicable local, state and federal standards, codes or regulations, and the County expressly reserves the right to prescribe standards as to how and where Facilities shall be installed. The standards shall be consistent with reasonable standards and standard engineering practices in the applicable industries.

5.2 Prior to commencement of construction of any new Facilities, Grantees shall first file with the County Engineer its application for permits to do such work, together with plans and specifications in duplicate showing the position and location of all such Facilities sought to be constructed, laid, installed or erected at that time showing their position relative to existing County roads, rights-of-way, or other County property within the Franchise Area upon plans drawn to scale. The Facilities shall be laid in conformity with said plans and specifications of definite location, except in instances in which deviation may be allowed thereafter in writing by the County Engineer. The plans and specifications shall specify the class and type of material and equipment to be used, manner of excavation, construction, installation, backfill, erection of temporary structures, erection of permanent structures, traffic control, traffic turnouts and road obstructions, etc. No such construction shall be commenced without Grantees first securing a written permit from the County Engineer, including approval endorsed on one set of plans and specifications returned to Grantees. All such work shall be subject to the approval of and shall pass the inspection of the County Engineer. Grantees shall pay all costs of and expenses incurred in the examination, inspection and approval of such work on account of granting the said permits.

5.3 In any work which requires breaking of soil within the Franchise Area for the purpose of laying, relaying, connecting, disconnecting, constructing, maintaining and repairing Grantees' Facilities, and making connections between the same to structures and buildings of consumers or making connections to other Facilities now in existence or hereafter constructed, Grantees shall be governed by and conform to the general rules adopted by the County Engineer; and Grantees at its own expense and with due diligence shall complete the work for which the soil has been broken and forthwith replace the work and make good the Franchise Area and leave the same in as good condition as before the work was commenced; provided, however, that no such breaking of the soil within the Franchise Area shall be done prior to the obtaining of a permit issued by the County Engineer. Applications for such a permit shall be accompanied by specifications for the restoration of the Franchise Area to the same condition as it was in prior to such breaking, and such specifications must be approved by the County Engineer before such breaking of the soil is commenced; provided further, that the County Engineer may require a performance bond in a reasonable sum sufficient to guarantee that such Franchise Area shall be restored to the same condition as it was in prior to such breaking of the soil, the amount of said bond to be fixed by the County Engineer. Grantees shall pay all costs of and expenses incurred in the examination, inspection and approval of such restoration. The County Engineer may at any time do, order, or have done, any and all work that the County Engineer considers necessary to restore to a safe condition any Franchise Area left by Grantees or its agents in a condition dangerous to life or property, and Grantees shall, upon demand, pay to the County all costs of such work, the County having first provided notice of such condition to Grantees and allowing Grantees a reasonable time to cure such unsafe condition, provided however, in the event of damage to the Franchise Area caused by Grantees that necessitates immediate repair by the County or its agents on an emergency basis where notice to Grantees or providing an opportunity to cure is not feasible considering nature of the emergency and necessary repair, as determined by the County Engineer using professional engineering standards, no such notice and reasonable time to cure shall be required as a condition of repayment by Grantees .

5.4 In preparing plans and specifications for the installation of Facilities within the Franchise Area, Grantees shall reasonably conform to the standards and specifications established by the County Engineer. Grantees shall consult with the County Engineer if Grantees plan to deviate from the established standards and specifications in the course of installing Facilities within the Franchise Area and shall demonstrate to the satisfaction of the County Engineer that its plans will achieve a legal and functionally equivalent result.

5.5 All work done by and for Grantees under this Franchise shall be done in a thorough and workmanlike manner. In the construction of Facilities and the opening of trenches within and the tunneling under the Franchise Area, Grantees shall leave such trenches and tunnels in such a way as to interfere as little as possible with public travel, and shall take all due and necessary precautions to guard against the same, so that damage or injury shall not occur or arise by reason of such work. Where any of such trenches, ditches, or tunnels are left open at night, Grantees shall place warning lights and barricades at such a position as to give adequate warning of such work, per the MUTCD (Manual on Uniform Traffic Control Devices). Grantees shall be liable for any injury to person or persons or damage to property to the extent proximately caused by its carelessness or neglect, or to the extent proximately caused by any failure or neglect to properly guard or give warning of any trenches, ditches or tunnels dug or maintained by Grantees .

5.6 Before any work is performed under this Franchise which may affect any existing

monuments or markers of any nature relating to subdivisions, plats, roads and all other surveys, Grantees shall reference all such monuments and markers. The reference points shall be so located that they will not be disturbed during Grantees' operations under this Franchise. The method of referencing these monuments or other points to be referenced shall be approved by the County Engineer. The replacement of all such monuments or markers disturbed during construction shall be made as expeditiously as conditions permit, and as directed by the County Engineer. The cost of monuments or other markers lost, destroyed, or disturbed, and the expense of replacement by approved monuments shall be borne by Grantees. A complete set of reference notes for monuments and other ties shall be filed with the County Engineer's Office.

Section 6. Relocation of Facilities.

6.1 Grantees shall, at their sole expense and with due diligence, relocate or adjust the elevation of any of its Facilities upon receipt of written request from the County Engineer when determined reasonably necessary based upon sound engineering principles by the County Engineer for improvement to the County facilities in the Franchise Area, provided that the elevations required by the County are not in violation of local, state or federal law and are reasonably necessary for safety purposes. Grantees shall coordinate such relocation or adjustment of its Facilities with the County and shall perform the same in a timely fashion so that, absent conditions beyond the control of Grantees, such relocation or adjustment of Grantees' Facilities will not impede or delay pending changes to the Franchise Area.

6.2 Grantees may propose to the County alternatives to reduce or eliminate the need for relocation of its Facilities pursuant to Section 6.1. Upon the County's receipt from Grantees of such alternatives in writing, the County shall evaluate such alternatives and shall advise Grantees in writing if one or more of such alternatives are suitable to accommodate the work that would otherwise necessitate relocation of Grantees' Facilities. In evaluating such alternatives, the County shall give each alternative proposed by Grantees full and fair consideration with due regard to all the facts and circumstances which bear upon the practicality of relocation and alternatives to relocation. In the event the County reasonably determines that such alternatives are not appropriate, Grantees shall relocate its Facilities as otherwise provided in Section 6.1. Any acceptance by the County of such alternatives shall not excuse (nor shall be construed to excuse) Grantees from future relocation or adjustment of Grantees' Facilities pursuant to this Section 6.

6.3 As qualified in Sections 6.1 and 6.2 above, and in Section 6.4 below, whenever any person or entity, other than the County, requires the relocation of Grantees' Facilities to accommodate the work of such person or entity within the Franchise Area, or whenever the County requires the relocation of Grantees' Facilities within the Franchise Area for the benefit of any person or entity other than the County, then Grantees shall have the right as a condition of such relocation to require such person or entity to:

6.3.1 Make payment to Grantees , at a time and upon terms acceptable to Grantees , which acceptance shall not be unreasonably withheld, for any and all costs and expenses incurred by Grantees in the relocation of Grantees' Facilities; and

6.3.2 Indemnify and save Grantees harmless from any and all claims and demands made against it on account of injury or damage to the person or property of another arising out of or in conjunction with the relocation of Grantees' Facilities, to the extent such

injury or damage is caused by the negligence of the person or entity requesting the relocation of Grantees' Facilities or the negligence of the agents, servants or employees of the person or entity requesting the relocation of Grantees' Facilities.

6.4 Any condition or requirement imposed by the County upon any person or entity, other than Grantees or the County (including, without limitation, any condition or requirement imposed pursuant to any contract or in conjunction with approvals or permits for zoning, land use, construction or development) which requires the relocation of Grantees' Facilities shall be a required relocation for purposes of Section 6.3; provided, however:

6.4.1 If the County notifies Grantees in writing that the primary purpose of imposing such condition or requirement upon such person or entity is to cause the grading or widening of the Franchise Area on the County's behalf consistent with the County's Six-Year Road Construction Program, then Grantees shall relocate its Facilities within the Franchise Area in accordance with Section 6.1.

6.4.2 If the County notifies Grantees in writing that the County will bear a portion of the costs of, or will provide funding towards, a project that includes grading or widening of the Franchise Area resulting from the imposition of such condition or requirement upon such person or entity, then Grantees agree to bear a portion of its costs and expenses to relocate its Facilities to accommodate such grading or widening, such portion borne by Grantees being a percentage equal to that percentage of such project's costs borne or funded by the County (the "County Contribution"); provided, however, in no event shall such portion borne by Grantees exceed the dollar amount of such County Contribution. "Project" shall mean that work directly bearing on the area that necessitates relocation by Grantees, and shall not include other off-site improvements that may be performed at the same time. In all other respects such relocation shall be a required relocation for the purposes of Section 6.3 and without limiting the foregoing, Grantees shall have the right as a condition of such relocation to require such person or entity to pay to Grantees all relocation costs and expenses in excess of the portion borne by Grantees under this Section 6.4.2.

6.4.3 If the Facilities to be relocated pursuant to this subsection 6.4 have been located at or relocated within the preceding five (5) years to a location upon which the County had agreed at the time without reservation, then Grantees shall be entitled to recovery of all its costs and expenses incurred in the relocation of its Facilities from the party on whom the condition for road improvements was placed. Documentation of any such agreement between the County and Grantees shall be kept in conjunction with the encroachment permit issued by the County for the work of relocation.

6.5 Nothing in this Section 6 shall require Grantees to bear any cost or expense in connection with the location or relocation of any Facilities then existing pursuant to easement or such other rights not derived from or addressed by this Franchise.

Section 7. Indemnification.

7.1 To the extent permitted by law, Grantees shall defend, indemnify and hold the County harmless from any and all claims, demands, suits, actions, costs and expenses, including but not limited to attorney's fees, made against it on account of injury or damage to the person or property of another, but only to the extent such injury or damage is caused by the

actions or failure to act of Grantees , its agents, servants or employees in exercising the rights granted to Grantees in this Franchise; provided, however, that in the event any such claim or demand be presented to or filed with the County, the County shall promptly notify Grantees thereof, and Grantees shall have the right, at its election and at its sole cost and expense, to settle and compromise such claim or demand; provided further, that in the event any suit or action is begun against the County based upon any such claim or demand, the County shall likewise promptly notify Grantees thereof, and Grantees shall have the right, at its election and its sole cost and expense, to settle and compromise such suit or action, or defend the same at its sole cost and expense, by attorneys of its own election. Notwithstanding the foregoing, if damages to another or others result from concurrent negligence of Grantees and the County, Grantees and the County shall each be responsible for, and this indemnification provision shall be operative so that each party bears, the proportionate share attributable to its own negligence. In case judgment which is not appealed shall be rendered against the County in such suit or action, Grantees shall fully satisfy said judgment within ninety (90) days after said suit or action shall have finally been determined. Upon Grantees' failure to satisfy said judgment within ninety (90) days, the County may elect to terminate this Franchise pursuant to the terms of Section 19 herein. The provision for reimbursement of the County shall survive the termination of this Franchise.

7. 2 Acceptance by the County of any work performed by Grantees at the time of completion shall not be grounds for avoidance of the covenant in Section 7.1 above.

Section 8. Acquisition of Right-of-Way.

8.1 In the event that Grantees propose to acquire easements for the location or relocation of its Facilities outside of, and adjacent to the Franchise Area, Grantees shall notify the County of the same and the County shall have the option, with the concurrence of Grantees, to acquire in place of such Grantees proposed easements, additional public rights-of-way or equivalent public utility easements for use by Grantees . Any such public rights-of-way acquired by the County shall become Franchise Area. Any such public utility easements so acquired by the County shall not be Franchise Area (and shall not be subject to the terms and conditions of this Franchise) and Grantees' use of such public utility easements shall be subject to the terms and conditions of such public utility easements.

Section 9. Vacation of the Franchise Area.

9.1 If at any time the County shall seek to vacate any portion of the Franchise Area and said vacation shall be for the purpose of acquiring the fee or other property interest in said portion of the Franchise Area for use by the County, in either its proprietary or governmental capacity, and there are no Facilities located in the Franchise Area, then the County Engineer may at his option and by giving thirty (30) days written notice to Grantees , terminate this franchise with reference to such portion of the Franchise Area so vacated, and the County shall not be liable for any damages or loss to Grantees allegedly incurred by reason of such termination. Nothing herein shall limit or prevent Grantees from exercising its powers of eminent domain. Should Grantees notify the County of its intent to consider exercising its power of eminent domain to obtain an easement for the Facilities located within the area of the Franchise to be terminated, the termination of the Franchise shall be tolled for a period of no less than one hundred and twenty (120) days from the date of notice.

9.2 If at any time the County shall vacate any portion of the Franchise Area in which Facilities are installed at the time of said vacation, and said vacation shall be for the purpose of acquiring the fee or other property interest in said portion of the Franchise Area by other than the County, then the County shall, in its vacation procedure, unless otherwise waived in writing by Grantees , reserve an easement to Grantees for Grantees' Facilities as reasonably necessary for the continued use, operation, maintenance and repair of the Facilities as located in the portion of the Franchise Area to be vacated.

Section 10. Moving Buildings within the Franchise Area.

10.1 If any person or entity obtains permission from the County to use the Franchise Area for the moving or removal of any building or other object, the County shall, prior to granting such permission, direct such person or entity to arrange with Grantees for the temporary adjustment of Grantees' Facilities necessary to accommodate the moving or removal of such building or other object. Such person or entity shall make such arrangements, upon terms and conditions acceptable to Grantees, not less than fourteen (14) days prior to the moving or removal of such building or other object. In such event, Grantees shall, at the sole cost and expense of the person or entity desiring to move or remove such building or other object, adjust any of its Facilities which may obstruct the moving or removal of such building or object.

Section 11. Locating Facilities.

11.1 Grantees and the County acknowledge and commit to full compliance with their respective obligations, as the same may arise from time to time, under Chapter 19.122 RCW (Underground Utilities Locator Statute) or any other law applicable to determining the location of utility facilities.

Section 12. Nonexclusive Franchise.

12.1 This Franchise is not and shall not be deemed to be an exclusive franchise. It shall not in any manner prohibit the County from granting other franchises of a like nature or franchises for other public or private utilities under, along, across, over, and upon any part of the Franchise Area, and shall in no way prevent or prohibit the County from constructing, altering, maintaining, using, or vacating any part thereof , or affect its jurisdiction over any part thereof with full power to make all necessary changes, relocations, repairs, maintenance, etc., the same as the County may deem fit.

Section 13. Franchise Term; Effect on Existing Franchises for Same Purpose.

13.1 This Franchise is and shall remain in full force and effect for a period of twenty-five (25) years from and after the effective date of the Ordinance; provided, however, Grantees shall have no rights under this Franchise nor shall Grantees be bound by the terms and conditions of this Franchise unless Grantees shall, within thirty (30) days after the effective date of the Ordinance, file with the County its written acceptance of the franchise agreement contained within the Ordinance.

13.1.1 No franchise hereunder shall become effective for any purpose unless and until written acceptance therefore shall have been filed with the Whatcom County Council and County Director of Public Works and such written acceptance shall be in the form and substance as

shall be prescribed and approved by the County Prosecuting Attorney and operate as an acceptance of each and every term and condition and limitation contained in this ordinance, and in such franchise; and

13.1.2 Such written acceptance shall be filed by Grantees not later than the thirtieth (30th) day following the effective date of the Ordinance granting such franchise; and in default of the filing of such written acceptance as herein required, Grantees shall be deemed to have rejected the same. In case of Grantees' tardy acceptance of franchise, the County's recognition thereof shall be strictly at its discretion.

13.2 This Franchise agreement sets forth and constitutes the entire agreement and understanding of the parties with respect to the subject matter hereof. This Franchise agreement supersedes any and all prior agreements, negotiations, correspondence, undertakings, promises, covenants, arrangements, communications, representations, and warranties, whether oral or written, of any party to this agreement.

Section 14. Assignment.

14.1 Neither this Franchise nor any interest herein shall be sold, transferred, or assigned without the prior consent in writing of the County Council, which consent shall not be unreasonably withheld, except that the Grantees may mortgage this Franchise to the trustee for its bond holders. Any approved assignee shall, within thirty (30) days of the date of any assignment, file written notice of the assignment with the County, together with its written acceptance of all terms and conditions of this Franchise.

14.2 All the provisions, conditions, and requirements herein contained shall be binding upon the successors and assigns of Grantees , and all privileges, as well as all obligations and liabilities of the grantee shall inure to its successors and assigns equally as if they were specifically mentioned wherever Grantees is mentioned.

Section 15. Amendment.

15.1 Except as addressed in and through Section 15.3 below, this Franchise may be amended only by written instrument, signed by both parties, which specifically states that it is an amendment to this Franchise and is approved and executed in accordance with the laws of the State of Washington. Without limiting the generality of the foregoing, this Franchise (including, without limitation, Section 5 above) shall govern and supersede and shall not be changed, modified, deleted, added to, supplemented or otherwise amended by any permit, approval, license, agreement or other document required by or obtained from the County in conjunction with the exercise (or failure to exercise) by Grantees any and all rights, benefits, privileges, obligations or duties in and under this Franchise, unless such permit, approval, license, agreement or other document specifically:

15.1.1 References this Franchise; and

15.1.2 States that it supersedes this Franchise to the extent it contains terms and conditions that change, modify, delete, add to, supplement or otherwise amend the terms and conditions of this Franchise. In the event of any conflict or inconsistency between the provisions of this Franchise and the provisions of any such permit, approval, license, agreement or other

document, the provisions of this Franchise shall control.

15.2 If, during the term of this Franchise, there becomes effective any change in federal or state law (including changes approved by the Washington Utilities and Transportation Commission) which:

15.2.1 Affords either party the opportunity to negotiate in good faith a term or condition of this Franchise which term or condition would not have, prior to such change, been consistent with federal or state law; or

15.2.2 Pre-empts or otherwise renders null and void any term or condition of this Franchise which has there-to-fore been negotiated in good faith; then, in such event, either party may notify the other party in writing that such party desires to commence negotiations to amend this Franchise. Such negotiations shall encompass only the specific term or condition affected by such change in federal or state law and neither party shall be obligated to re-open negotiation on any other term or condition of this Franchise. Within thirty (30) days from and after the other party's receipt of such written notice, the parties shall, at a mutually agreeable time and place, commence such negotiations. Pending completion of such negotiations resulting in mutually agreeable amendment of this Franchise, adoption of such amendment by Ordinance by the County and acceptance of such Ordinance by Grantees, and except as to any portion thereof which has been pre-empted or otherwise rendered null and void by such change in federal or state law, this Franchise shall remain in full force and effect.

15.3 Notwithstanding any language to the contrary contained herein, this Franchise is subject to the provisions of the Whatcom County Charter, Section 9.30, and all rights belonging to the County and its people as set forth therein are hereby reserved thereto.

Section 16. Miscellaneous

16.1 If any term, provision, condition, or portion of this Franchise shall be held to be invalid, such invalidity shall not affect the validity of the remaining portions of this Franchise, which shall continue in full force and effect. The headings of sections and paragraphs of this Franchise are for convenience of reference only and are not intended to restrict, affect or be of any weight in the interpretation or construction of the provisions of such sections or paragraphs.

16.2 This Franchise is subject to the requirements of any and all applicable laws, rules, and regulations, including the Whatcom County Code, as currently enacted or hereafter modified. In the event of any actual conflict between the provisions of this Franchise and the requirements of the Whatcom County Code or County-enacted rules or regulations, the provisions of this Franchise shall control, to the extent authorized by law.

16.3 All notices, demands, requests, consents and approvals which may, or are required to be given by any party to any other party hereunder, shall be in writing and shall be deemed to have been duly given if delivered personally, sent by facsimile, sent by a nationally recognized overnight delivery service, or if mailed or deposited in the United States mail and sent by registered or certified mail, return receipt requested, postage prepaid to:

For County: County Executive
Whatcom County Courthouse.
311 Grand Ave.
Bellingham, WA 98225

For Grantee: Gordon and Doreen Montgomery
8741 Semiahmoo Dr.
Blaine, WA 98230

John Milobar
415-2366 Wall St.
Vancouver, B.C. V5L4Y1
Canada

or to such other address as the foregoing parties hereto may from time-to-time designate in writing and deliver in a like manner. All notices shall be deemed complete upon actual receipt or refusal to accept delivery. Facsimile transmission of any signed original document, and retransmission of any signed facsimile transmission shall be the same as delivery of an original document.

16.4 No failure by any of the foregoing parties to insist upon the strict performance of any covenant, duty, agreement, or condition of this Franchise or to exercise any right or remedy consequent upon a breach thereof shall constitute a waiver of any such breach or any other covenant, agreement, term or condition. No waiver shall affect or alter this Franchise, and each and every covenant, agreement, term and condition of this franchise shall continue in full force and effect with respect to other then existing or subsequent breach thereof.

Section 17. Incorporation and Annexation.

17.1 Whenever any part of the Franchise Area, by reason of the subsequent incorporation of any town or city, or extension of the limits of any town or city, shall fall within the city or town limits, this Franchise shall continue in force and effect as to all of the Franchise Area not so included in city or town limits.

Section 18. Insurance.

18.1 During the term of this Franchise Grantees, its successors and assigns, shall maintain and keep in effect, a liability insurance policy covering all liability of Grantees to the County, including any assumed by contract between Grantees and any other party, with limits at least in the amount of $2,000,000. In lieu of the insurance requirement of this Section, Grantees may self-insure against such risks. At the time of Grantees' acceptance of this Franchise and otherwise upon the County's request, Grantees shall provide the County with certificate(s) of insurance or evidence of self-insurance reflecting the requirements of this section.

Section 19. Forfeiture and Termination of Franchise.

19.1 If Grantees shall willfully violate or fail, through willful or unreasonable neglect, to

comply with any of the provisions of this Franchise for sixty (60) days after receipt of written notice from the County, then the County shall have the right by ordinance to declare Grantees' forfeiture of all rights hereunder and to declare this Franchise terminated and of no further force or effect thereafter; provided, however, if any failure to comply with this Franchise by Grantees cannot be corrected with due diligence within said sixty (60) day period (Grantees' obligation to comply and to proceed with due diligence being subject to unavoidable delays and events beyond its control), then the time within which Grantees may so comply shall be extended for such time as may be reasonably necessary and so long as Grantees commences promptly and diligently to effect such compliance.

Section 20. Effective Date.

20.1 This Ordinance shall be effective ten (10) days after being signed by the County Executive, with the Franchise granted hereunder finally effective pursuant to the terms of Sections 13.1, 13.1.1, and 13.1.2, having been: (i) introduced to the County Council not less than thirteen (13) days before its passage; (ii) brought to public notice by such notice having been posted in three (3) public places in Bellingham at least fifteen (15) days before the day fixed for the public hearing; (iii) published at least twice in the official newspaper for the County and no later than five (5) days prior to the day fixed for the hearing and as otherwise required by law; and (iv) passed at a regular meeting of the legislative body of the County of Whatcom by a vote of at least _____ members of the County Council on _____, 2020.

ADOPTED this ____ day of _____, 2020.

ATTEST:

WHATCOM COUNTY COUNCIL
WHATCOM COUNTY, WASHINGTON

Dana Brown-Davis, Clerk of the Council

Barry Buchanan, Council Chair

APPROVED AS TO FORM:

( ) Approved ( ) Denied

Christopher Quinn
Civil Deputy Prosecutor
(authorized via email: 7/21/2020)

Satpal Singh Sidhu, County Executive

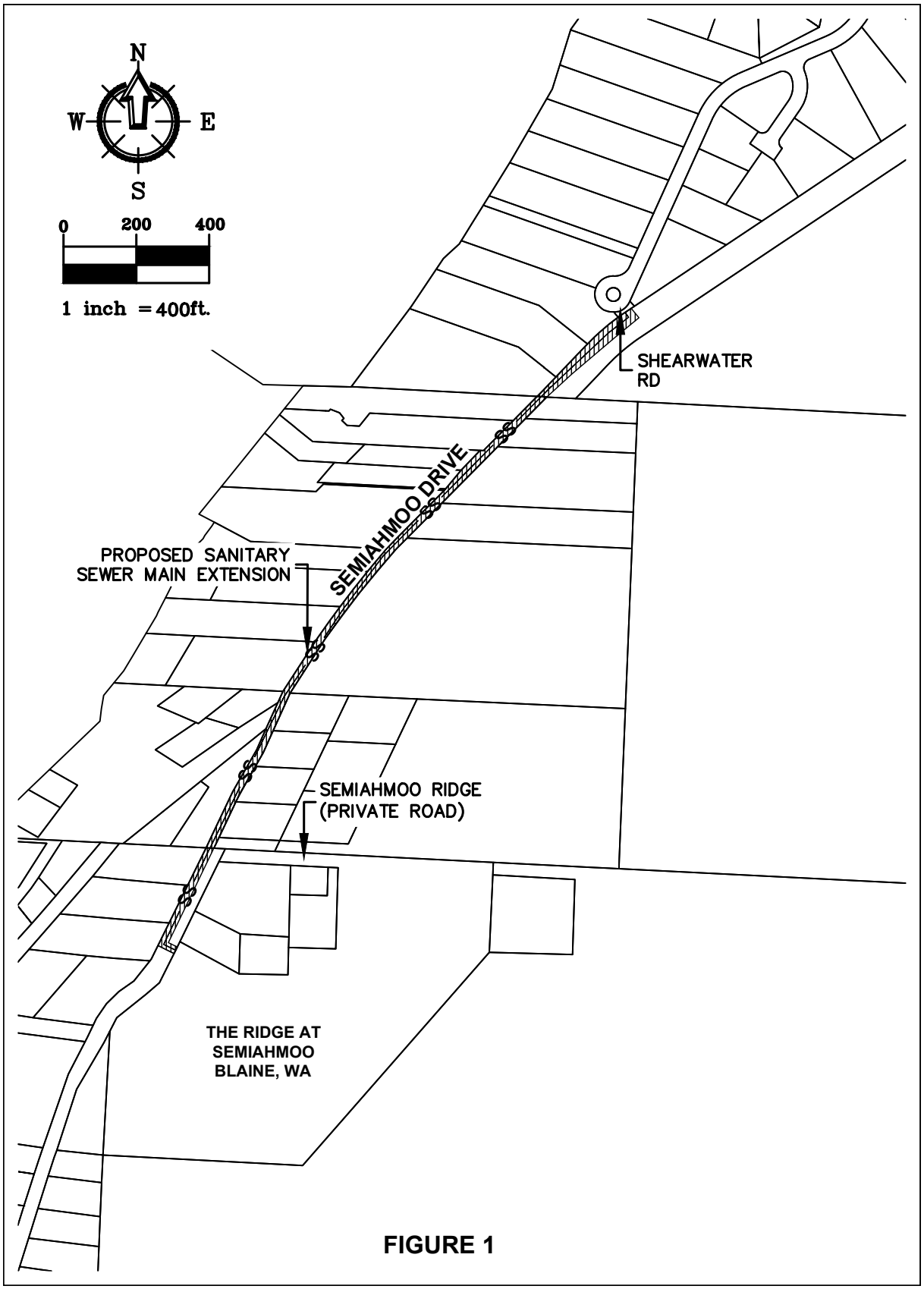

N
W
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S
0
200
400
1 inch = 400ft.
SHEARWATER RD
SEMIAHMOO DRIVE
PROPOSED SANITARY SEWER MAIN EXTENSION
SEMIAHMOO RIDGE (PRIVATE ROAD)
THE RIDGE AT SEMIAHMOO BLAINE, WA

FIGURE 1

APPLICATION FOR FRANCHISE

RECEIVED
NOV 25 2019
WHATCOM COUNTY COUNCIL

TO THE WHATCOM COUNTY COUNCIL:

COMES NOW, Gordon Montgomery and John Milobar

who respectfully petitions the Whatcom County Council for a twenty-five (25) year franchise to lay, construct, maintain, and repair

sewer lines to provide sewer service from the City of Blaine to the Ridge at Semiahmoo, a 26-lotplat, on Parcel No. 4051153184800000

and all necessary appurtenances along, over, and across the following roads situated in Whatcom County, Washington:

Semiahmoo Drive as depicted in the attached engineer's sketch

The petitioner further requests that the Whatcom County Council fix a time and place for a public hearing on the granting of this continuation of franchise, and that public notice be given, at the expense of the petitioner, as provided by law; and that, at said hearing, petitioner be granted the franchise continuation herein requested.

DATED: 11-25-19

Dannon Traxler
Langabeer & Traxler, PS (as agent)
Company Name

2701 Meridian Street
Mailing Address

Bellingham, WA 98225
City State Zip

360-671-6460 ext. 1
Phone Number

Signature of authorized agent/owner

Dannon C. Traxler
Print or type name

C:\DOCUME~1\jnixon\LOCALS~1\Temp\XPgrpwise\2. APPLICATION FOR FRANCHISE.doc

Chapter 12.24
FRANCHISE REQUIREMENTS

Sections:

12.24.011 Authority.
12.24.021 Application requirements.
12.24.025 Transfer of ownership or control.
12.24.031 Forward to public works.
12.24.041 Ordinance.
12.24.051 Application – Notice of hearing.
12.24.061 Recording of franchise.
12.24.070 Submittal of plans and specifications.
12.24.080 Time limit.
12.24.090 Surety bonds.
12.24.100 Inspection.
12.24.110 Approval of alteration or revision.
12.24.120 Liability for construction or maintenance.

12.24.011 Authority.

This chapter is enacted pursuant to authority contained in Chapter 36.55 RCW and Whatcom County Charter Section 9.30. (Ord. 2008-005 Exh. A; Ord. 2004-022).

12.24.021 Application requirements.

A. Application for franchises on county roads and bridges shall be submitted to the Whatcom County council pursuant to RCW 36.55.040.

B. Every franchise application submitted to the county council shall be accompanied by a franchise application fee as set forth in the current Whatcom County unified fee schedule.

C. Every franchise application submitted to the county council must also be accompanied by a sketch of the proposed installation. (Ord. 2008-005 Exh. A; Ord. 2004-022).

12.24.025 Transfer of ownership or control.

A. A franchise shall not be sold, transferred, leased, assigned or disposed of in whole or in part either by sale, voluntary or involuntary merger, consolidation or otherwise, unless approval is granted by the county council to ensure a review of circumstances not present at the time of the adoption of the original franchise. The council's approval shall not be unreasonably withheld.

Such costs associated with this review process shall be reimbursed to the county council by a new prospective franchisee.

B. An assignment of a franchise shall be deemed to occur if there is an actual change in control or where ownership of 50 percent or more of the beneficial interests, singly or collectively, are obtained by other parties. The word "control" as use herein is not limited to majority stock ownership only, but includes actual working control in whatever manner exercised.

C. A franchisee shall promptly notify the county council prior to any proposed change in, or transfer of or acquisition by any other party of control of a franchisee's company. Every change, transfer, or acquisition by any other party of control of a franchisee's company shall cause a review of the proposed transfer. In the event that the county council adopts a resolution denying its consent and such change transfer or acquisition of control has been effected, the county may cancel the franchise. Approval shall not be required for mortgaging purposes or if said transfer is from a franchisee to another person or entity controlling, controlled by, or under common control with a franchisee.

D. Application for transfer of ownership or control shall be submitted to the county council.

E. Every franchise application for transfer of ownership submitted to the county council shall be accompanied by a franchise transfer of ownership fee as set forth in the current Whatcom County Unified Fee Schedule.

F. Regardless of the circumstances, a franchisee shall promptly notify the county prior to any proposed name change of the franchisee's company. In the event that the county approves a resolution withholding its consent to the name change within 60 days of receipt of notice thereof, the county may cancel the franchise unless the parties to such change reverse its effects within 60 days after the county notifies the franchisee of its intent to cancel the franchise hereunder. (Ord. 2008-005 Exh. A).

12.24.031 Forward to public works.

Upon receipt of franchise application, application fee, and sketch of proposed installation, or application for transfer of ownership and transfer of ownership fee, the clerk of the council shall forward a complete copy to the director of Whatcom County public works or the county engineer. (Ord. 2008-005 Exh. A; Ord. 2004-022; Ord. 93-066 Exh. A; prior code § 4.44.010. Formerly 12.24.010).

12.24.041 Ordinance.

Whatcom County public works director or the county engineer shall prepare an ordinance granting the franchise for consideration by the county council. (Ord. 2008-005 Exh. A; Ord. 2004-022).

12.24.051 Application – Notice of hearing.

The clerk of the council shall schedule a public hearing on the ordinance granting the franchise pursuant to RCW 36.55.050. (Ord. 2008-005 Exh. A; Ord. 2004-022).

12.24.061 Recording of franchise.

The Whatcom County council clerk shall cause the franchise to be recorded by the county auditor pursuant to RCW 36.55.080. (Ord. 2008-005 Exh. A; Ord. 2004-022).

12.24.070 Submittal of plans and specifications.

There shall be submitted to the director of Whatcom County public works or the county engineer three copies of the final plans, specifications or special provisions of the proposed installation, at the time of the granting of a franchise. (Ord. 2008-005 Exh. A; Ord. 2004-022; Ord. 93-066 Exh. A; prior code § 4.44.020. Formerly 12.24.020).

12.24.080 Time limit.

There shall be a time limit imposed upon the construction of any facility granted by franchise on any county road or bridge, subject to the approval of the county engineer. (Ord. 2008-005 Exh. A; Ord. 2004-022; prior code § 4.44.030. Formerly 12.24.030).

12.24.090 Surety bonds.

There shall be a surety bond posted at the time of granting a franchise for any facility upon a county road or bridge to ensure replacement of any county road or bridge to its original condition and shall be in an amount not less than 10 percent of the total estimate of the proposed installation and releasable only by the county engineer. (Ord. 2008-005 Exh. A; Ord. 2004-022; Ord. 93-066 Exh. A; prior code § 4.44.040. Formerly 12.24.040).

12.24.100 Inspection.

There shall be adequate inspection by an inspector approved by the county engineer who shall be responsible to the county engineer for all construction of any facility upon any county road or bridge. (Ord. 2008-005 Exh. A; Ord. 2004-022; prior code § 4.44.050. Formerly 12.24.050).

12.24.110 Approval of alteration or revision.

No alteration or revisions of plans as submitted at the time of granting a franchise shall be permitted by a person or persons, or any franchise-holder, unless prior approval is requested and submitted to the county engineer. (Ord. 2008-005 Exh. A; Ord. 2004-022; Ord. 93-066 Exh. A; prior code § 4.44.060. Formerly 12.24.060).

12.24.120 Liability for construction or maintenance.

The foregoing regulations are not to be construed as relieving the franchise holder of any responsibility or liability for the construction, reconstruction, or maintenance of such facilities as the franchise may grant. (Ord. 2008-005 Exh. A; Ord. 2004-022; prior code § 4.44.070. Formerly 12.24.070).

Freeland and Associates, Inc.

220 W. Champion St.; Ste. 200
Bellingham, Washington
360.650.1408

October 20, 2015

Blaine City Council
435 Martin Street
Blaine, WA 98230

Subject: Sanitary Sewer Service Extension to new subdivision 'The Ridge at Semiahmoo'

Honorable Council Members:

A new residential subdivision project known as 'The Ridge at Semiahmoo' is proposed south of the current Blaine City Limits within Whatcom County. Currently this project is pursuing preliminary plat approval from Whatcom County. In order to move forward and gain preliminary plat approval from Whatcom County, the project owner, Mr. Gordon Montgomery, must show how his subdivision will be served with water and sewer.

Water is already provided in the area from Birch Bay Water and Sewer District. Mr. Montgomery is requesting that a sanitary sewer main be extended from the south end of the current City of Blaine service area to serve his project. Although the site is outside Blaine City Limits and the UGA, it is within the former UGA. Whatcom County has confirmed that the proposed subdivision is vested to UR4 zoning and a Comprehensive Plan designation of short-term UGA and is allowed to develop to that density. In order to gain approval for the sewer, this area must be included in the City sewer service area. In order to have this area included in the City sewer service area, the current City General Sewer Plan as included in the City of Blaine's Comprehensive Plan must be amended. A report outlining the proposal titled *Staff Report to Planning Commission*, dated September 10, 2015, was prepared by Michael Jones, City of Blaine Community Development Director. This Staff Report provides a summary of the project and why a sewer extension is proposed.

Due to the need to amend the current City General Sewer Plan as included in the Comprehensive Plan, our firm has prepared a summary of the proposed sewer extension to serve 'The Ridge at Semiahmoo'. This technical summary is conceptual in nature, providing a framework for the proposal as it moves through the approval process. Design of the proposed sewer extension will require detailed data collection and engineering efforts.

To prepare the technical summary, we spoke with City of Blaine staff, reviewed the current sewer plan, and reviewed applicable sections of the City of Blaine Public Works Standards (Chapter 5 – Sanitary

Sewer). The following summarizes the proposal for extending the City of Blaine existing sewer service area to the project.

Project Location and General Description of Project

The Ridge at Semiahmoo is located approximately 500 feet south of Normar Lane on the east side of Semiahmoo Drive. A vicinity map showing the project location is attached with this letter. A 26-lot single-family subdivision is proposed for this development. Also attached is an aerial photo showing the proposed project, location of the existing sewer, and a conceptual location of the proposed sanitary sewer extension.

Existing Sanitary Sewer Location

Based on review of area as-built plans from the City of Blaine, an existing eight-inch sewer is located within an access easement that connects to the south end of Shearwater Road, approximately ½ mile north of the proposed development. The existing main to be connected into is approximately eight feet deep at this location. Gravity sewer mains flow north downhill eventually reaching the City of Blaine wastewater treatment plant located on Semiahmoo Parkway.

Proposed main extension

A new eight-inch PVC sanitary sewer is proposed located within the right-of-way on Semiahmoo Drive extending south from Shearwater Road approximately 2,000 feet to the proposed development. Proposed slope of the new sewer main would meet City of Blaine Public Works Standards for minimum slope (at least 0.40%).

A high point in elevation appears to exist on Semiahmoo Drive approximately 800 feet south of Shearwater Road. A portion of the gravity sewer main may require a deep excavation for a short horizontal distance.

The proposed depth of the sewer where the subdivision connects into the main would be located at least five feet below ground service to provide adequate gravity service to the property. In general, the subdivision slopes up from Semiahmoo Drive to the east, therefore, gravity sewer mains are proposed.

Expected Sanitary Sewer Flows

Sanitary sewer for flows for single family residences were estimated several ways. Based on the Department of Ecology Sewer Works Criteria (2008), flows typically average 100 gallons per person per day. From the previously referenced report *Staff Report for Planning Commission*, the population can be estimated at 2.40 people per household, or a total of 63 people (26 lots x 2.4 = 63 people). Therefore, expected flows from the proposed subdivision would be 6,300 gallons per day.

Using guidelines from the Department of Health for sizing new onsite sewer systems, typical flows of 120 gallons of effluent per day per bedroom are used. Estimating that the homes will typically be four bedrooms, a total flow of 12,480 gallons per day could be expected. Using Mannings equation with a

roughness 'n' of 0.013, an eight-inch PVC sanitary sewer pipe laid at minimum slope of 0.4% can adequately handle the conservative estimated flows of up to 12,480 gallons per day.

New Development

This proposed extension restricts connections to the proposed subdivision (The Ridge at Semiahmoo). No new construction will be allowed to connect, nor will existing homes be allowed unless they can demonstrate their septic system has failed and can meet all the requirements of Blaine Municipal Code 13.08.411.

Sincerely,

Tony Freeland, P.E.

Freeland & Associates, Inc.



10-20-15

Encl.

Asbuilt Plan "Resort Semiahmoo Boundary Ridge Division 2"



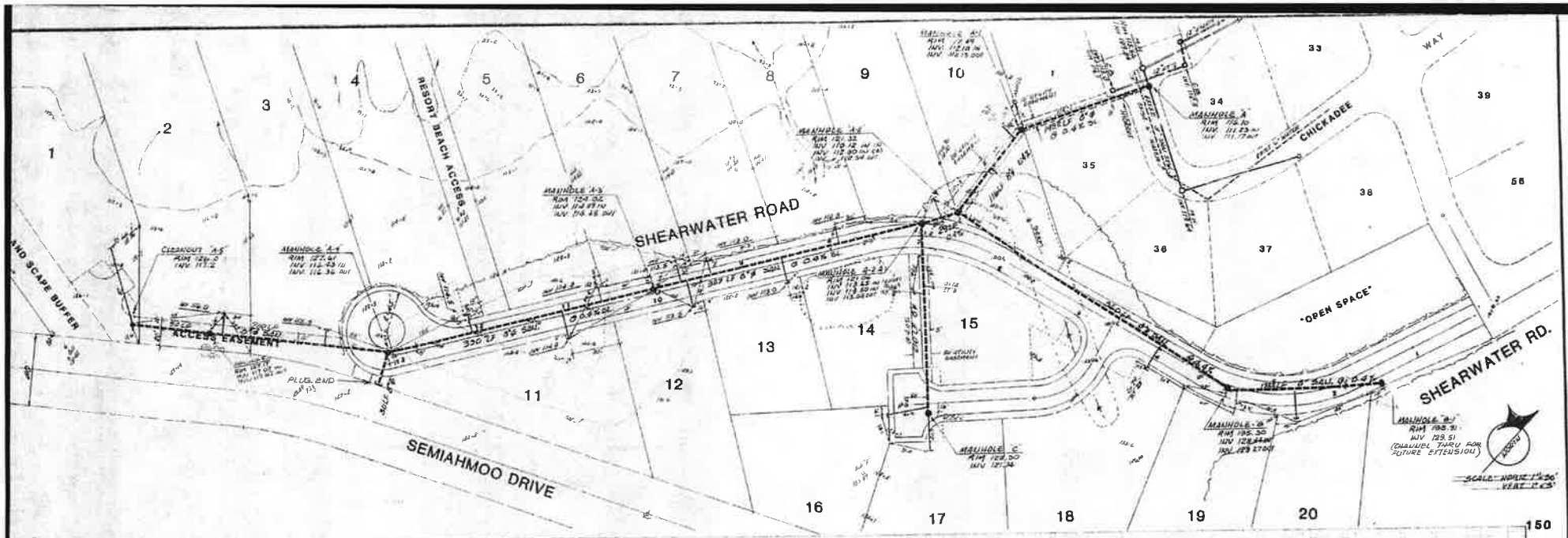
Image courtesy of Google Maps

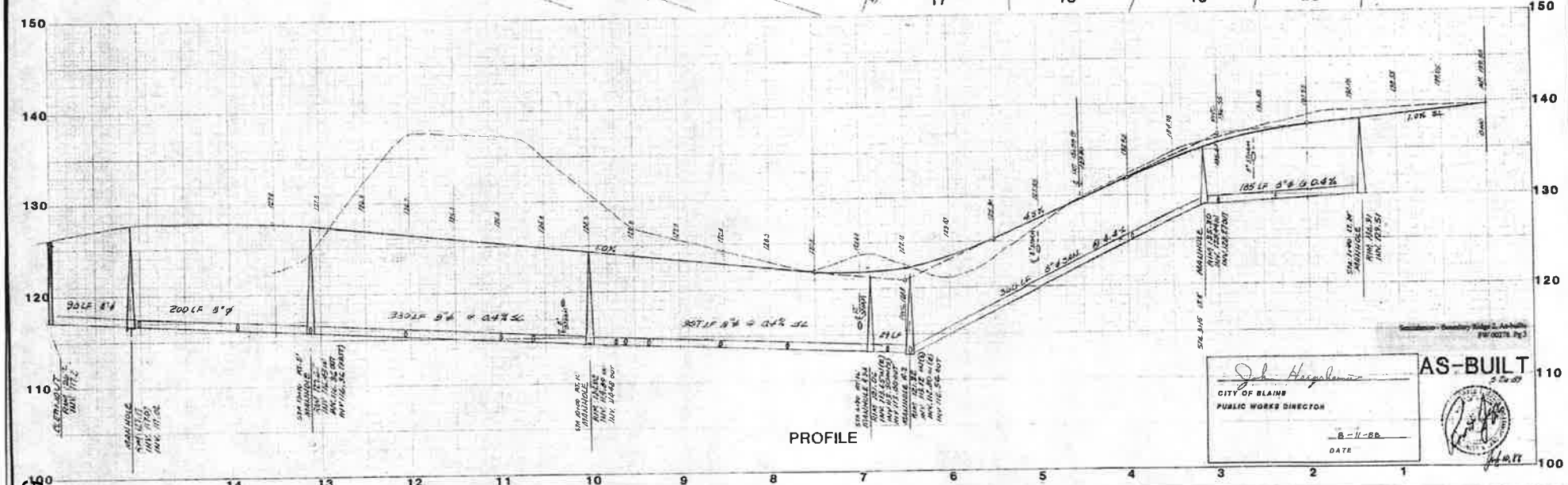
	Vicinity Map	**Fig. 1**



Image courtesy of Google Maps

Aerial Photo | **Fig. 2**





AS-BUILT

John Hargleroad
CITY OF BLAINE
PUBLIC WORKS DIRECTOR
8-11-88
DATE

RONALD T. JEPSON & ASSOC.
REGISTERED PROFESSIONAL ENGINEERS AND LAND SURVEYORS
322 COMMERCIAL SUITE 304 BELLINGHAM WASHINGTON 98225

SANITARY SEWER

"RESORT SEMIAHMOO"
BOUNDARY RIDGE DIV. 2

SHEET 2 OF 5

JOB NO 85100-0

549

Whatcom County

COUNTY COURTHOUSE
311 Grand Avenue, Ste #105
Bellingham, WA 98225-4038
(360) 778-5010

Agenda Bill Master Report

File Number: AB2020-373

File ID:	AB2020-373	**Version:**	1	**Status:**	Introduced for Public Hearing
File Created:	09/03/2020	**Entered by:**	CHalka@co.whatcom.wa.us		
Department:	Council Office	**File Type:**	Ordinance Requiring a Public Hearing		
Assigned to:	Council			**Final Action:**	
Agenda Date:	10/27/2020			**Enactment #:**	

Primary Contact Email: chalka@co.whatcom.wa.us

TITLE FOR AGENDA ITEM:

Ordinance adopting interim zoning regulations for the siting, establishment, and operation of temporary homeless facilities

SUMMARY STATEMENT OR LEGAL NOTICE LANGUAGE:

Ordinance adopting interim zoning regulations for the siting, establishment, and operation of temporary homeless facilities

HISTORY OF LEGISLATIVE FILE

Date:	Acting Body:	Action:	Sent To:
10/13/2020	Council	INTRODUCED FOR PUBLIC HEARING	Council

Attachments: Memo, Proposed Ordinance, Proposed Ordinance_Strike

CLERK OF THE COUNCIL
Dana Brown-Davis, C.M.C.

COUNTY COURTHOUSE
311 Grand Avenue, Suite #105
Bellingham, WA 98225-4038
(360) 778-5010

COUNCILMEMBERS
Rud Browne
Barry Buchanan
Tyler Byrd
Todd Donovan
Ben Elenbaas
Carol Frazey
Kathy Kershner

WHATCOM COUNTY COUNCIL

MEMORANDUM

DATE: September 4, 2020

TO: Whatcom County Council

FROM: Whatcom County Council Staff

RE: Ordinance adopting interim zoning regulations for temporary homeless facilities

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On July 24, 2018, the Whatcom County Council adopted Ordinance 2018-041, adopting interim regulations for the establishment and operation of temporary homeless facilities for one year. On November 6, 2019, the Whatcom County Council adopted Ordinance 2019-074, extending Ordinance 2018-041 for one year and incorporating minor changes to the definition of "temporary homeless facility" (Section 3) and to provisions for finding alternative shelter for children under the age of 18 without a parent or guardian present (Section 2.I.). Ordinance 2019-074 will expire on November 6, 2020, and AB2020-373 brings forward a new ordinance to extend regulations another year.

The proposed ordinance includes the following revisions (strike through = deleted, bold underlined = added):

1. Page 1:
WHEREAS, on November 6, 2019, the Whatcom County Council adopted Ordinance 2019-074, extending Ordinance 2018-041 for one year and incorporating minor changes to the definition of "temporary homeless facility" (Section 3) and finding alternative shelter for children under the age of 18 without a parent or guardian present (Section 2.I.); and

2. Page 1:
WHEREAS, Ordinance 2019-074 ~~2018-041~~ is set to expire on ~~July 24, 2019~~November 6, 2020;

3. Page 1:
WHEREAS the County Council finds that extending the interim regulations imposed by Ordinance ~~2018-041~~2019-074 is necessary for the protection of public health and safety; and

4. Page 8:
Section 10. Duration of Interim Ordinance. This interim ordinance will replace Ordinance ~~2018-041~~2019-074 and shall be in effect for one year beginning on ~~November 6, 2019~~October 27, 2020, and ending on ~~November 6, 2020~~October 27, 2021, unless another ordinance is adopted amending the Whatcom County Code and rescinding this interim ordinance before ~~November 6, 2020~~October 27, 2021.

Introduction 10/13/2020

PROPOSED BY: COUNTY COUNCIL
INTRODUCTION DATE: OCTOBER 13, 2020

ORDINANCE NO. _____
(AN INTERIM ORDINANCE OF WHATCOM COUNTY, WASHINGTON)

ADOPTING INTERIM ZONING REGULATIONS FOR THE SITING, ESTABLISHMENT, AND OPERATION OF TEMPORARY HOMELESS FACILITIES

WHEREAS, homelessness continues to be a local, regional and national challenge due to many social and economic factors; and

WHEREAS, tent and tiny house encampments have become a temporary mechanism for providing shelter for homeless individuals and families; and

WHEREAS, under RCW 36.01.290 the Washington State Legislature has authorized religious organizations to host temporary encampments to provide shelter for homeless individuals on property that these religious organizations own or control; and

WHEREAS, on July 24, 2018, the Whatcom County Council adopted Ordinance 2018-041, adopting interim regulations for the establishment and operation of temporary homeless facilities for one year; and

WHEREAS, on November 6, 2019, the Whatcom County Council adopted Ordinance 2019-074, extending Ordinance 2018-041 for one year and incorporating minor changes to the definition of "temporary homeless facility" (Section 3) and finding alternative shelter for children under the age of 18 without a parent or guardian present (Section 2.I.); and

WHEREAS, Ordinance 2019-074 is set to expire on November 6, 2020; and

WHEREAS the County Council finds that extending the interim regulations imposed by Ordinance 2019-074 is necessary for the protection of public health and safety; and

WHEREAS, the Whatcom County Code does not currently have permanent provisions addressing the establishment and operation of temporary homeless facilities; and

WHEREAS, interim homeless facility regulations and processing requirements are necessary to preserve and protect public health and safety and prevent danger to public or private property; and

WHEREAS, interim zoning controls enacted under RCW 36.70A.390 and/or RCW 36.70.790 are methods by which the County may preserve the status quo so that new plans and regulations will not be rendered moot by intervening development; and

WHEREAS, RCW 36.70A.390 and RCW 36.70.790 both authorize the enactment of an interim zoning map, interim zoning ordinance, or interim official control without holding a public hearing as long as a public hearing is held within at least sixty days of enactment; and

WHEREAS, RCW 36.70A.390 provides that, *"A county or city governing body that adopts a moratorium, interim zoning map, interim zoning ordinance, or interim official control without holding a public hearing on the proposed moratorium, interim zoning map, interim zoning ordinance , or interim official control, shall hold a public hearing on the adopted moratorium, interim zoning map, interim zoning ordinance , or interim official control within at least sixty days of its adoption , whether or not the governing body received a recommendation on the matter from the planning commission or department If the governing body does not adopt findings of fact justifying its action before this hearing, then the governing body shall do so immediately after this public hearing. A moratorium, interim zoning map, interim zoning ordinance, or interim official control adopted under this section may be effective for not longer than six months, but*

may be effective for up to one year if a work plan is developed for related studies providing for such a longer period. A moratorium, interim zoning map, interim zoning ordinance, or interim official control may be renewed for one or more six-month periods if a subsequent public hearing is held and findings of fact are made prior to each renewal"; and

WHEREAS, in conformity with the responsibilities of Whatcom County to meet public health, safety and welfare requirements and provide zoning and land use regulations pursuant to state law, and the County's authority to regulate land use activity within its corporate limits, the County intends to develop appropriate public health, safety and welfare requirements and zoning and land use regulations for the establishment and operation of temporary homeless facilities; and

WHEREAS, the County Council has determined it needs additional time to conduct appropriate research to analyze the effects of the establishment and operation of temporary homeless facilities; and

WHEREAS, interim zoning will provide the County with additional time to review and amend its public health, safety and welfare requirements and zoning and land use regulations related to the establishment and operation of temporary homeless facilities; and

WHEREAS, interim zoning will also allow qualifying religious organizations and registered not-for-profit, tax exempt 501(c)(3) organizations the opportunity to establish and operate temporary homeless facilities; and

WHEREAS, a determination of non-significance (DNS) was issued under the State Environmental Policy Act (SEPA) on July 3, 2018; and

WHEREAS, the County Council concludes that the County does have the authority to establish an interim zoning ordinance and that the County must adopt interim zoning concerning the establishment and operation of temporary homeless facilities to act as a stop- gap measure: (a) to provide the County with an opportunity to study the issues concerning the establishment and operation of temporary homeless facilities and prepare appropriate revisions to the County's codes and regulations; (b) to protect the health, safety, and welfare of the citizens of Whatcom County by avoiding and ameliorating negative impacts and unintended consequences of establishing and operating temporary homeless facilities and (c) to avoid applicants possibly establishing vested rights contrary to and inconsistent with any revisions the County may make to its rules and regulations as a result of the County's study of this matter; and

WHEREAS, the County Council adopts the foregoing as its findings of facts justifying the adoption of this Ordinance; and

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

Section 1. Findings of Fact. The County Council adopts the above "WHEREAS" recitals as findings of fact in support of its action as required by RCW 36. 70A.390 and RCW 36.70.790.

Section 2. Regulations established. Regulations concerning the establishment and processing of applications for temporary homeless facilities in unincorporated Whatcom County are hereby established. Establishing such facilities contrary to the provisions of this ordinance is prohibited. Administrative Use approvals shall be required for temporary homeless facilities in the County. Applications for administrative use approvals, land use approvals, or any other permit or approval, in any way associated with temporary homeless facilities, shall not be processed, issued, granted, or approved unless in compliance with this ordinance. If a temporary homeless facility is established in violation of this ordinance or if, after an administrative use permit is issued for the same, the director of the planning and development services department determines that the permit holder has violated this ordinance or any condition of the permit, the temporary homeless facility, its sponsor and managing agency shall be subject to code enforcement and all activities associated with the temporary homeless facility shall cease, and the site shall be vacated and restored to its pre-

encampment conditions.

Section 3. Definitions. The following definitions apply to temporary homeless facilities:

A. "Temporary homeless facility" means a facility providing temporary housing accommodations that includes a sponsor and managing agency, the primary purpose of which is to provide temporary shelter for people experiencing homelessness in general or for specific populations of the homeless. Temporary homeless facilities include but are not limited to temporary tent encampments and temporary tiny house encampments.

B. "Temporary tent encampment" means a short-term living facility for a group of homeless people that is composed of tents or other temporary structures, as approved by the director, on a site provided or arranged for by a sponsor with services provided by a sponsor and supervised by a managing agency.

C. "Temporary tiny house encampment" means a temporary homeless facility for a group of people living in purpose-built tiny houses for people experiencing homelessness, as approved by the director, on a site provided or arranged for by a sponsor with services provided by a sponsor and supervised by a managing agency. Temporary tiny houses for the homeless are typically less than 200 square feet and easily constructed and moved to various locations. For the purposes of this ordinance, temporary tiny homes are not dwelling units and, as such, are not required to meet building codes.

D. "Managing agency" means an organization identified as the manager of a temporary homeless facility that has the capacity to organize and manage a temporary homeless facility. Managing agencies are limited to religious organizations and non-profit agencies. A "managing agency" may be the same entity as the sponsor.

E. "Sponsor " means an organization that :
   1. invites a temporary homeless facility to reside on land they own or lease; and
   2. is a State of Washington registered not-for-profit corporation and federally recognized tax exempt 501(c)(3) organization; or
   3. is recognized by the Internal Revenue Service as exempt from federal income taxes as a religious organization, which expresses its religious mission, in part, by organizing living accommodations for the homeless.

F. "Director" means the Planning and Development Services Department Director.

Section 4. Requirements. The following requirements shall apply to all temporary homeless facilities approved under this ordinance, unless modified by the director through approval of an administrative use permit.

A. The encampment shall be located a minimum of 20 feet from the property line of abutting properties containing commercial, industrial, and multifamily residential uses. The encampment shall be located a minimum of 40 feet from the property line of abutting properties containing single-family residential or public recreational uses, unless the director finds that a reduced buffer width will provide adequate separation between the encampment and adjoining uses, due to changes in elevation, intervening buildings or other physical characteristics of the site of the encampment.

B. No temporary homeless facility shall be located within a critical area or its buffer as defined by Whatcom County Code (WCC) 16.16 or 23.

C. A temporary homeless facility shall comply with the applicable development standards of Whatcom County Code Title 20 Zoning, except that temporary homeless facilities

shall not be considered structures for the purposes of calculating parcel's total lot coverage, as defined by WCC 20.97.217.

D. A six-foot-tall fence is required around the perimeter of the encampment to limit access to the site for safety and security reasons; provided, that the fencing does not create a sight obstruction at the street or street intersections or curbs as determined by the county engineer, unless the director determines that there is sufficient vegetation, topographic variation, or other site conditions such that fencing would not be needed.

E. Exterior lighting must be directed downward and glare contained within the temporary encampment.

F. The maximum number of residents at a temporary encampment site shall be determined by the director taking into consideration site conditions, but in no case shall the number be greater than fifty (50) people.

G. On-site parking of the sponsor shall not be displaced unless sufficient required off-street parking remains available for the host's use to compensate for the loss of on-site parking or unless a shared parking agreement is executed with adjacent properties.

H. A transportation plan, including provisions for transit, and pedestrian and bicycle ingress and egress to the encampment, shall be submitted for review and approval.

I. No children under the age of 18 are allowed to stay overnight in the temporary encampment, unless accompanied by a parent or guardian. If a child under the age of 18 without a parent or guardian present attempts to stay at the encampment, the sponsor and the managing agency shall actively endeavor to find alternative shelter for the child through community partners such as Northwest Youth Services, Opportunity Council, Lighthouse Mission, Interfaith Coalition and other appropriate homeless youth services organizations. Children under the age of 18 without a parent or guardian present shall be allowed to remain in a temporary encampment while alternative shelter is being sought.

J. The sponsor or managing agency shall provide and enforce a written code of conduct, which not only provides for the health, safety and welfare of the temporary encampment residents, but also mitigates impacts to neighbors and the community. A copy of the code of conduct shall be submitted to the County at the time of application for the administrative use permit. Said code shall be incorporated into the conditions of approval. The managing agency shall post the County approved written code of conduct on site.

K. An operations plan must be provided that addresses site management, site maintenance, and provision of human and social services. Individuals or organizations shall have either a demonstrated experience providing similar services to homeless residents; and/or certification or academic credentials in an applicable human service field; and/or applicable experience in a related program with a homeless population. Should an individual or organization not have any of the preceding qualifications, additional prescriptive measures may be required to minimize risk to both residents of the temporary homeless facility and the community in general.

L. The sponsor and the managing agency shall ensure compliance with Washington State laws and regulations and the Whatcom County Health Department's regulations concerning, but not limited to, drinking water connections, solid waste disposal, and human waste. The sponsor and the managing agency shall permit inspections by local agencies and/or departments to ensure such compliance and shall implement all directives resulting therefrom within the specified time period.

M. The sponsor and managing agency shall assure all applicable public health regulations, including but not limited to the following, will be met for:

1. Potable water, which shall be available at all times at the site;
2. Sanitary portable toilets, which shall be set back from all property lines as determined by the director;
3. Hand-washing stations by the toilets and food preparation areas;
4. Food preparation or service tents; and
5. Refuse receptacles.

N. Public health regulations (WAC 246.215 and WCC 24.03) on food donations and food handling and storage, including proper temperature control, shall be followed and homeless encampment residents involved in food donations and storages shall be made aware of these Whatcom County Health Department requirements.

O. The sponsor and the managing agency shall designate points of contact and provide contact information (24 hour accessible phone contact) to the chief criminal deputy of the Whatcom County Sheriff or his/her designee. At least one designated point of contact shall be on duty at all times. The names of the on-duty points of contact shall be posted on-site daily and their contact information shall be provided to the Whatcom County Sheriff's Office as described above.

P. Facilities for dealing with trash shall be provided on-site throughout the encampment. A regular trash patrol in the immediate vicinity of the temporary encampment site shall be provided.

Q. The sponsor and the managing agency shall take all reasonable and legal steps to obtain verifiable identification information, to include full name and date of birth, from current and prospective encampment residents and use the identification to obtain sex offender and warrant checks from appropriate agencies. The sponsor and the managing agency shall keep a current log of names and dates of all people who stay overnight in the encampment. This log shall be available upon request to law enforcement agencies and prospective encampment residents shall be so advised by the sponsor and managing agency. Persons who have active warrants, or who are required to register as sex offenders, are prohibited from the encampment's location.

R. The sponsor and the managing agency shall immediately contact the Whatcom County Sheriff's Office if someone is rejected or ejected from the encampment when the reason for rejection or ejection is an active warrant or a match on a sex offender check, or if, in the opinion of the on-duty point of contact or on-duty security staff, the rejected/ejected person is a potential threat to the community.

S. Tents over 300 square feet in size and canopies in excess of 400 square feet shall utilize flame retardant materials.

T. The sponsor, the managing agency and temporary encampment residents shall cooperate with other providers of shelters and services for homeless persons within the County and shall make inquiry with these providers regarding the availability of existing resources.

U. The sponsor and/or managing agency shall provide before-encampment photos of the host site with the application. Upon vacation of the temporary encampment, all temporary structures and debris shall be removed from the host site within one calendar week.

V. Upon cessation of the temporary encampment, the site shall be restored, as near as possible, to its original condition. Where deemed necessary by the director, the sponsor and/or managing agency shall re-plant areas in which vegetation had been removed or destroyed.

Section 5. Frequency and duration of temporary homeless facilities.

A. No more than a maximum of 100 people may be housed in temporary homeless facilities (encampments) located in the unincorporated County at any time. Multiple encampment locations may be permitted provided that the aggregate total of people in all temporary tent and/or tiny house encampments shall not exceed 100.

B. The director shall not grant a permit for the same site more than once in any calendar year; provided that director is not authorized to issue a permit for the same site sooner than 180 days from the date the site is vacated as provided for in Section 4 of this ordinance.

C. Temporary tent encampments may be approved for a period not to exceed 180 days. The director may grant one 180-day extension, provided all conditions have been complied with and circumstances associated with the use have not changed. This extension shall be subject to a Type II review process and may be appealed to the hearing examiner as provided in WCC 22.05.020(1). The permit shall specify a date by which the use shall be terminated and the site vacated and restored to its pre-encampment condition.

D. Temporary tiny house encampments may be approved for a period of between six months and up to one year, provided the sponsor and managing agency comply with all permit conditions. The director may grant one or more extension(s) not to exceed one additional year, provided enabling legislation allows so. Extensions are subject to a Type II review process and may be appealed to the hearing examiner as provided in WCC 22.05.020(1). The permit shall specify a date by which the use shall be terminated and the site vacated and restored to its pre-encampment condition.

Section 6. Permit required. Establishment of a temporary homeless facility shall require approval of an administrative use permit, as described in this ordinance, and compliance with all other applicable County regulations. The director shall have authority to grant, grant with conditions or deny an application for an administrative use permit under this ordinance.

Section 7. Application. Application for an administrative use permit shall be made on forms provided by the County, and shall be accompanied by the following information; provided, that the director may waive any of these items, upon request by the applicant and finding that the item is not necessary to analyze the application. An application to establish a temporary homeless facility shall be signed by both the sponsor and the managing agency ("applicant") and contain the following:

A. A site plan of the property, drawn to scale, showing existing natural features, existing and proposed grades, existing and proposed utility improvements, existing rights-of-way and improvements, and existing and proposed structures, tents and other improvements (including landscaping and fencing at the perimeter of the proposed encampment and the property and off-street parking);
B. A vicinity map, showing the location of the site in relation to nearby streets and properties;
C. A written summary of the proposal, responding to the standards and requirements of this ordinance;
D. The written code of conduct, operations plan and a transportation plan as required by this ordinance;
E. Statement of actions that the applicant will take to obtain verifiable identification from all encampment residents and to use the identification to obtain sex offender and warrant checks from appropriate agencies;
F. Project statistics, including site area, building coverage, number and location of tents and temporary structures, expected and maximum number of residents, and duration of the encampment;
G. Address and parcel number of the subject property;

H. Photographs of the site;
I. A list of other permits that are or may be required for development of the property (issued by the County or by other government agencies), insofar as they are known to the applicant;
J. Permit fees for temporary homeless facilities shall be in accordance with WCC 22.25;
K. A list of any requirement under this ordinance for which the applicant is asking to modify.

Section 8. Permit Procedures.

A. Notice. All temporary homeless facility applications shall be reviewed under a Type II process under WCC 22.05, except that the final decision must be rendered within 60 days of a determination of completeness. Additionally, the notice of application shall contain proposed duration and operation of the temporary homeless facility, number of residents for the encampment, and contain a County website link to the proposed written code of conduct, operations plan and transportation plan for the facility.
B. Decision and Notice of Decision. Final action on permit applications made under this section shall be in accordance with WCC 22.05. Before any such permit may be granted, the applicant shall demonstrate and the director shall find consistency WCC 20.84.220 and the following:

1. The proposed use meets the requirements of this ordinance; and
2. Measures, including the requirements herein and as identified by the director, have been taken to minimize the possible adverse impacts which the proposed encampment may have on the area in which it is located. It is acknowledged that not all impacts can be eliminated, however the risk of significant impacts can be reduced to a temporary and acceptable level as the duration of the encampment will be limited.

A notice of the decision shall be provided in accordance with WCC 22.05.

C. Conditions. Because each temporary encampment has unique characteristics, including, but not limited to, size, duration, uses, number of occupants and composition, the director shall have the authority to impose conditions on the approval of an administrative use permit to ensure that the proposal meets the criteria for approval listed above. Conditions, if imposed, must be intended to protect public health, life and safety and minimize nuisance-generating features such as noise, waste, air quality, unsightliness , traffic, physical hazards and other similar impacts that the temporary encampment may have on the area in which it is located. In cases where the application for an administrative use permit does not meet the provisions of this ordinance (except when allowed under subsection (D) of this section) or adequate mitigation may not be feasible or possible, the director shall deny the application.

D. Modification of Requirements. The director may approve an administrative use permit for a temporary encampment that relaxes one or more of the standards in this ordinance only when, in addition to satisfying the decision criteria stated above, the applicant submits a description of the standard to be modified and demonstrates how the modification would result in a safe encampment with minimal negative impacts to the host community under the specific circumstances of the application. In considering whether the modification should be granted, the director shall first consider the effects on the health and safety of encampment residents and the neighboring communities. Modifications shall not be granted if their adverse impacts on encampment residents and/or neighboring communities will be greater than those without modification. The burden of proof shall be on the applicant.

E. Appeal. The director's decision may be appealed to the hearing examiner as provided in WCC 22.05.020(1) and 22.05.160.

F. Revocation. The director shall also have the authority to revoke an approved administrative use permit, pursuant to WCC 22.05.150 at any time a sponsor or managing agency has failed to comply with the applicable provisions of this ordinance or permit.

Section 9. Purpose. The purpose of this interim ordinance is to allow and establish a review process for the location, siting, and operation of temporary homeless facilities within the unincorporated County. While the interim ordinance is in effect, the County will study the land use and other impacts associated with temporary homeless facilities, draft final zoning and regulations to address such uses, hold public hearings on such draft regulations, and adopt such regulations.

Section 10. Duration of Interim Ordinance**.** This interim ordinance will replace Ordinance 2019-074 and shall be in effect for one year beginning on October 27, 2020, and ending on October 27, 2021, unless another ordinance is adopted amending the Whatcom County Code and rescinding this interim ordinance before October 27, 2021.

Section 11. Work Plan. During the interim ordinance period, County staff will study the issues concerning the establishment and operation of temporary homeless facilities. Staff will prepare a draft ordinance with appropriate revisions to the County's land use regulations; perform SEPA review of the draft ordinance, and conduct the public review process, including public hearings before the County's Planning Commission and County Council, as required for amendments to the County's development regulations.

Section 14. Conflict with other Whatcom County Code Provisions. If the provisions of this Ordinance are found to be inconsistent with other provisions of the Whatcom County Code, this Ordinance shall control.

Section 15. Severability. If any section, sentence, clause or phrase of this Ordinance should be held to be unconstitutional or unlawful by a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the validity or constitutionality of any other section, sentence, clause or phrase of this Ordinance.

ADOPTED this _____ day of _____, 2020.

WHATCOM COUNTY COUNCIL
WHATCOM COUNTY, WASHINGTON

ATTEST:

_____ _____

Dana Brown-Davis, Council Clerk **Barry Buchanan, Chairperson**

APPROVED as to form: **( ) Approved ( ) Denied**

Karen Frakes *(09/03/2020)*

_____ _____

Civil Deputy Prosecutor **Satpal Sidhu, Executive**

Date: _____

Introduction ~~6/18~~10/13/~~2019~~2020

PROPOSED BY: COUNTY COUNCIL
INTRODUCTION DATE: OCTOBER 13~~22, 2019~~, 2020

ORDINANCE NO. _____
(AN INTERIM ORDINANCE OF WHATCOM COUNTY, WASHINGTON)

ADOPTING INTERIM ZONING REGULATIONS FOR THE SITING, ESTABLISHMENT, AND OPERATION OF TEMPORARY HOMELESS FACILITIES

WHEREAS, homelessness continues to be a local, regional and national challenge due to many social and economic factors; and

WHEREAS, tent and tiny house encampments have become a temporary mechanism for providing shelter for homeless individuals and families; and

WHEREAS, under RCW 36.01.290 the Washington State Legislature has authorized religious organizations to host temporary encampments to provide shelter for homeless individuals on property that these religious organizations own or control; and

WHEREAS, on July 24, 2018, the Whatcom County Council adopted Ordinance 2018-041, adopting interim regulations for the establishment and operation of temporary homeless facilities for one year; and

WHEREAS, on November 6, 2019, the Whatcom County Council adopted Ordinance 2019-074, extending Ordinance 2018-041 for one year and incorporating minor changes to the definition of "temporary homeless facility" (Section 3) and finding alternative shelter for children under the age of 18 without a parent or guardian present (Section 2.I.); and

WHEREAS, Ordinance 2019-074 ~~2018-041~~ is set to expire on ~~July 24, 2019~~November 6, 2020; and

WHEREAS the County Council finds that extending the interim regulations imposed by Ordinance ~~2018-041~~ 2019-074 is necessary for the protection of public health and safety; and

WHEREAS, the Whatcom County Code does not currently have permanent provisions addressing the establishment and operation of temporary homeless facilities; and

WHEREAS, interim homeless facility regulations and processing requirements are necessary to preserve and protect public health and safety and prevent danger to public or private property; and

WHEREAS, interim zoning controls enacted under RCW 36.70A.390 and/or RCW 36.70.790 are methods by which the County may preserve the status quo so that new plans and regulations will not be rendered moot by intervening development; and

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WHEREAS, RCW 36.70A.390 provides that, *"A county or city governing body that adopts a moratorium, interim zoning map, interim zoning ordinance, or interim official control without holding a public hearing on the proposed moratorium, interim zoning map, interim zoning ordinance , or interim official control, shall hold a public hearing on the adopted moratorium, interim zoning map, interim zoning ordinance , or interim official control within at least sixty days of its adoption , whether or not the governing body received a recommendation on the matter from the planning commission or department If the governing body does not adopt findings of fact justifying its action before this hearing, then the governing body shall do so immediately after this public hearing. A moratorium, interim zoning map, interim zoning ordinance, or interim*

official control adopted under this section may be effective for not longer than six months, but may be effective for up to one year if a work plan is developed for related studies providing for such a longer period. A moratorium, interim zoning map, interim zoning ordinance, or interim official control may be renewed for one or more six-month periods if a subsequent public hearing is held and findings of fact are made prior to each renewal"; and

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WHEREAS, the County Council has determined it needs additional time to conduct appropriate research to analyze the effects of the establishment and operation of temporary homeless facilities; and

WHEREAS, interim zoning will provide the County with additional time to review and amend its public health, safety and welfare requirements and zoning and land use regulations related to the establishment and operation of temporary homeless facilities; and

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WHEREAS, a determination of non-significance (DNS) was issued under the State Environmental Policy Act (SEPA) on July 3, 2018; and

WHEREAS, the County Council concludes that the County does have the authority to establish an interim zoning ordinance and that the County must adopt interim zoning concerning the establishment and operation of temporary homeless facilities to act as a stop- gap measure: (a) to provide the County with an opportunity to study the issues concerning the establishment and operation of temporary homeless facilities and prepare appropriate revisions to the County's codes and regulations; (b) to protect the health, safety, and welfare of the citizens of Whatcom County by avoiding and ameliorating negative impacts and unintended consequences of establishing and operating temporary homeless facilities and (c) to avoid applicants possibly establishing vested rights contrary to and inconsistent with any revisions the County may make to its rules and regulations as a result of the County's study of this matter; and

WHEREAS, the County Council adopts the foregoing as its findings of facts justifying the adoption of this Ordinance; and

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

Section 1. Findings of Fact. The County Council adopts the above "WHEREAS" recitals as findings of fact in support of its action as required by RCW 36. 70A.390 and RCW 36.70.790.

Section 2. Regulations established. Regulations concerning the establishment and processing of applications for temporary homeless facilities in unincorporated Whatcom County are hereby established. Establishing such facilities contrary to the provisions of this ordinance is prohibited. Administrative Use approvals shall be required for temporary homeless facilities in the County. Applications for administrative use approvals, land use approvals, or any other permit or approval, in any way associated with temporary homeless facilities, shall not be processed, issued, granted, or approved unless in compliance with this ordinance. If a temporary homeless facility is established in violation of this ordinance or if, after an administrative use permit is issued for the same, the director of the planning and development services department determines that the permit holder has violated this ordinance or any condition of the permit, the temporary homeless facility, its sponsor and managing agency shall be subject to code enforcement and all activities associated with the

temporary homeless facility shall cease, and the site shall be vacated and restored to its pre-encampment conditions.

Section 3. Definitions. The following definitions apply to temporary homeless facilities:

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E. "Sponsor " means an organization that :
   1. invites a temporary homeless facility to reside on land they own or lease; and
   2. is a State of Washington registered not-for-profit corporation and federally recognized tax exempt 501(c)(3) organization; or
   3. is recognized by the Internal Revenue Service as exempt from federal income taxes as a religious organization, which expresses its religious mission, in part, by organizing living accommodations for the homeless.

F. "Director" means the Planning and Development Services Department Director.

Section 4. Requirements. The following requirements shall apply to all temporary homeless facilities approved under this ordinance, unless modified by the director through approval of an administrative use permit.

A. The encampment shall be located a minimum of 20 feet from the property line of abutting properties containing commercial, industrial, and multifamily- residential uses. The encampment shall be located a minimum of 40 feet from the property line of abutting properties containing single-family residential or -public -recreational uses, unless the director finds that a reduced buffer width will provide adequate separation between the encampment and adjoining uses, due to changes in elevation, intervening buildings or other physical characteristics of the site of the encampment.

B. No temporary homeless facility shall be located within a critical area or its buffer as defined by Whatcom County Code (WCC) 16.16 or 23.

C. A temporary homeless facility shall comply with the applicable development standards

of Whatcom County Code Title 20 Zoning, except that temporary homeless facilities shall not be considered structures for the purposes of calculating parcel's total lot coverage, as defined by WCC 20.97.217.

D. A six-foot-tall fence is required around the perimeter of the encampment to limit access to the site for safety and security reasons; provided, that the fencing does not create a sight obstruction at the street or street intersections or curbs as determined by the county engineer, unless the director determines that there is sufficient vegetation, topographic variation, or other site conditions such that fencing would not be needed.

E. Exterior lighting must be directed downward and glare contained within the temporary encampment.

F. The maximum number of residents at a temporary encampment site shall be determined by the director taking into consideration site conditions, but in no case shall the number be greater than fifty (50) people.

G. On-site parking of the sponsor shall not be displaced unless sufficient required off-street parking remains available for the host's use to compensate for the loss of on-site parking or unless a shared parking agreement is executed with adjacent properties.

H. A transportation plan, including provisions for transit, and pedestrian and bicycle ingress and egress to the encampment, shall be submitted for review and approval.

I. No children under the age of 18 are allowed to stay overnight in the temporary encampment, unless accompanied by a parent or guardian. If a child under the age of 18 without a parent or guardian present attempts to stay at the encampment, the sponsor and the managing agency shall actively endeavor to find alternative shelter for the child through community partners such as Northwest Youth Services, Opportunity Council, Lighthouse Mission, Interfaith Coalition and other appropriate homeless youth services organizations. Children under the age of 18 without a parent or guardian present shall be allowed to remain in a temporary encampment while alternative shelter is being sought.

J. The sponsor or managing agency shall provide and enforce a written code of conduct, which not only provides for the health, safety and welfare of the temporary encampment residents, but also mitigates impacts to neighbors and the community. A copy of the code of conduct shall be submitted to the County at the time of application for the administrative use permit. Said code shall be incorporated into the conditions of approval. The managing agency shall post the County approved written code of conduct on site.

K. An operations plan must be provided that addresses site management, site maintenance, and provision of human and social services. Individuals or organizations shall have either a demonstrated experience providing similar services to homeless residents; and/or certification or academic credentials in an applicable human service field; and/or applicable experience in a related program with a homeless population. Should an individual or organization not have any of the preceding qualifications, additional prescriptive measures may be required to minimize risk to both residents of the temporary homeless facility and the community in general.

L. The sponsor and the managing agency shall ensure compliance with Washington State laws and regulations and the Whatcom County Health Department's regulations concerning, but not limited to, drinking water connections, solid waste disposal, and human waste. The sponsor and the managing agency shall permit inspections by local agencies and/or departments to ensure such compliance and shall implement all directives resulting therefrom within the specified time period.

M. The sponsor and managing agency shall assure all applicable public health regulations, including but not limited to the following, will be met for:

1. Potable water, which shall be available at all times at the site;
2. Sanitary portable toilets, which shall be set back from all property lines as determined by the director;
3. Hand-washing stations by the toilets and food preparation areas;
4. Food preparation or service tents; and
5. Refuse receptacles.

N. Public health regulations (WAC 246.215 and WCC 24.03) on food donations and food handling and storage, including proper temperature control, shall be followed and homeless encampment residents involved in food donations and storages shall be made aware of these Whatcom County Health Department requirements.

O. The sponsor and the managing agency shall designate points of contact and provide contact information (24 hour accessible phone contact) to the chief criminal deputy of the Whatcom County Sheriff or his/her designee. At least one designated point of contact shall be on duty at all times. The names of the on-duty points of contact shall be posted on-site daily and their contact information shall be provided to the Whatcom County Sheriff's Office as described above.

P. Facilities for dealing with trash shall be provided on-site throughout the encampment. A regular trash patrol in the immediate vicinity of the temporary encampment site shall be provided.

Q. The sponsor and the managing agency shall take all reasonable and legal steps to obtain verifiable identification information, to include full name and date of birth, from current and prospective encampment residents and use the identification to obtain sex offender and warrant checks from appropriate agencies. The sponsor and the managing agency shall keep a current log of names and dates of all people who stay overnight in the encampment. This log shall be available upon request to law enforcement agencies and prospective encampment residents shall be so advised by the sponsor and managing agency. Persons who have active warrants, or who are required to register as sex offenders, are prohibited from the encampment's location.

R. The sponsor and the managing agency shall immediately contact the Whatcom County Sheriff's Office if someone is rejected or ejected from the encampment when the reason for rejection or ejection is an active warrant or a match on a sex offender check, or if, in the opinion of the on-duty point of contact or on-duty security staff, the rejected/ejected person is a potential threat to the community.

S. Tents over 300 square feet in size and canopies in excess of 400 square feet shall utilize flame retardant materials.

T. The sponsor, the managing agency and temporary encampment residents shall cooperate with other providers of shelters and services for homeless persons within the County and shall make inquiry with these providers regarding the availability of existing resources.

U. The sponsor and/or managing agency shall provide before-encampment photos of the host site with the application. Upon vacation of the temporary encampment, all temporary structures and debris shall be removed from the host site within one calendar week.

V. Upon cessation of the temporary encampment, the site shall be restored, as near as possible, to its original condition. Where deemed necessary by the director, the sponsor and/or managing agency shall re-plant areas in which vegetation had been

removed or destroyed.

Section 5. Frequency and duration of temporary homeless facilities.

A. No more than a maximum of 100 people may be housed in temporary homeless facilities (encampments) located in the unincorporated County at any time. Multiple encampment locations may be permitted provided that the aggregate total of people in all temporary tent and/or tiny house encampments shall not exceed 100.

B. The director shall not grant a permit for the same site more than once in any calendar year; provided that director is not authorized to issue a permit for the same site sooner than 180 days from the date the site is vacated as provided for in Section 4 of this ordinance.

C. Temporary tent encampments may be approved for a period not to exceed 180 days. The director may grant one 180-day extension, provided all conditions have been complied with and circumstances associated with the use have not changed. This extension shall be subject to a Type II review process and may be appealed to the hearing examiner as provided in WCC 22.05.020(1). The permit shall specify a date by which the use shall be terminated and the site vacated and restored to its pre-encampment condition.

D. Temporary tiny house encampments may be approved for a period of between six months and up to one year, provided the sponsor and managing agency comply with all permit conditions. The director may grant one or more extension(s) not to exceed one additional year, provided enabling legislation allows so. Extensions are subject to a Type II review process and may be appealed to the hearing examiner as provided in WCC 22.05.020(1). The permit shall specify a date by which the use shall be terminated and the site vacated and restored to its pre-encampment condition.

Section 6. Permit required. Establishment of a temporary homeless facility shall require approval of an administrative use permit, as described in this ordinance, and compliance with all other applicable County regulations. The director shall have authority to grant, grant with conditions or deny an application for an administrative use permit under this ordinance.

Section 7. Application. Application for an administrative use permit shall be made on forms provided by the County, and shall be accompanied by the following information; provided, that the director may waive any of these items, upon request by the applicant and finding that the item is not necessary to analyze the application. An application to establish a temporary homeless facility shall be signed by both the sponsor and the managing agency ("applicant") and contain the following:

A. A site plan of the property, drawn to scale, showing existing natural features, existing and proposed grades, existing and proposed utility improvements, existing rights-of-way and improvements, and existing and proposed structures, tents and other improvements (including landscaping and fencing at the perimeter of the proposed encampment and the property and off-street parking);
B. A vicinity map, showing the location of the site in relation to nearby streets and properties;
C. A written summary of the proposal, responding to the standards and requirements of this ordinance;
D. The written code of conduct, operations plan and a transportation plan as required by this ordinance;
E. Statement of actions that the applicant will take to obtain verifiable identification from all encampment residents and to use the identification to obtain sex offender and warrant checks from appropriate agencies;
F. Project statistics, including site area, building coverage, number and location of tents and temporary structures, expected and maximum number of residents, and duration of the encampment;

G. Address and parcel number of the subject property;
H. Photographs of the site;
I. A list of other permits that are or may be required for development of the property (issued by the County or by other government agencies), insofar as they are known to the applicant;
J. Permit fees for temporary homeless facilities shall be in accordance with WCC 22.25;
K. A list of any requirement under this ordinance for which the applicant is asking to modify.

Section 8. Permit Procedures.

A. Notice. All temporary homeless facility applications shall be reviewed under a Type II process under WCC 22.05, except that the final decision must be rendered within 60 days of a determination of completeness. Additionally, the notice of application shall contain proposed duration and operation of the temporary homeless facility, number of residents for the encampment, and contain a County website link to the proposed written code of conduct, operations plan and transportation plan for the facility.
B. Decision and Notice of Decision. Final action on permit applications made under this section shall be in accordance with WCC 22.05. Before any such permit may be granted, the applicant shall demonstrate and the director shall find consistency WCC 20.84.220 and the following:

1. The proposed use meets the requirements of this ordinance; and
2. Measures, including the requirements herein and as identified by the director, have been taken to minimize the possible adverse impacts which the proposed encampment may have on the area in which it is located. It is acknowledged that not all impacts can be eliminated, however the risk of significant impacts can be reduced to a temporary and acceptable level as the duration of the encampment will be limited.

A notice of the decision shall be provided in accordance with WCC 22.05.

C. Conditions. Because each temporary encampment has unique characteristics, including, but not limited to, size, duration, uses, number of occupants and composition, the director shall have the authority to impose conditions on the approval of an administrative use permit to ensure that the proposal meets the criteria for approval listed above. Conditions, if imposed, must be intended to protect public health, life and safety and minimize nuisance-generating features such as noise, waste, air quality, unsightliness , traffic, physical hazards and other similar impacts that the temporary encampment may have on the area in which it is located. In cases where the application for an administrative use permit does not meet the provisions of this ordinance (except when allowed under subsection (D) of this section) or adequate mitigation may not be feasible or possible, the director shall deny the application.

D. Modification of Requirements. The director may approve an administrative use permit for a temporary encampment that relaxes one or more of the standards in this ordinance only when, in addition to satisfying the decision criteria stated above, the applicant submits a description of the standard to be modified and demonstrates how the modification would result in a safe encampment with minimal negative impacts to the host community under the specific circumstances of the application. In considering whether the modification should be granted, the director shall first consider the effects on the health and safety of encampment residents and the neighboring communities. Modifications shall not be granted if their adverse impacts on encampment residents and/or neighboring communities will be greater than those without modification. The burden of proof shall be on the applicant.

E. Appeal. The director's decision may be appealed to the hearing examiner as provided

in WCC 22.05.020(1) and 22.05.160.

F. Revocation. The director shall also have the authority to revoke an approved administrative use permit, pursuant to WCC 22.05.150 at any time a sponsor or managing agency has failed to comply with the applicable provisions of this ordinance or permit.

Section 9. Purpose. The purpose of this interim ordinance is to allow and establish a review process for the location, siting, and operation of temporary homeless facilities within the unincorporated County. While the interim ordinance is in effect, the County will study the land use and other impacts associated with temporary homeless facilities, draft final zoning and regulations to address such uses, hold public hearings on such draft regulations, and adopt such regulations.

Section 10. Duration of Interim Ordinance**.** This interim ordinance will replace Ordinance ~~2018-041~~2019-074 and shall be in effect for one year beginning on ~~November 6, 2019~~October 27, 2020, and ending on ~~November 6, 2020~~October 27, 2021, unless another ordinance is adopted amending the Whatcom County Code and rescinding this interim ordinance before ~~November 6, 2020~~October 27, 2021.

Section 11. Work Plan. During the interim ordinance period, County staff will study the issues concerning the establishment and operation of temporary homeless facilities. Staff will prepare a draft ordinance with appropriate revisions to the County's land use regulations; perform SEPA review of the draft ordinance, and conduct the public review process, including public hearings before the County's Planning Commission and County Council, as required for amendments to the County's development regulations.

Section 14. Conflict with other Whatcom County Code Provisions. If the provisions of this Ordinance are found to be inconsistent with other provisions of the Whatcom County Code, this Ordinance shall control.

Section 15. Severability. If any section, sentence, clause or phrase of this Ordinance should be held to be unconstitutional or unlawful by a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the validity or constitutionality of any other section, sentence, clause or phrase of this Ordinance.

ADOPTED this _____ day of _____, ~~2019~~2020.

WHATCOM COUNTY COUNCIL
WHATCOM COUNTY, WASHINGTON

ATTEST:

_____
Dana Brown-Davis, Council Clerk

_____
~~Rud Browne~~Barry Buchanan, Chairperson

APPROVED as to form:

( ) Approved ( ) Denied

Karen Frakes *(09/03/2020)*
_____
Civil Deputy Prosecutor

_____
~~Jack Louws~~Satpal Sidhu, Executive

Date: _____

Whatcom County

COUNTY COURTHOUSE
311 Grand Avenue, Ste #105
Bellingham, WA 98225-4038
(360) 778-5010

Agenda Bill Master Report

File Number: AB2020-428

File ID:	AB2020-428	**Version:**	1	**Status:**	Introduced for Public Hearing
File Created:	09/29/2020	**Entered by:**	SWinger@co.whatcom.wa.us		
Department:	Finance Division	**File Type:**	Resolution Requiring a Public Hearing		
Assigned to:	Council			**Final Action:**	
Agenda Date:	10/27/2020			**Enactment #:**	

Primary Contact Email: swinger@co.whatcom.wa.us

TITLE FOR AGENDA ITEM:

Resolution authorizing the sale of surplus personal property pursuant to WCC 1.10

SUMMARY STATEMENT OR LEGAL NOTICE LANGUAGE:

The County Purchasing Agent is required by Whatcom County Code 1.10.180 to submit a list (see Exhibit 'A') of surplus personal property to the Council for authority to dispose of said personal property

HISTORY OF LEGISLATIVE FILE

Date:	Acting Body:	Action:	Sent To:
10/13/2020	Council	INTRODUCED FOR PUBLIC HEARING	Council

Attachments: Proposed Resolution, Exhibit A

PROPOSED BY: Finance

DATE INTRODUCED: 10/13/2020

RESOLUTION NO. _____

A RESOLUTION AUTHORIZING THE SALE OF WHATCOM COUNTY SURPLUS PERSONAL PROPERTY

PURSUANT TO WCC 1.10

WHEREAS, a public hearing was held on _____, 2020 to discuss the sale of Whatcom County personal property; and

WHEREAS, it was determined to be in the best interest of Whatcom County to sell the property listed in Exhibit "A" and such property shall be sold at public auction or by sealed bid after October 2020, subsequent to compliance with notice requirements of WCC 1.10.200; and

NOW, THEREFORE, BE IT RESOLVED that the property listed in Exhibit "A" be sold at public auction or by sealed bid after October 2020 pursuant to the notice requirements of WCC 1.10.200.

BE IT FURTHER RESOLVED that where there is no bid within the advertised terms the County may withdraw the property from the sale, or if the County deems such action to be in the public interest, reject any or all bids either written or oral, and thereafter negotiate the sale of the property providing the negotiated price is higher than the highest bid at the public sale and that the public has notice by advertisement, under WCC 1.10.200, and an opportunity to compete through mailed bids, for the purchase by offer of a more favorable price.

APPROVED this ____ day of _____, 2020.

ATTEST:

WHATCOM COUNTY COUNCIL
WHATCOM COUNTY, WASHINGTON

_____
Dana Brown-Davis, Council Clerk

_____
Barry Buchanan, Council Chair

APPROVED AS TO FORM:

_____
Civil Deputy Prosecuting Attorney

Exhibit "A"
CAPITAL EQUIPMENT SURPLUS REQUEST
October 2020

PUBLIC WORKS – EQUIPMENT SERVICES							
UNIT	**YEAR**	**MAKE**	**MODEL**	**DEPT**	**VIN #**	**EST MILES/HRS**	**COMMENTS**
5	1994	Pontiac	Grand Prix SE	ASSESSOR	1G2WJ52M1RF329857	59,534	Obsolete/no parts available
42	2000	Ford	Ranger XL 4X4	HEALTH	1FTZR11V2YPB81456	104,467	Already Replaced
52	2000	Ford	Taurus	ASSESSOR	1FAFP5227YG252211	105,347	Already Replaced
66	2000	Ford	Focus Wagon	ASSESSOR	1FAFP36P9YW374097	96,008	Obsolete/no parts available
89	2008	Ford	Escape 4X4 – Hybrid	PDS	1FMCU59H08KB00098	141,441	Already Replaced
98	2004	Toyota	Prius-Hybrid	HEALTH	JTDKB22UX50117364	101,362	Already Replaced
103	2007	Ford	F150 4X4	M&O	FTRX14W17FB64257	153,121	Already Replaced
159	2008	Ford	F250 4X4 EX CAB	M&O	1FTSX21R38EC76958	102,750	Already Replaced
181	2002	Ford	F150 4X4	ENGINEERING	2FTRX18W62CA78554	117,365	Already Replaced
224	1987	Dodge	D350 1T WELD TRK	EQUIP SERVICES	1B6MD3453HS494677	101,200	Already Replaced
244	2001	International	Bridge Truck	M&O	1HTGLAXT61H331909	44,921	Already Replaced
265	2003	Kenworth	T800B	M&O	1NKDXBEXX3R386682	277,556	Already Replaced
266	2003	Kenworth	T800B	M&O	1NKDXBEX13R386683	284,859	Already Replaced
275	2001	Kenworth	T800B with #576 & #418	M&O	1NKDXBEX31R876944	269,611	Already Replaced
314	1991	CAT	140G	M&O	72V13873	11,094	Already Replaced
329	2012	John Deere	6430 with #529	M&O	1L06430PTB704136	7,771	Already Replaced
337	2000	Komatsu	WA320-3MC	M&O	A31509	3,986	Already Replaced
338	2012	John Deere	6430 with #538	M&O	1L06430PVB705617	8,488	Already Replaced
355	1998	Gradall	G3WD 4X2	M&O	0139365	5,900	Already Replaced
360	1984	John Deere	850 Dozer	M&O	J713373	1,236	Already Replaced
418	2001	Swenson	Sander with #275	M&O	N/A	N/A	Already Replaced
433	1964	P&H	325TC Truck	M&O	26139	10,949	Already Replaced
433A	1964	P&H	Crane with #433	M&O	N/A	4,541	Already Replaced
457	1994	Swenson	Sander	M&O	N/A	N/A	Already Replaced
463	1994	Portable	Sander	M&O	N/A	N/A	Already Replaced
464	1994	Portable	Sander	M&O	N/A	N/A	Already Replaced
477	2003	Pump	Pump TP-150 6"	M&O	TP-150/150/3/02	N/A	Already Replaced
487	2000	Continental	Welder with #224	EQUIP SERVICES	N/A	N/A	Already Replaced
529	2012	US Mower	Rotary MID MT with #329	M&O	102074	N/A	Already Replaced
538	2012	US Mower	Rotary MID MT with #338	M&O	102062	N/A	Already Replaced
571	1994	American	Reverse-A-Cast	PARKS	N/A	N/A	Already Replaced
576	1994	Snow	Plow with #275	M&O	N/A	N/A	Already Replaced

582	2008	American	Sno-Pl-3912-P1SA	M&O	JG0069	N/A	Already Replaced
756	1980	Emulsion Tanks	Asphalt Emulsion Tanks (qty 4)	M&O	N/A	N/A	Obsolete/No parts available
759	1998	B/E Better	Parts Washer	EQUIP SERVICES	N/A	N/A	Already Replaced
816	2003	Wheel Barrel	Power Wheel Barrel	PARKS	7563272	N/A	Already Replaced
869	2008	Ford	F250 4X4 EX Cab	PARKS	1FTSX21Y18EA18736	123,012	Already Replaced
6017	2004	Chevy	Impala	SHERIFF	2G1WF52KX49228001	118,514	Already Replaced
6150	2005	Ford	Expedition	SHERIFF	1FMPU16535LA74283	103,311	Already Replaced
6162	2006	Chevy	Impala	SHERIFF	2G1WS581869376094	115,222	Already Replaced
6165	2006	Ford	Expedition	SHERIFF	1FMPU16516LA79354	119,081	Already Replaced
6196	2008	Ford	Crown Vic Police Interceptor	SHERIFF	2FAHP71V28X154889	187,325	Already Replaced
6201	2008	Ford	Crown Vic Police Interceptor	SHERIFF	2FAHP71V38X154898	171,217	Already Replaced
6204	2009	Ford	Crown Vic Police Interceptor	SHERIFF	2FAHP71VX9X129837	119,371	Already Replaced
6208	2009	Ford	Crown Vic Police Interceptor	SHERIFF	2FAHP71V19X129841	136,459	Already Replaced
6213	2009	Ford	Crown Vic Police Interceptor	SHERIFF	2FAHP71V09X129846	103,109	Already Replaced
6214	2009	Ford	Crown Vic Police Interceptor	SHERIFF	2FAHP71V29X129847	118,913	Already Replaced
6226	2014	Ford	PUV-AWD	SHERIFF	1FM5K8AR5EGB37957	72,435	Totalled
6824	1998	Row Boat	Duro AOGPR12	N/A	DUW12040E898	N/A	Already Replaced

DESCRIPTION

GENERAL FUND – SURPLUS EQUIPMENT						
UNIT	**YEAR**	**MAKE**	**MODEL / DESCRIPTION**	**DEPT**	**PROPERTY TAG #**	**COMMENTS**

DESCRIPTION
Miscellaneous worn, obsolete, or broken office equipment, computer components, and furniture

Whatcom County

COUNTY COURTHOUSE
311 Grand Avenue, Ste #105
Bellingham, WA 98225-4038
(360) 778-5010

Agenda Bill Master Report

File Number: AB2020-435

File ID:	AB2020-435	**Version:**	1	**Status:**	Introduced for Public Hearing
File Created:	10/01/2020	**Entered by:**	SMock@co.whatcom.wa.us		
Department:	Public Works Department	**File Type:**	Resolution Requiring a Public Hearing		
Assigned to:	Council			**Final Action:**	
Agenda Date:	10/27/2020			**Enactment #:**	

Primary Contact Email: sdraper@co.whatcom.wa.us

TITLE FOR AGENDA ITEM:

Resolution adopting the 2021 Annual Road Construction Program (ACP)

SUMMARY STATEMENT OR LEGAL NOTICE LANGUAGE:

Resolution adopting the Whatcom County 2021 Annual Construction Program (ACP). The ACP is an intregral part of the County budget process and reflects the first year of the adopted 2021-2026 Six Year Transportation Improvement Program

HISTORY OF LEGISLATIVE FILE

Date:	Acting Body:	Action:	Sent To:
10/13/2020	Council	INTRODUCED FOR PUBLIC HEARING	Council

Attachments: Memo, Proposed Resolution

WHATCOM COUNTY
PUBLIC WORKS DEPARTMENT

Jon Hutchings
Director

James P. Karcher, P.E.
County Engineer
322 N. Commercial Street, Ste 301
Bellingham, WA 98225-4042
Phone: (360) 778-6210
Fax: (360) 778-6211

Memorandum

To: The Honorable Satpal Sidhu, Whatcom County Executive, and Honorable Members of the Whatcom County Council

Through: Jon Hutchings, Director SIGN FOR DIRECTOR

From: James P. Karcher, P.E., County Engineer JPK

Date: September 30, 2020

Re: 2021 Annual Construction Program (ACP)

Requested Action:
Public Works Committee work session and Introduction on October 13, 2020, followed by a Public Hearing and adoption on October 27, 2020.

Background and Purpose:
RCW 36.81.130 requires the adoption of the Annual Construction Program (ACP). Adoption of this program is an element of the County budget process.

This ACP is identical to the 1st year of the Six Year Transportation Improvement Program (STIP) approved on September 29, 2020.

Information:
A proposed resolution is enclosed for your consideration. In addition, each project that has funding available in 2021 has a project summary sheet for your review.

If you have questions or require additional information, please contact me at the number provided above.

PROPOSED BY: Public Works

INTRODUCED: 10/13/2020

RESOLUTION NO. _____

APPROVING THE WHATCOM COUNTY 2021 ANNUAL CONSTRUCTION PROGRAM

WHEREAS, pursuant to RCW 36.81.130, the Whatcom County Engineer did file with the Whatcom County Council a recommended plan for laying out, construction, maintenance and special maintenance of County roads for the fiscal year of 2021; and,

WHEREAS, the Whatcom County Council held a public hearing on the 27th day of October, 2020, and has considered the testimony given as well as the recommended plan; and,

WHEREAS, the Whatcom County Council had determined that said plan is necessary as nearly as practicable to the Whatcom County 2021-2026 Six-Year Transportation Improvement Program, approved by Resolution 2020-034 on September 29, 2020.

NOW, THEREFORE, BE IT RESOLVED that the 2021 Whatcom County Annual Construction Program is hereby approved as shown on the attachment hereto; and

BE IT FURTHER RESOLVED that no changes be made in the program without the unanimous vote of the Whatcom County Council; and

BE IT FINALLY RESOLVED that upon approval, the 2021 Annual Construction Program be filed with the County Road Administration Board per WAC 136-16-040.

APPROVED this _____ day of _____, 2020.

ATTEST:

WHATCOM COUNTY COUNCIL
WHATCOM COUNTY, WASHINGTON

_____
Dana Brown-Davis, Clerk of the Council

_____
Barry Buchanan, Chair of the Council

APPROVED AS TO FORM:

Approved as to form CQ, emailed 9.30.20

_____
Chris Quinn, Senior Civil Deputy Prosecutor Attorney

Whatcom County
2021

Annual Construction Program

WAC 136-16

(A) TOTAL CONSTRUCTION DONE (total sum of column 13 + column 14): $16,300,000.00
(B) COMPUTED COUNTY FORCES LIMIT: $1,801,002.00
(C) TOTAL COUNTY FORCES CONSTRUCTION (total sum of column 14): $1,600,000.00

Date of Environmental Assessment:
Date of Final Adoption:
Ordinance/Resolution Number:

(1)	(2)	(3)	(4)					(5)	(6)	(7)	(8)	(9)	(10)	(11)	(12)	(13)	(14)	(15)
Annual Program Item No.	6 Year Road Program Item No.	Project Name	Road #	Road Segment Information Road Name	BMP	EMP	FFC	Project Length(mi.)	Project Type Code	Environmental Assessment	Sources of Funds: County Road Funds	Other Funds: Amount	Other Funds: Program Source	PE & CE (595.10)	Right of Way (595.20)	Estimated Expenditures Dollars: Construction: Contract	Construction: County Forces	Grand Total (All 595)
1	R1	CRP #907001 Birch Bay Drive & Pedestrian Facility from Lora Lane to Cedar Avenue	20010	**Road Name:** Birch Bay Drive **From:** Lora Lane **To:** Cedar Avenue	2.68	4.26	17	1.58	P&T FP DR Other	S	$1,700,000			$200,000		$1,500,000		$1,700,000
2	R2	CRP #914002 East Smith Road & Hannegan Road	55080	**Road Name:** East Smith Road **From:** East Smith Road **To:** Hannegan Road	1.86	2.06	07	0.40	3R IS Illm Safety	S	$1,500,000	$2,000,000.00	STP(E)	$400,000	$100,000	$3,000,000		$3,500,000
			55110	**Road Name:** Hannegan Road **From:** East Smith Road **To:** Hannegan Road	1.86	2.06	07											
3	R3	CRP #917001 Marine Drive, Locust Avenue to Alderwood Avenue	12790	**Road Name:** Marine Drive **From:** Locust Avenue **To:** Alderwood Avenue	3.92	4.57	16	0.65	RC SW P&T Safety	S	$1,941,000	$1,509,000.00	STP(UL)	$400,000	$50,000	$3,000,000		$3,450,000
4	R4	CRP #919005 Samish Way/Galbraith Lane	44060	**Road Name:** Samish Way **From:** Samish Way **To:** Galbraith Lane	1.41	1.68	17	0.27	IS Other Safety Illm	S	$60,000			$10,000	$10,000	$30,000	$10,000	$60,000
			44060	**Road Name:** Galbraith Lane **From:** 0 **To:** 0	0.00	0.00	09											
5	R5	CRP #919018 Birch Bay Lynden Rd., Enterprise Rd. to Rathbone Rd.	21580	**Road Name:** Birch Bay Lynden Rd. **From:** Enterprise Rd. **To:** Rathbone Rd.	7.92	9.95	07	2.03	2R Safety	E	$985,000	$165,000.00	WA Misc	$150,000		$1,000,000		$1,150,000
6	R6	CRP #906001 Birch Bay Lynden Rd. & Blaine Rd.	21580	**Road Name:** Birch Bay Lynden Rd. **From:** Birch Bay Lynden Rd. **To:** Blaine Rd.	1.00	1.25	17	0.25	IS Illm SW Safety 3R	S	$400,000			$400,000				$400,000
7	R7	CRP #918019 Smith Road & Northwest Drive	75080	**Road Name:** Smith Road **From:** 0 **To:** 0	1.40	1.60	16	0.40	RC IS Illm Safety	S	$25,000			$25,000				$25,000
			74050	**Road Name:** Northwest Drive **From:** 0 **To:** 0	3.50	3.70	16											
8	R8	CRP # 920016 Chief Martin Road, Cagey Road to Kwina Road	14110	**Road Name:** Chief Martin Road **From:** Cagey Road **To:** Kwina Road	0.00	2.50	06	2.50	3R Safety	S	$200,000			$200,000				$200,000
9	R9	CRP #914001 Slater Road & Northwest Drive	14760	**Road Name:** Slater Road **From:** Slater Road **To:** Northwest Drive	8.00	8.29	16	0.40	RC FP IS Illm Safety	S	$5,000			$5,000				$5,000
			74050	**Road Name:** Northwest Drive **From:** Slater Road **To:** Northwest Drive	2.27	2.38	16											
10	R10	CRP #916002 Horton Road, Northwest Drive to Aldrich Road	74230	**Road Name:** Horton Road **From:** Horton Road **To:** Aldrich Road	0.00	0.70	16	0.70	NEW SW DR IS	S	$10,000			$10,000				$10,000
11	R11	CRP #912017 Lummi Nation Transportation Projects						N/A			$2,000,000			$350,000	$150,000	$1,500,000		$2,000,000
12	R12	CRP 910002 Point Roberts Transportation Improvements						N/A			$150,000			$50,000		$90,000	$10,000	$150,000
13	R13	CRP #916007 Hemmi Road Flood Mitigation	56320	**Road Name:** East Hemmi Road **From:** East Hemmi Road **To:** East Hemmi Road	2.30	2.60	08	0.30	2R DR Other	S	$1,450,000			$150,000		$1,290,000	$10,000	$1,450,000

(1)	(2)	(3)	(4)					(5)	(6)	(7)	(8)	(9)	(10)	(11)	(12)	(13)	(14)	(15)
Annual Program Item No.	6 Year Road Program Item No.	Project Name	Road #	Road Segment Information Road Name	BMP	EMP	FFC	Project Length(mi.)	Project Type Code	Environmental Assessment	Sources of Funds: County Road Funds	Other Funds: Amount	Other Funds: Program Source	PE & CE (595.10)	Right of Way (595.20)	Estimated Expenditures Dollars: Construction: Contract	Construction: County Forces	Grand Total (All 595)
14	R14	CRP #915014 Innis Creek Road	88850	**Road Name:** Innis Creek Road **From:** Innis Creek Road **To:** Innis Creek Road	2.45	2.65	09	0.20	2R DR Other Safety	S	$10,000			$10,000				$10,000
15	R15	CRP #921001 Birch Bay Drive, Jackson Road to Shintaffer Road	20010	**Road Name:** Birch Bay Drive **From:** Jackson Road **To:** Shintaffer Road	2.10	4.53	07	2.43	3R Safety	E	$15,000			$15,000				$15,000
16	R16	CRP #921002 Marine Drive II, Alderwood Avenue to Bridge No. 172	12790	**Road Name:** Marine Drive **From:** Alderwood Avenue **To:** Bridge No. 172	3.37	3.92	06	0.55	RC P&T	S	$15,000			$15,000				$15,000
17	R17	CRP #915013 Turkington Road/Jones Creek	89200	**Road Name:** Turkington Road **From:** Turkington Road **To:** Turkington Road	0.40	0.60	09	0.20	RC Other	S	$55,000			$30,000	$25,000			$55,000
18	R18	CRP #921003 Truck Road, 2020 Flood Damage Repair	89200	**Road Name:** Truck Road **From:** Truck Road **To:** Truck Road	0.40	0.60	16	0.20	3R K	S	$100,000			$100,000				$100,000
19	R19	CRP 919002 Abbott Road/Levee Improvements	55560	**Road Name:** Abbott Road **From:** Abbott Road **To:** Abbott Road	1.70	1.90	09	0.20	RC Other	S	$150,000					$150,000		$150,000
20	R20	CRP #919001 Ferndale Road/Levee Improvements	12800	**Road Name:** Ferndale Road **From:** Ferndale Road **To:** Ferndale Road	2.50	3.82	08	1.32	Other	S	$50,000			$50,000				$50,000
21	R21	CRP #921004 Lake Louise, Austin Street to Lake Whatcom Boulevard	46010	**Road Name:** Lake Louise Road **From:** Austin Street **To:** Lake Whatcom Blvd	0.00	4.06	18	4.06	3R Safety	E	$25,000			$25,000				$25,000
22	R22	CRP #921005 Austin Street, Lake Louise Street to Cable Street	46020	**Road Name:** Austin Street **From:** Lake Louise **To:** Cable Street	0.00	0.37	16	0.37	3R SW Safety	S	$25,000			$25,000				$25,000
23	R28	CRP #921019 Lakeway Drive Corridor Improvements	45690	**Road Name:** Lakeway Drive **From:** Lakeway Drive **To:** Lakeway Drive	0.00	1.39	16	1.39	Other P&T Safety	E	$50,000			$50,000				$50,000
24	R31	CRP #921006 Small Area Paving, Various locations						N/A	Br 2R	E	$250,000			$50,000		$200,000		$250,000
25	R34	CRP #921007 South Pass Road, 2020 Flood Damage Repair	66040	**Road Name:** South Pass Road **From:** South Pass Road **To:** South Pass Road	3.50	3.65	16	0.15	2R Safety	E	$25,000			$25,000				$25,000
26	B2	CRP #917004 Jackson Road/Terrell Creek Bridge No. 81	21950	**Road Name:** Jackson Road **From:** Jackson Road **To:** Jackson Road	0.00	0.10	18	0.10	Br	S	$250,000			$200,000	$50,000			$250,000
27	B4	CRP #913006 North Lake Samish Road Bridge No. 107	44170	**Road Name:** North Lake Samish **From:** North Lake Samish **To:** North Lake Samish	0.01	0.11	08	0.10	P&T Br	S	$150,000			$100,000	$50,000			$150,000
28	B5	CRP #920003 Goshen Road/Anderson Creek Bridge No. 248	56140	**Road Name:** Goshen Rd. **From:** At Bridge No. 248 **To:** At Bridge No. 248	0.56	0.76	08	0.20	Br	S	$20,000	$200,000.00	BR	$200,000	$20,000			$220,000
29	B10	CRP #919006 Mosquito Lake Road/Hutchinson Creek Tributary	84190	**Road Name:** Mosquito Lake Road **From:** Mosquito Lake Road **To:** Mosquito Lake Road	3.10	3.20	08	0.10	FP	S	$560,000			$50,000	$10,000	$0	$500,000	$560,000
30	B11	CRP #919007 North Fork Road/Kenney Creek	89510	**Road Name:** North Fork Road **From:** North Fork Road **To:** North Fork Road	1.00	1.10	09	0.10	FP	S	$70,000	$200,000.00	FBRB	$250,000	$20,000			$270,000
31	B12	CRP #920004 Truck Road Fish Passage	89370	**Road Name:** Truck Road **From:** Truck Road **To:** Truck Road	0.90	0.91	09	0.01	FP	S	$330,000			$25,000	$5,000	$0	$300,000	$330,000
32	B13	CRP #921008 Deal Road, Fish Passage	89300	**Road Name:** Deal Road **From:** Deal Road **To:** Deal Road	0.20	0.21	09	0.01	FP	S	$80,000			$75,000	$5,000			$80,000
33	F1	CRP #919008 Replacement of Whatcom Chief & Terminal Modification						N/A	Ferry	E	$300,000			$300,000				$300,000
34	F2	CRP #919021 Gooseberry Pt. Terminal Preservation Project						N/A	Ferry	S	$800,000			$50,000		$750,000		$800,000
35	F3	CRP #914015 Lummi Island Breakwater Replacement						N/A	Ferry	E	$1,529,000	$521,000.00	FBP	$150,000		$1,900,000		$2,050,000

(1)	(2)	(3)	(4)					(5)	(6)	(7)	(8)	(9)	(10)	(11)	(12)	(13)	(14)	(15)
Annual Program Item No.	6 Year Road Program Item No.	Project Name	Road #	Road Segment Information Road Name	BMP	EMP	FFC	Project Length(mi.)	Project Type Code	Environmental Assessment	Sources of Funds: County Road Funds	Other Funds: Amount	Other Funds: Program Source	PE & CE (595.10)	Right of Way (595.20)	Estimated Expenditures Dollars: Construction: Contract	Construction: County Forces	Grand Total (All 595)
36	F4	CRP #919009 Relocation of Gooseberry Terminal						N/A	Ferry	E	$50,000			$50,000				$50,000
37	Y1	CRP #921009 Various Bridge Rehabilitation/Replacement						N/A	Br	S	$300,000			$50,000		$0	$250,000	$300,000
38	Y2	CRP #921010 Right of Way Acquisition						N/A		E	$50,000				$50,000			$50,000
39	Y3	CRP #921011 Unanticipated Site Improvements						N/A		E	$300,000			$30,000		$0	$270,000	$300,000
40	Y4	CRP #921012 Unanticipated Stormwater Quality Improvements						N/A		S	$120,000			$20,000		$90,000	$10,000	$120,000
41	Y5	CRP #921013 Unanticipated Non-motorized Transportation Improvements						N/A	SW P&T Safety	I	$60,000			$10,000		$50,000		$60,000
42	Y6	CRP #921014 Fish Passage Project						N/A	FP	S	$50,000			$50,000				$50,000
43	Y7	CRP #921015 Swift Creek Transportation Impact						N/A			$100,000			$10,000		$0	$90,000	$100,000
44	Y8	CRP #921016 Railroad Crossing Improvements						N/A	Other 2R Safety	I	$200,000			$50,000		$0	$150,000	$200,000
45	Y9	CRP #921017 Beam Guardrail Replacements/Upgrades						N/A	Safety	I	$50,000			$50,000				$50,000
46	Y10	CRP #921018 ADA Barrier Removal						N/A	SW	E	$200,000			$50,000		$150,000		$200,000
											$16,765,000	**$4,595,000**		**$4,515,000**	**$545,000**	**$14,700,000**	**$1,600,000**	**$21,360,000**

Birch Bay Drive and Pedestrian Facility
CRP #907001

Construction Funding Year(s):	2021

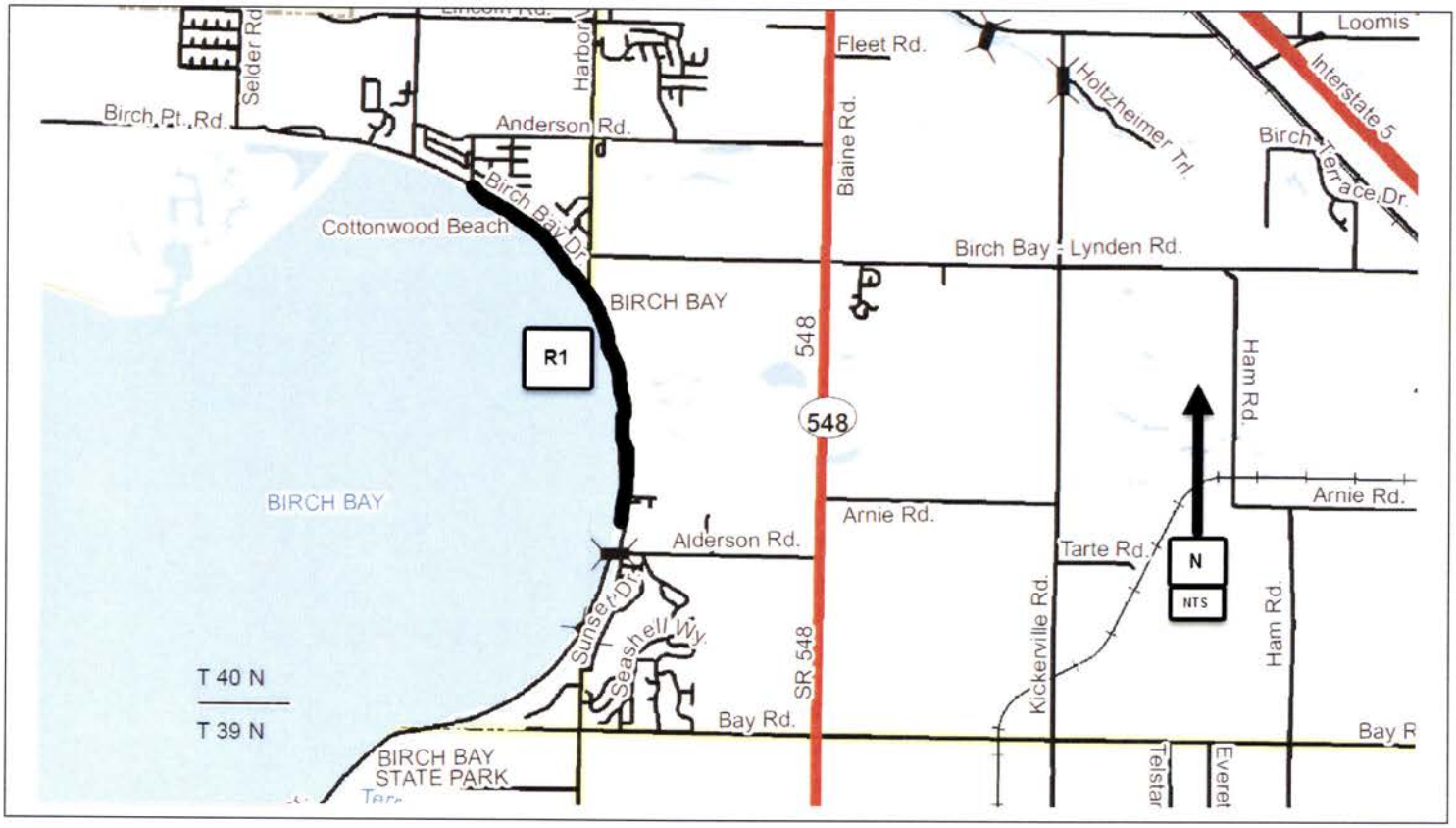
Project Narrative:
This project is located parallel to Birch Bay Drive from Cedar Avenue to the mouth of Terrell Creek, in Sections 30 and 31, T40N, R1E, and Sections 24 and 25, T40N, R1W. This is a 1.58 mile separated berm with pathway to encourage pedestrian use along Birch Bay Drive to support safety and to protect the roadway from storm damage. In addition, the project will provide mitigation for both beach erosion and roadway protection. This project is listed **#R1** on the 2021-2026 Six-Year Transportation Improvement Program.

Project Status:
Phase I of the Feasibility Study was completed in 2006. Phase 2A (Preliminary Construction Cost Estimate) was completed in 2007, and updated in spring of 2013. Preliminary Engineering began in late 2013, R/W acquisition began in 2016 (100% complete), and permitting is 100% complete. Construction began in December 2019 and is expected to last through 2022. Due to the long duration monitoring periods required by project permits, it is anticipated that the contract may be open through 2025.

Total Estimated Project Cost:	$14,150,000
Expenditures to Date:	$7,690,000

Funding Sources:	
Federal	$3,172,000 (STP and TAP)
State	$0
Local	$10,978,000

Environmental Permitting	Whatcom County-Shorelines; WDFW-HPA, Army Corps of Engineers, DOE; Sec 404 Clean Water Act; NEPA
Right-of-Way Acquisition (Actual)	$1,686,000
County Forces (Estimate)	N/A



East Smith Road & Hannegan Road Intersection Improvements
CRP # 914002

Construction Funding Year(s):	**2021**

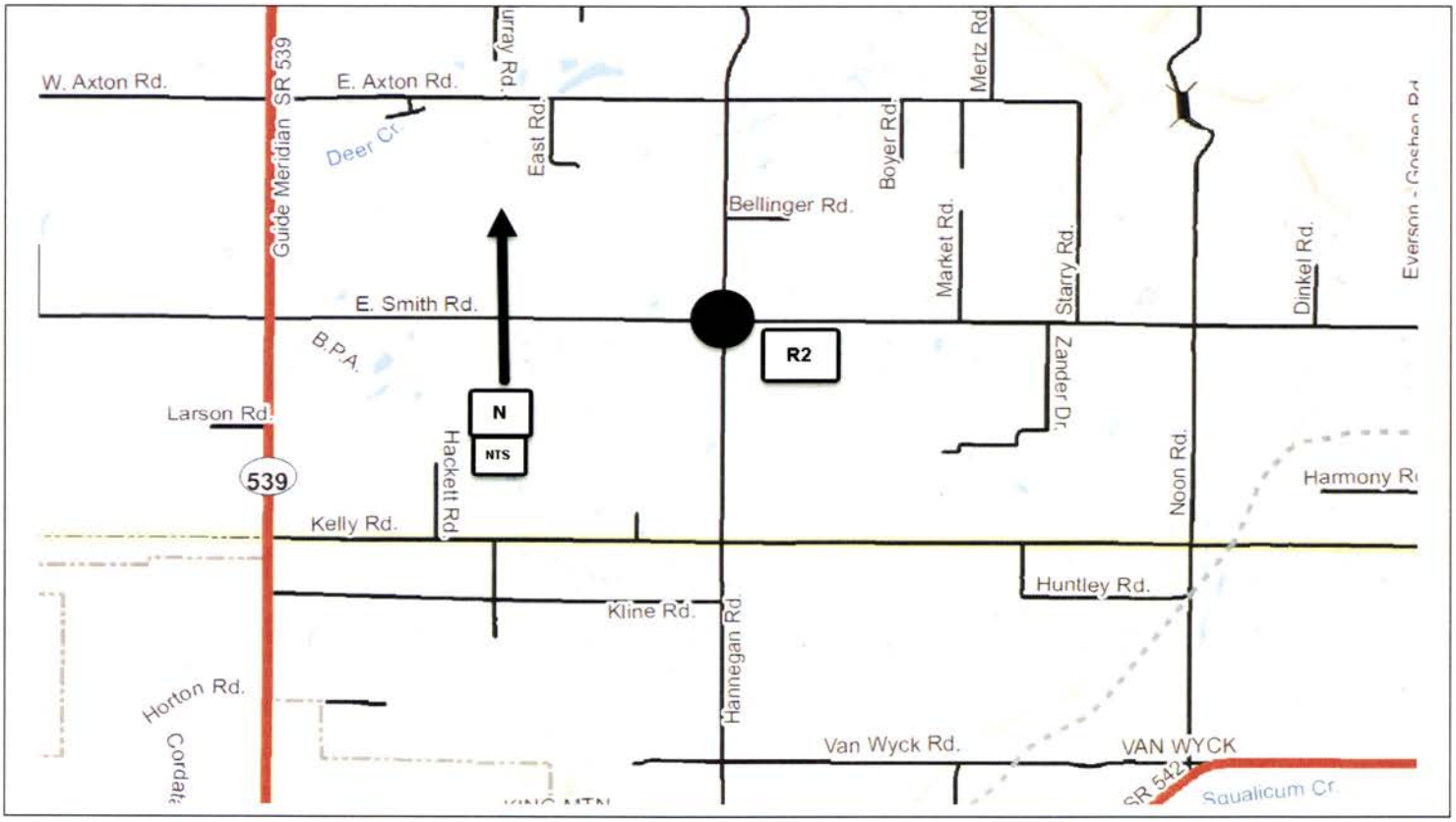
Project Narrative:
The intersection of East Smith and Hannegan Roads is located in Sections 28, 29, 32 and 33, T39N, R3E. This intersection currently experiences delays due to the lack of left-turn channelization on Smith Road. The project work entails the construction of a two-lane Roundabout at the intersection. This project is listed **#R2** on the 2021-2026 Six-Year Transportation Improvement Program.

Project Status:
The 'Alternatives Analysis' completed by a traffic consultant in 2018 determined a two-lane Roundabout as the best design solution. Design proceeding, and is expected to be completed in 2021, with Construction planned for 2021 or 2022 depending on ROW acquisition, utility relocation, and environmental permitting.

Total Estimated Project Cost:	$3,565,000
Expenditures to Date:	$461,000

Funding Sources:	
Federal	$2,000,000 ST/HSIP available in 2021
State	$0
Local	$1,565,000

Environmental Permitting	NEPA, ESA, Corp of Engr, Clrg/CAO, DOE
Right-of-Way Acquisition (Estimate)	$350,000
County Forces (Estimate)	N/A



Marine Drive
Locust Avenue to Alderwood Avenue
Reconstruction and Bike/Ped Facilities
CRP # 917001

Construction Funding Year(s):	2021

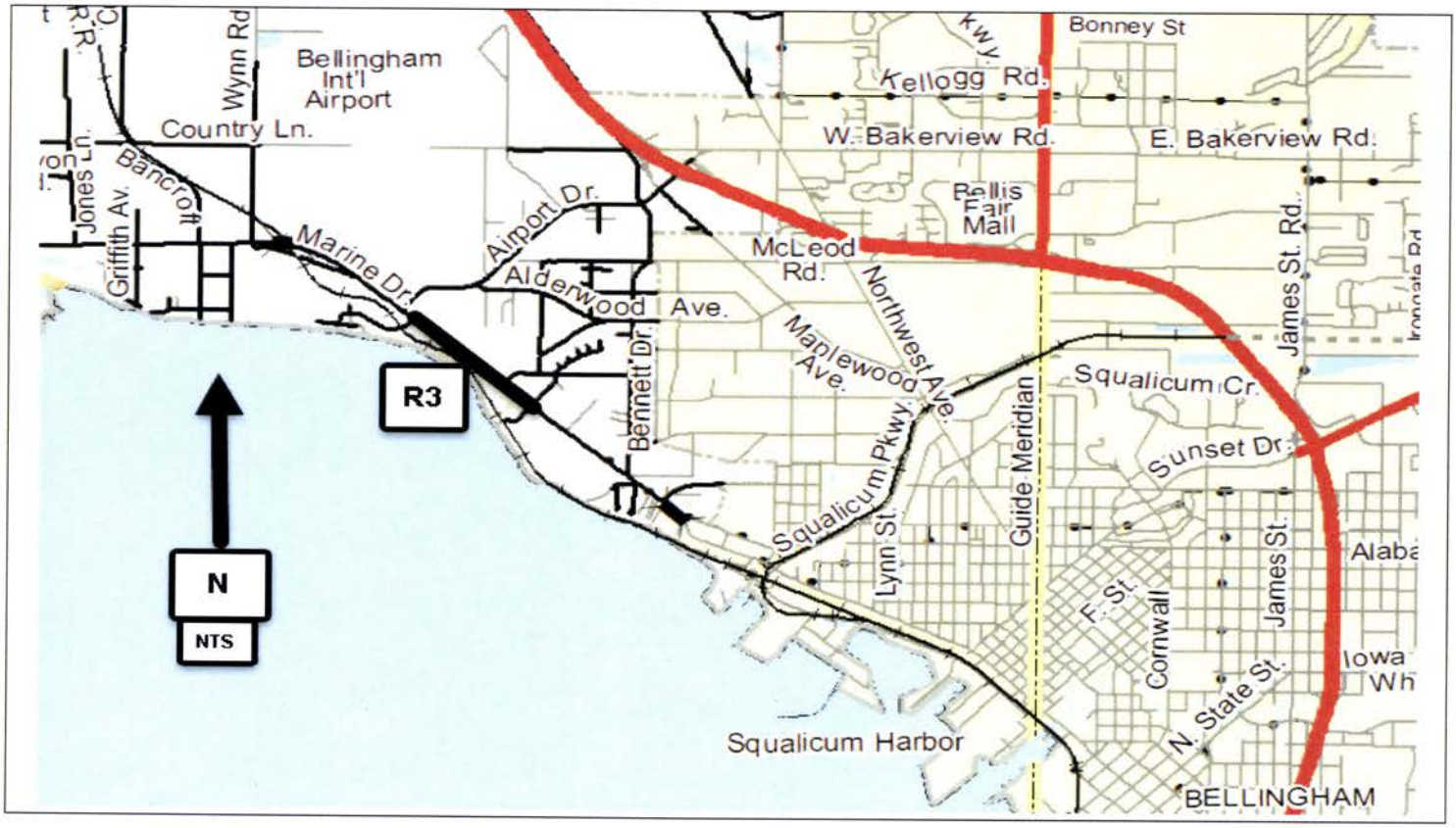
Project Narrative:
This Marine Drive project is located between Locust Ave. and Alderwood Avenue in Section 15 of T38N, R2E. The work involves reconstruction of approximately ½ mile of roadway with emphasis on bike/pedestrian and stormwater quality enhancements. This project is listed **#R3** on the 2021-2026 Six-Year Transportation Improvement Program.

Project Status: Survey completed and design initiated in 2019. Design to be completed in late 2020, with ROW acquisition and environmental permitting to be completed in early 2021. Construction is expected to begin in summer of 2021.

Total Estimated Project Cost:	$3,510,000
Expenditures to Date:	$322,000

Funding Sources:	
Federal	$1,509,000 (STBG) Available in 2021
State	$0
Local	$2,001,000

Environmental Permitting	ECS, BA, SEPA, CLR/CAO, Corps of Engrs
Right-of-Way Acquisition (Estimate)	$50,000
County Forces (Estimate)	N/A



Samish Way & Galbraith Lane
Pedestrian Crosswalk
CRP # 919005

Construction Funding Year(s):	**2021**

Project Narrative:
Construct a pedestrian-actuated crosswalk for access across Samish Way at Galbraith Lane in response to the City of Bellingham's expansion of the upper Lake Padden parking lot on Samish Way. The existing and projected high use of this parking lot for mountain bike and pedestrian use will result in numerous pedestrians and bikes crossing Samish Way. This project is listed **#R4** on the 2021-2026 Six Year Transportation Improvement Program.

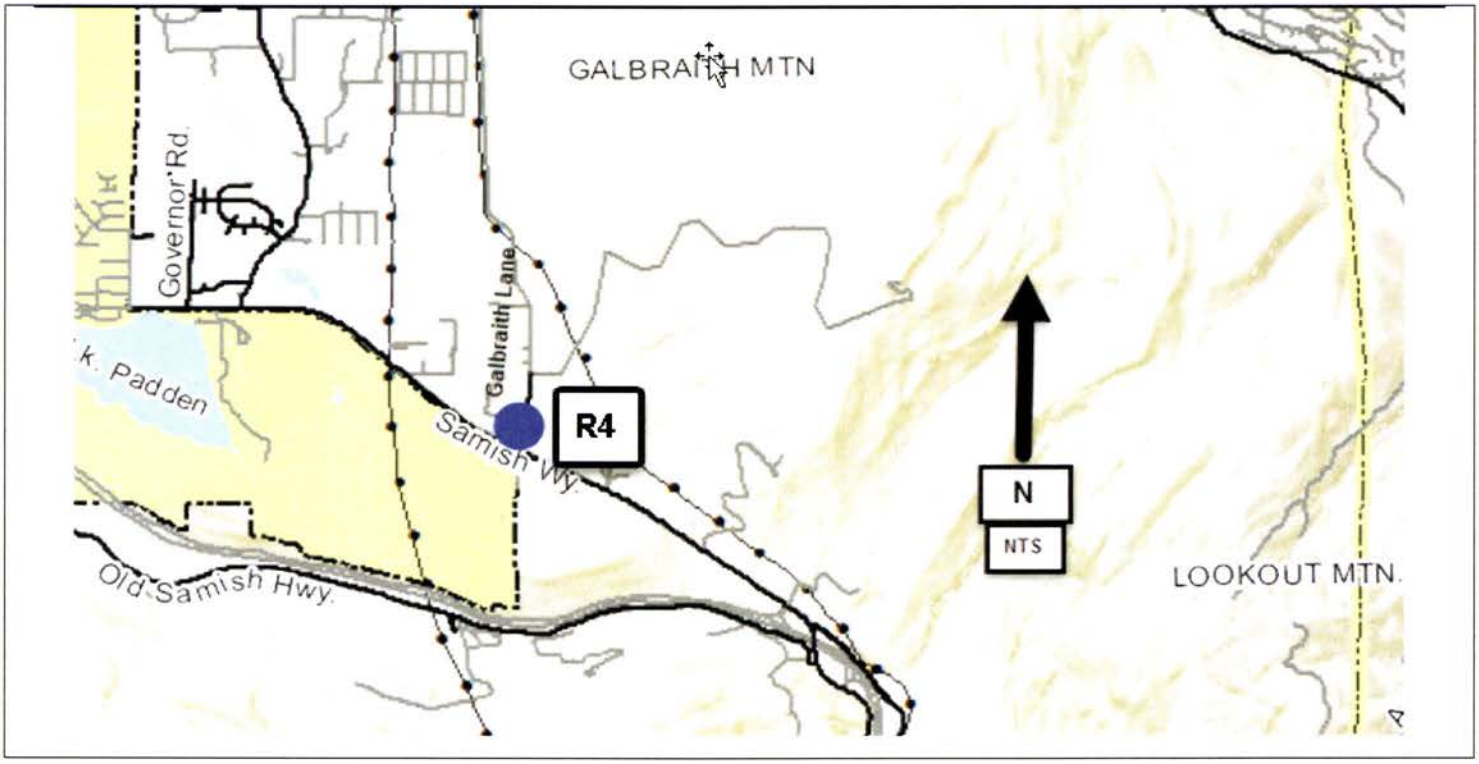
Project Status:
Currently working with the City of Bellingham to provide an in-house design for the pedestrian-actuated crosswalk. COB plans to install the crosswalk with their traffic signal crews, and construction is planned in 2021.

Total Estimated Project Cost: $ 60,000

Expenditures to Date: $20,400

Funding Sources:	
Federal	$0
State	$0
Local	$60,000

Environmental Permitting	SEPA, Land Disturbance, Critical Areas
Right-of-Way Acquisition (Estimate)	$10,000
County Forces (Estimate)	TBD



Whatcom County Public Works
Project Narrative

Birch Bay Lynden Rd, Enterprise Rd. to Rathbone Rd.
Pavement Rehabilitation
CRP # 919018

Construction Funding Year(s):	**2021**

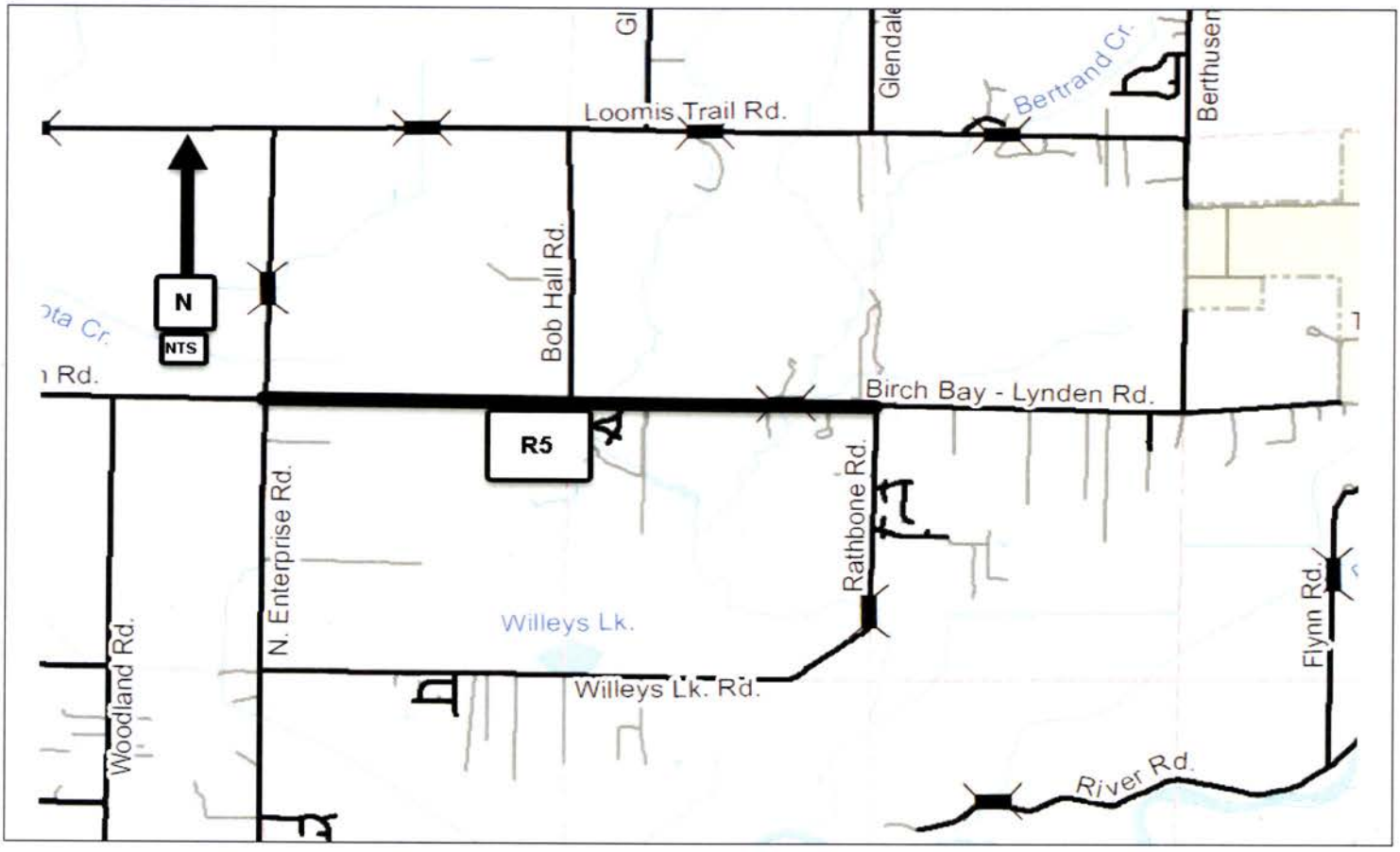
Project Narrative:
This Birch Bay Lynden Road project is located between Enterprise Road and Rathbone Road in Sections 27 & 28 of T40N, R2E. The work will involve the pavement rehabilitation of approximately 2 miles of roadway. This project is listed **#R5** on the 2021-2026 Six-Year Transportation Improvement Program.

Project Status: This project received Rural Arterial Preservation Program (RAPP) grant funds of $165,000 in mid-2019. Design work has begun, with construction planned for 2021.

Total Estimated Project Cost:	$1,150,000
Expenditures to Date:	$5,300

Funding Sources:	
Federal	$0
State	$165,000 RATA funds
Local	$985,000

Environmental Permitting	SEPA
Right-of-Way Acquisition (Estimate)	N/A
County Forces (Estimate)	N/A



Birch Bay Lynden Rd. & Blaine Rd. Intersection Improvements
CRP # 906001

Construction Funding Year(s):	**TBD**

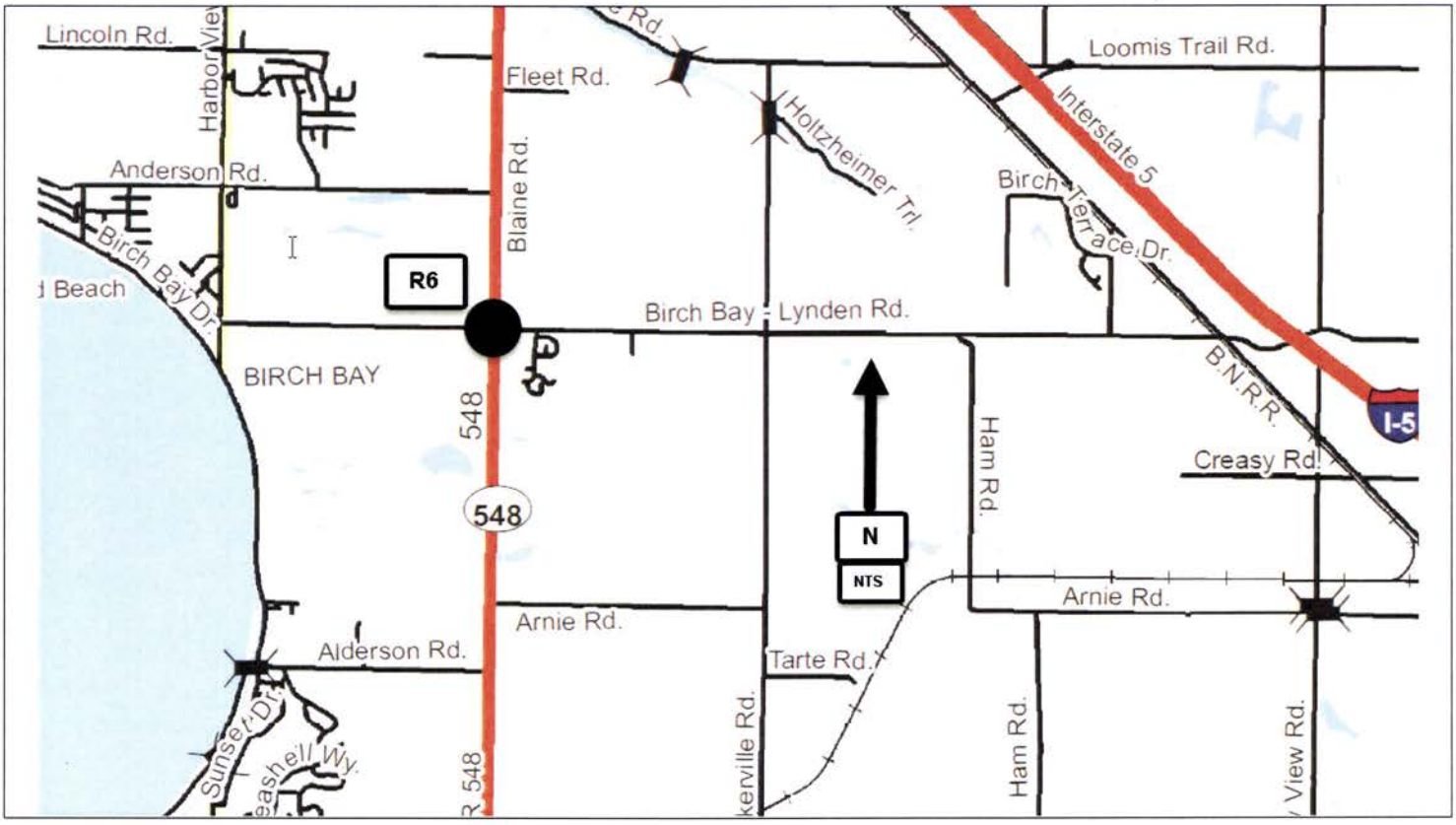
Project Narrative:
This project is located 4.6 miles south of Blaine, at the corners common to Sections 19, 20, 29, and 30, T40N, R1E. Intersection improvements being considered are a roundabout or a signal. This is a joint project with the Washington State Department of Transportation; however, it is unlikely that they will participate as a funding source. This project is listed **#R6** on the 2021-2026 Six-Year Transportation Improvement Program.

Project Status: Survey work and R/W Plan started. Consultant contract underway to evaluate & decide on preferred design alternative, and will be determined in Fall of 2020. Applied for and received federal STBG funding of $800K which is available in 2023-2024. Additional grant funds will be looked for through other sources.

Total Estimated Project Cost:	$1,200,000
Expenditures to Date:	$89,000

Funding Sources:	
Federal	$ STBG available in 2023-2024
State	$0
Local	$1,200,000 (add'l Grant funds sought)

Environmental Permitting	ESA, NEPA, Clrg/CAO, Corp of Engr, DOE,
Right-of-Way Acquisition (Estimate)	$500,000
County Forces (Estimate)	



Smith Road & Northwest Drive Intersection Improvements
CRP # 918019

Construction Funding Year(s):	TBD

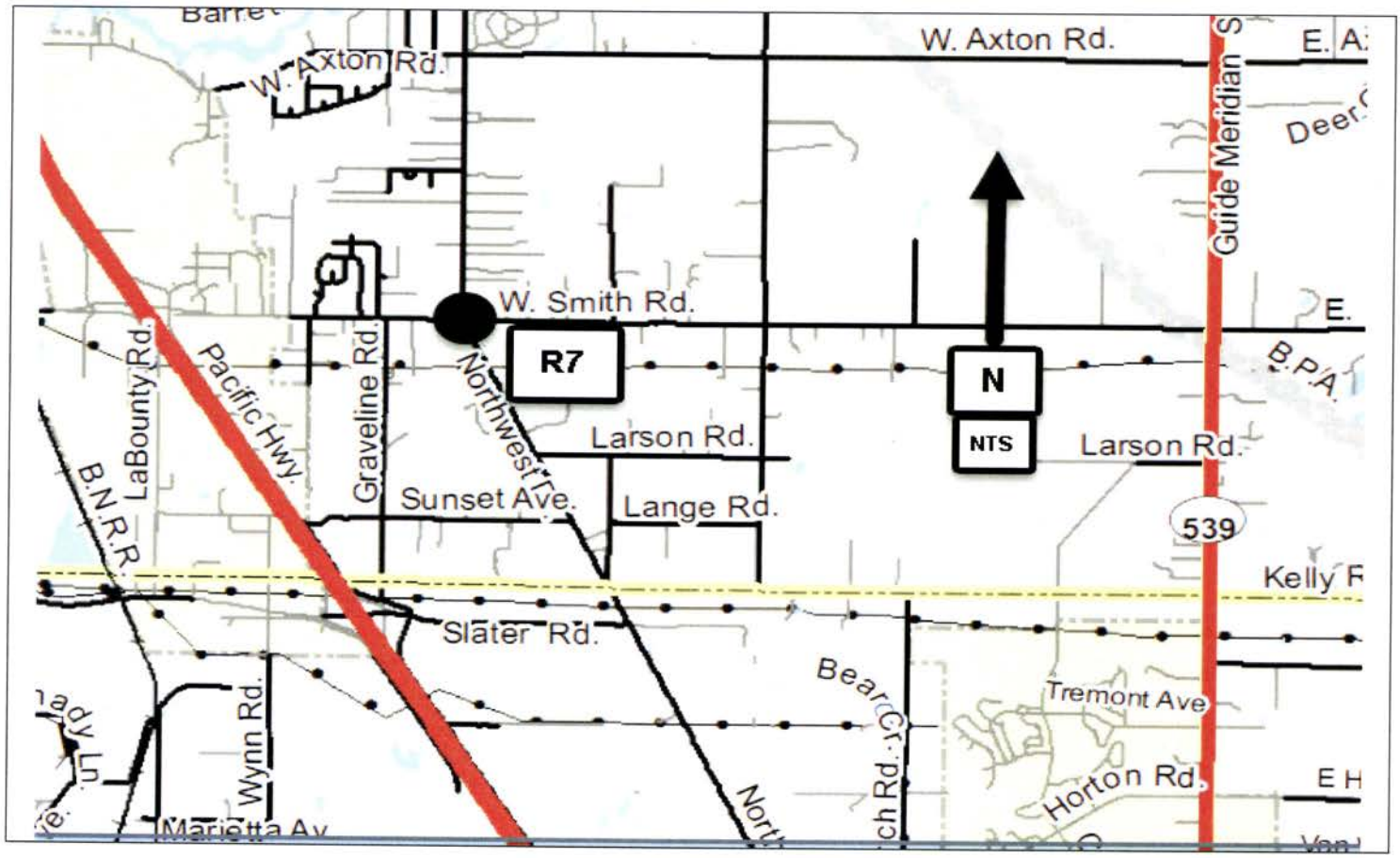
Project Narrative:
This project is located in Section 27 & 34 of T39N, R2E. The work involves intersection improvements that will likely be a roundabout or traffic signal at the current 4-way stop. This project will also require drainage upgrades and R/W acquisition, and is dependent on the NW Annex building being demolished at a future date. This project is listed **#R7** on the 2021-2026 Six-Year Transportation Improvement Program.

Project Status: Consultant contract underway to evaluate & decide on preferred design alternative, and will be determined in Fall of 2020. Public Works is working with Whatcom Council of Governments (WCOG) to submit this project for Regional Transportation Funding with a request for $5 million.

Total Estimated Project Cost:	TBD
Expenditures to Date:	$ 43,000

Funding Sources:	
Federal	$ 0
State	$ 0
Local	$35,000 (Grant funds sought thru WCOG)

Environmental Permitting	SEPA, Critical Areas, DOE
Right-of-Way Acquisition (Estimate)	TBD
County Forces (Estimate)	TBD



Chief Martin Road/Cagey Road to Kwina
Pavement Rehabilitation
CRP # 920016

Construction Funding Year(s):	**2021**

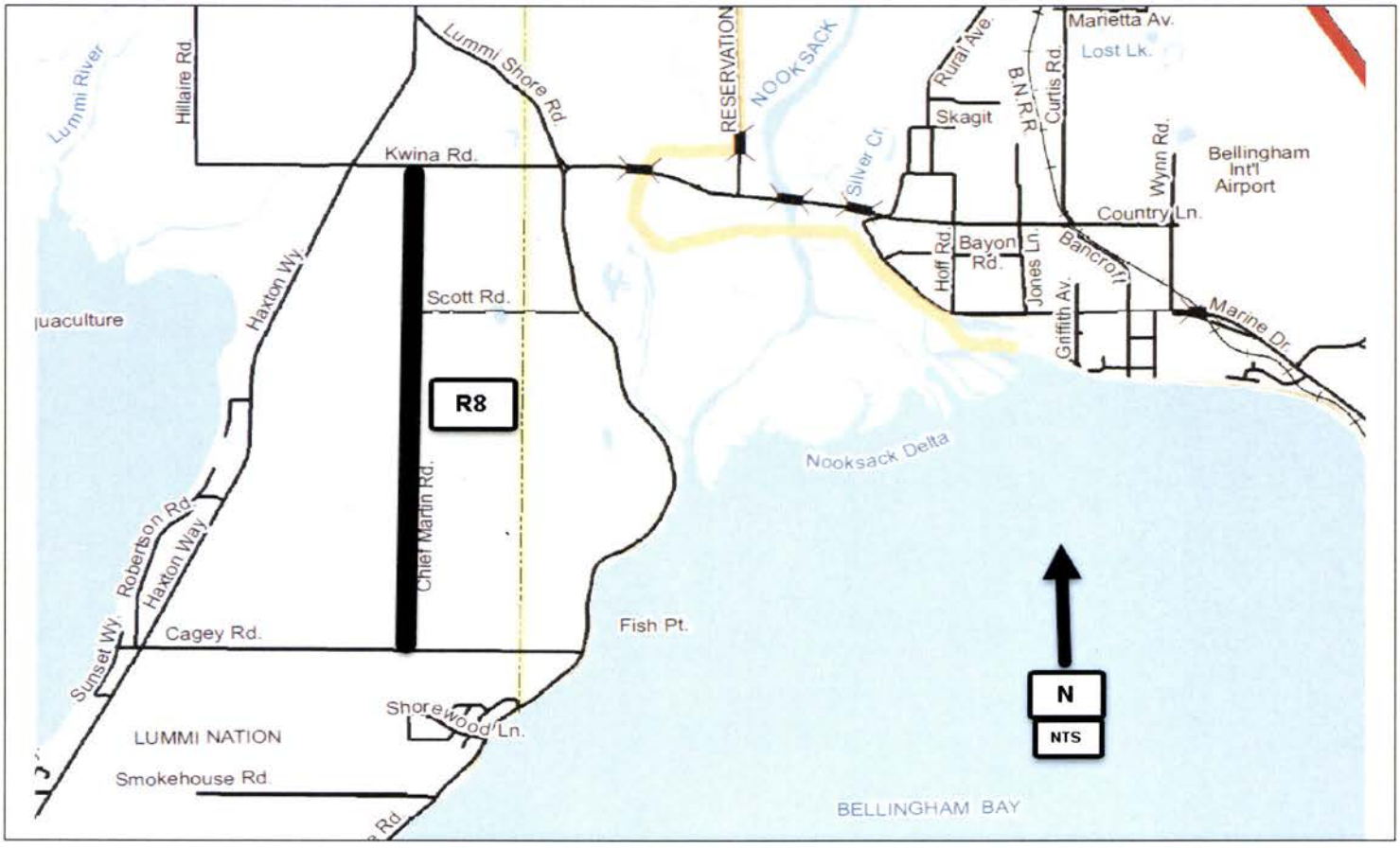
Project Narrative:
This Chief Martin Road project is located between Cagey Road to Kwina Road in Sections 24 & 25 of T39N and R1E. The work will involve the pavement rehabilitation of approximately 2.50 miles of roadway. This project is listed **#R8** on the 2021-2026 Six-Year Transportation Improvement Program.

Project Status:
Design, permitting and temporary easements to begin in late 2020. Currently looking for funding sources for the construction phase.

Total Estimated Project Cost:	$200,000
Expenditures to Date:	$0

Funding Sources:	
Federal	
State	
Local	$200,000

Environmental Permitting	SEPA, ESA, HPA, Clrg/CAO
Right-of-Way Acquisition (Estimate)	5,000
County Forces (Estimate)	N/A



Slater Road & Northwest Drive Intersection Improvements
CRP # 914001

Construction Funding Year(s):	**TBD**

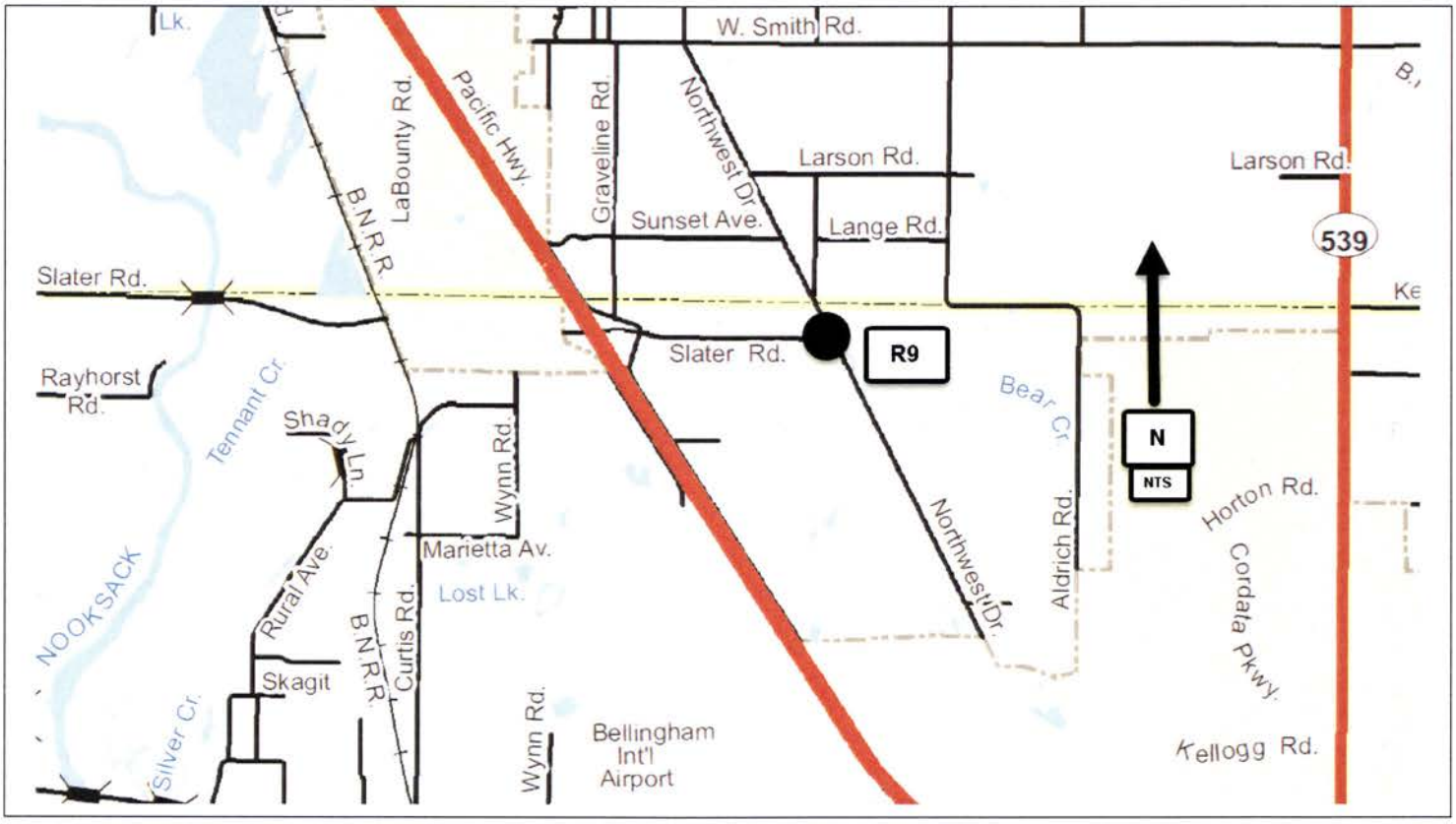
Project Narrative:
This project is located in Section 27 & 34 of T39N, R2E. The work involves intersection improvements that will likely be a roundabout or traffic signal at the current 3-way stop. This project will also require fish passage upgrades and R/W acquisition. This project is listed **#R9** on the 2021-2026 Six-Year Transportation Improvement Program.

Project Status: WSDOT is the lead agency on this project and will be providing the design. Construction start date TBD depending on State revenues.

Total Estimated Project Cost:	TBD
Expenditures to Date:	$ 22,000

Funding Sources:	
Federal	$ 0
State	$ 0
Local	$15,000

Environmental Permitting	SEPA, Critical Areas, DOE
Right-of-Way Acquisition (Estimate)	TBD
County Forces (Estimate)	TBD



Horton Road
Northwest Drive to Aldrich Road
CRP # 916002

Construction Funding Year(s):	TBD

Project Narrative:
This new roadway project is located between Northwest Drive and Aldrich Road in Section 2 of T38N, R2E. The work involves a ½ mile of new roadway alignment and intersection with NW Drive, along with all the associated permitting, storm water and R/W issues. This project is listed **#R10** on the 2021-2026 Six-Year Transportation Improvement Program.

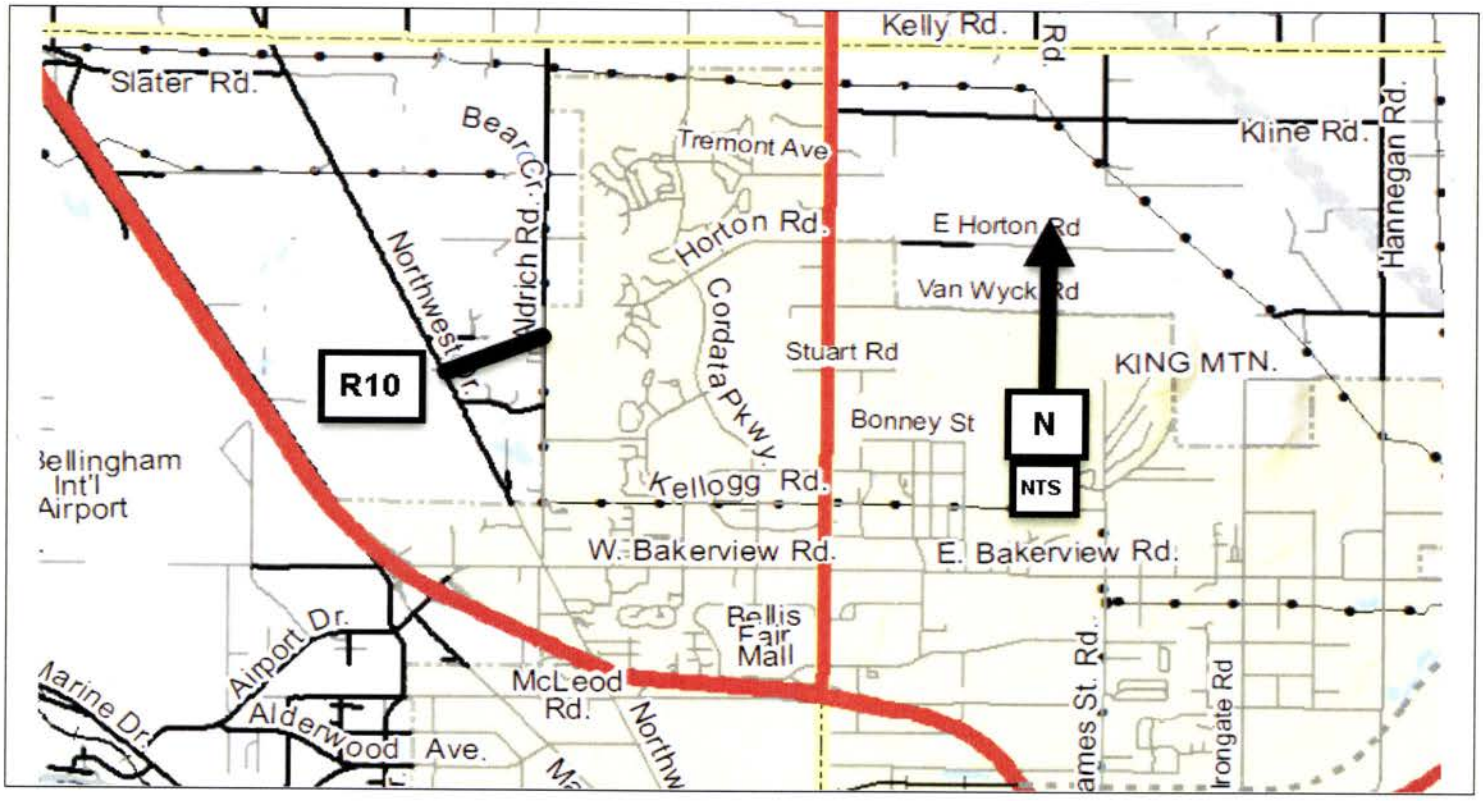
Project Status:
Design, right-of-way, and permitting to begin in 2017 with Surface Transportation Program (STP) Grant awarded to Whatcom County and transferred to the City of Bellingham. An interlocal agreement is in place for the City of Bellingham to perform design of the project in coordination with their section of Horton Road construction. Construction schedule dependent upon funding agreements with City of Bellingham and other sources.

Total Estimated Project Cost: TBD

Expenditures to Date: $7,800
***$1,000,000 STBG Grant transferred to COB for design of county portion.**

Funding Sources:	
Federal	($1,000,000)*
State	0
Local	$147,000

Environmental Permitting	ECS, BA, NEPA, CLR/CAO, Corps of Engrs
Right-of-Way Acquisition (Estimate)	TBD
County Forces (Estimate)	N/A



Lummi Nation Transportation Projects
CRP #912017

Construction Funding Year(s):	**2021**

Project Narrative:
The Lummi Nation Transportation Projects is located in Section 2, T37N, R1E and Section 34, T38N, R1E. This work, in fulfillment of the ferry lease obligation, involves the construction of transportation improvement projects in accordance with Exhibit C of the October 27, 2011 Uplands Lease Agreement for Lummi Island Ferry Use at Gooseberry Point. This project is listed **#R11** on the 2021-2026 Six-Year Transportation Improvement Program.

Project Status:
Projects funds will be available for expenditure when funds of equal or greater value are matched by the Lummi Nation.

Total Estimated Project Cost:	$4,000,000
Expenditures to Date:	$2,000,000

Funding Sources:	
Federal	$0
State	$0
Local	$2,000,000

Environmental Permitting	N/A
Right-of-Way Acquisition (Estimate)	N/A
County Forces (Estimate)	N/A

Due to the nature of this item, no map exists. Location of the new transportation projects will be determined in 2021.

Point Roberts Transportation Improvements
CRP # 910002

Construction Funding Year(s):	**2021**

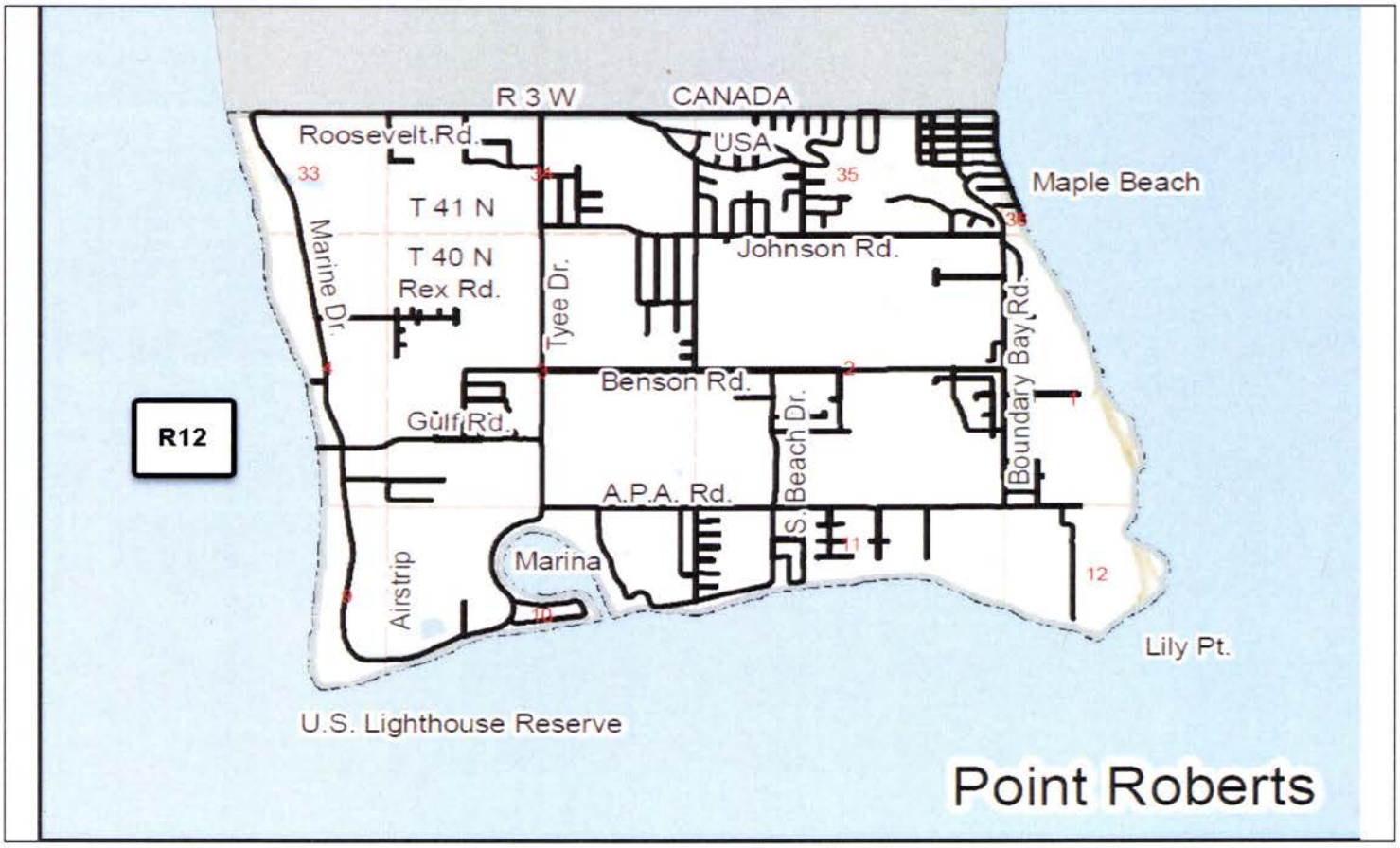
Project Narrative:
Point Roberts is located in T40N and T41N, R3W. The proposed improvements would be specific to area needs and the development of projects to be funded by the Pt. Roberts Transportation Benefit District. This project is listed **#R12** on the 2021-2026 Six-Year Transportation Improvement Program.

Project Status:
Public Works has assigned staff working with the Point Roberts Transportation Benefit District Advisory Committee to coordinate project evaluation, selection, and development.

Total Estimated Project Cost:	$150,000
Expenditures to Date:	$400

Funding Sources:	
Federal	$0
State	$0
Local	$150,000

Environmental Permitting	TBD
Right-of-Way Acquisition (Estimate)	TBD
County Forces (Estimate)	TBD



Hemmi Road Flood Mitigation
CRP # 916007

Construction Funding Year(s):	**2021**

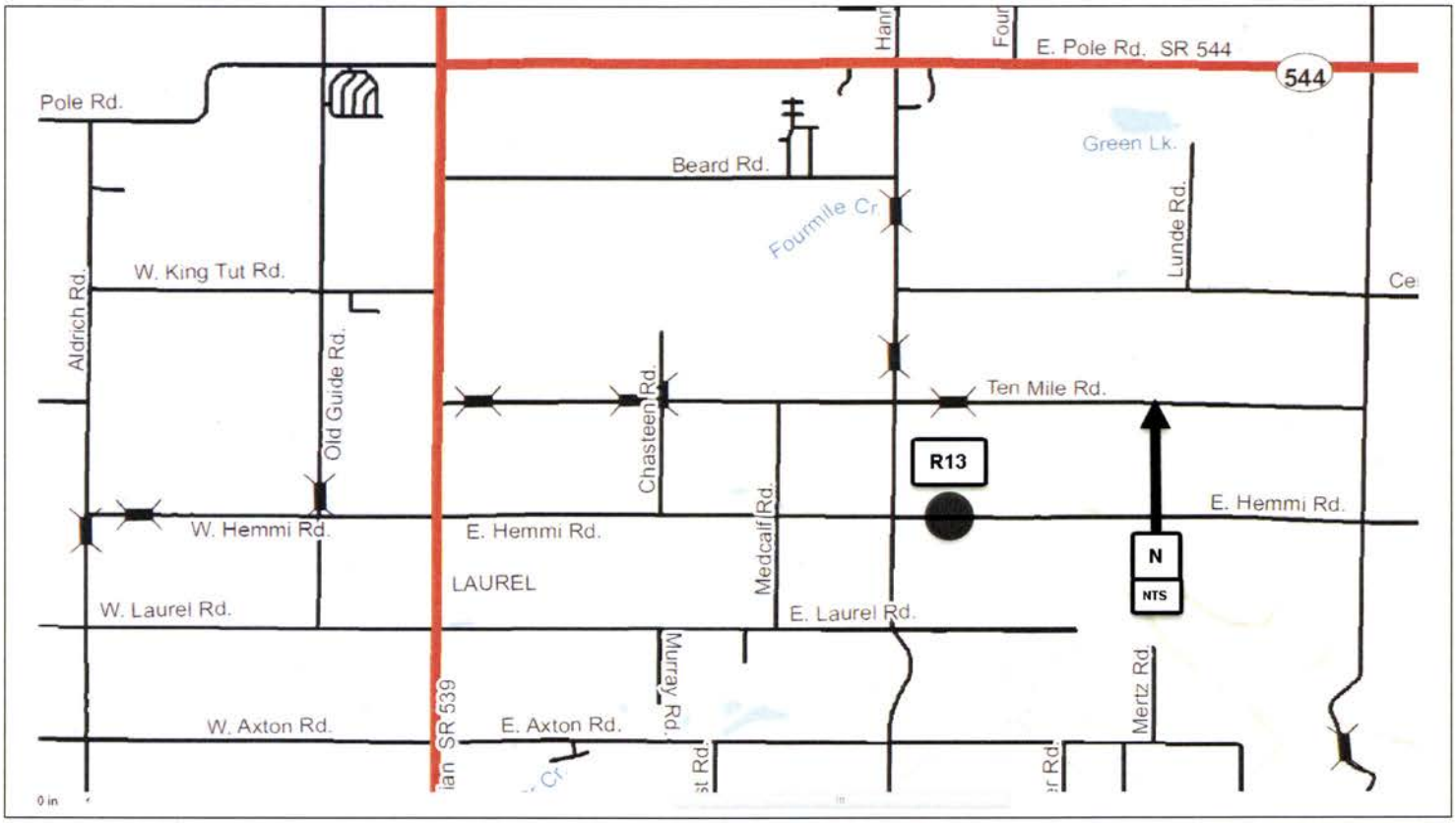
Project Narrative:
This Hemmi Road Flood Mitigation project is located on Hemmi Road approximately a half mile east of Hannegan Road, located in Section 16 and 21 of T39N, R3E. Hemmi Road is submerged several months of the year at this location. Project work will include raising this portion of the road, installing a larger culvert and associated road work. This project is listed **#R13** on the 2021-2026 Six-Year Transportation Improvement Program.

Project Status: Engineering, permitting and real estate work expected to be completed in 2020 with construction scheduled in 2021.

Total Estimated Project Cost:	$1,745,000
Expenditures to Date:	$295,000

Funding Sources:	
Federal	
State	
Local	$1,745,000

Environmental Permitting	SEPA, HPA, Shorelines, ACOE 404
Right-of-Way Acquisition (Estimate)	TBD
County Forces (Estimate)	TBD



Innis Creek Road
CRP # 915014

Construction Funding Year(s):	TBD

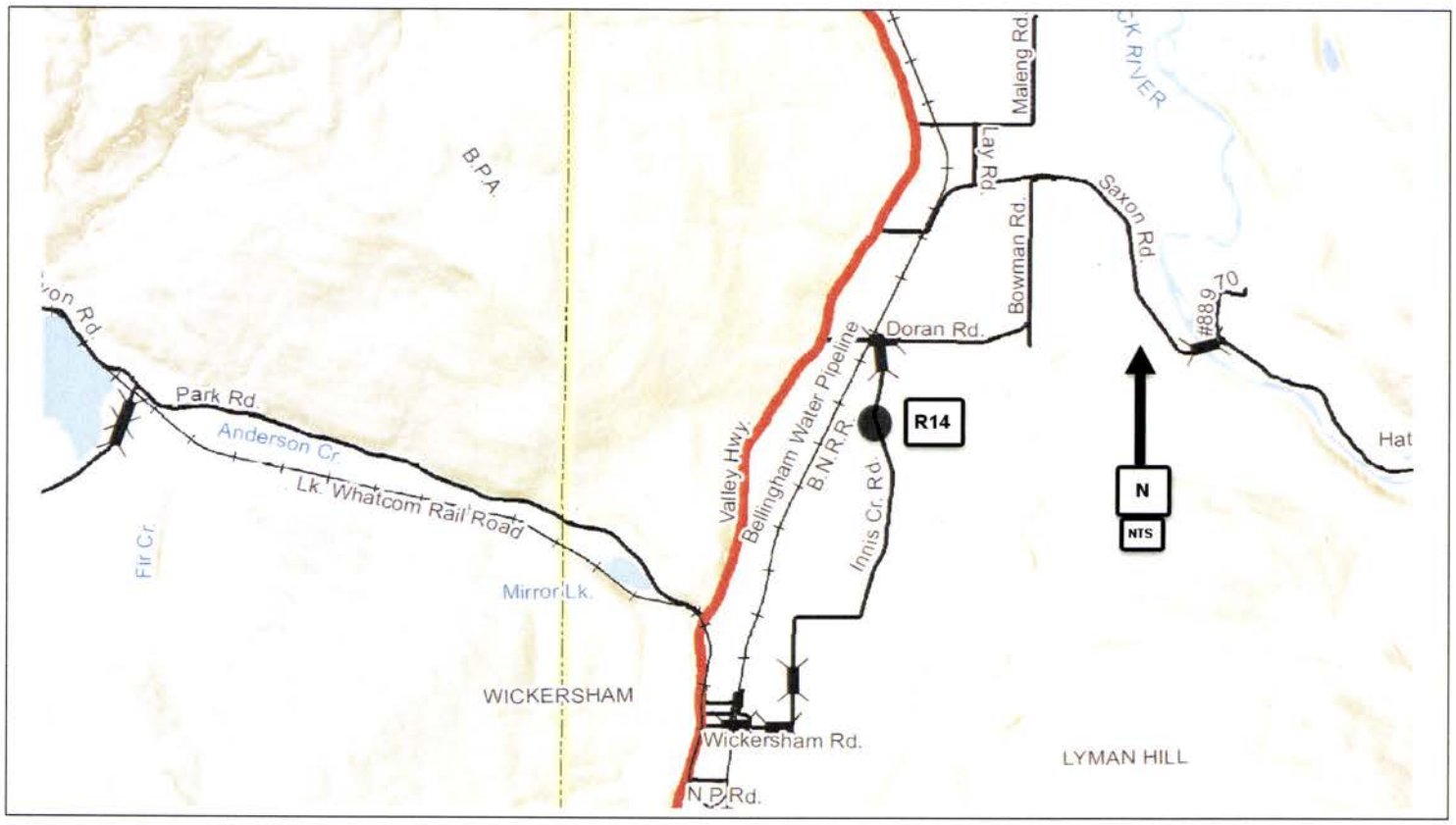
Project Narrative:
This project is located northeast of Wickersham in Section 29, T37N, R5E. The work involves raising a quarter mile section of Innis Creek Road to mitigate flooding issues. This project is listed **#R14** on the 2021-2026 Six Year Transportation Improvement Program.

Project Status:
Preliminary design completed in 2019 with alternatives developed; however, environmental mitigation, due to presence of endangered species, has initiated re-evaluation of options.

Total Estimated Project Cost:	TBD
Expenditures to Date:	$ 71,000

Funding Sources:	
Federal	$0
State	$0
Local	$10,000

Environmental Permitting	TBD
Right-of-Way Acquisition (Estimate)	TBD
County Forces (Estimate)	TBD



Birch Bay Drive – Jackson Rd. to Shintaffer Rd.
CRP #921001

Construction Funding Year(s):	**2022**

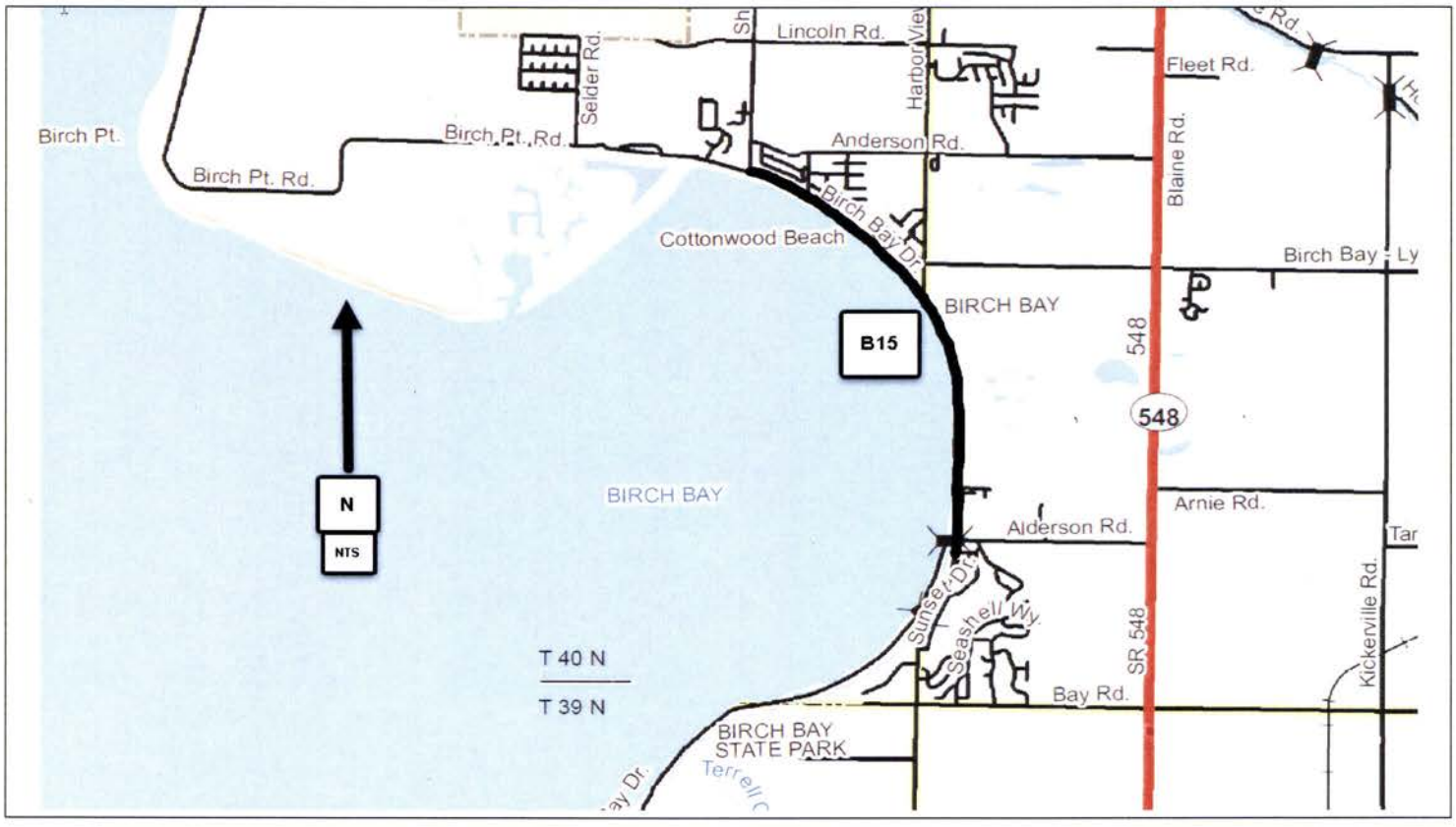
Project Narrative:
This project is located in Sections 24, 30, and 31 of T40N, R1E. The work involves pavement rehabilitation of approximately 2.5 miles of roadway through a grind/repave operation. This project is listed **#R15** on the 2021-2026 Six-Year Transportation Improvement Program.

Project Status:
Project design and construction will closely follow the Birch Bay Drive & Pedestrian Facility project to rehabilitate Birch Bay Drive after the soft shore berm construction activities. Additional funding sources will be pursued as they become available.

Total Estimated Project Cost:	$1,710,000
Expenditures to Date:	$ 0

Funding Sources:	
Federal	$ 0
State	$ 0
Local	$1,710,000

Environmental Permitting	SEPA, CLR/CAO, Shorelines
Right-of-Way Acquisition (Estimate)	$0
County Forces (Estimate)	TBD



Marine Drive II
Alderwood Avenue to Bridge No. 172
Reconstruction and Bike/Ped Facilities
CRP # 921002

Construction Funding Year(s):	**TBD**

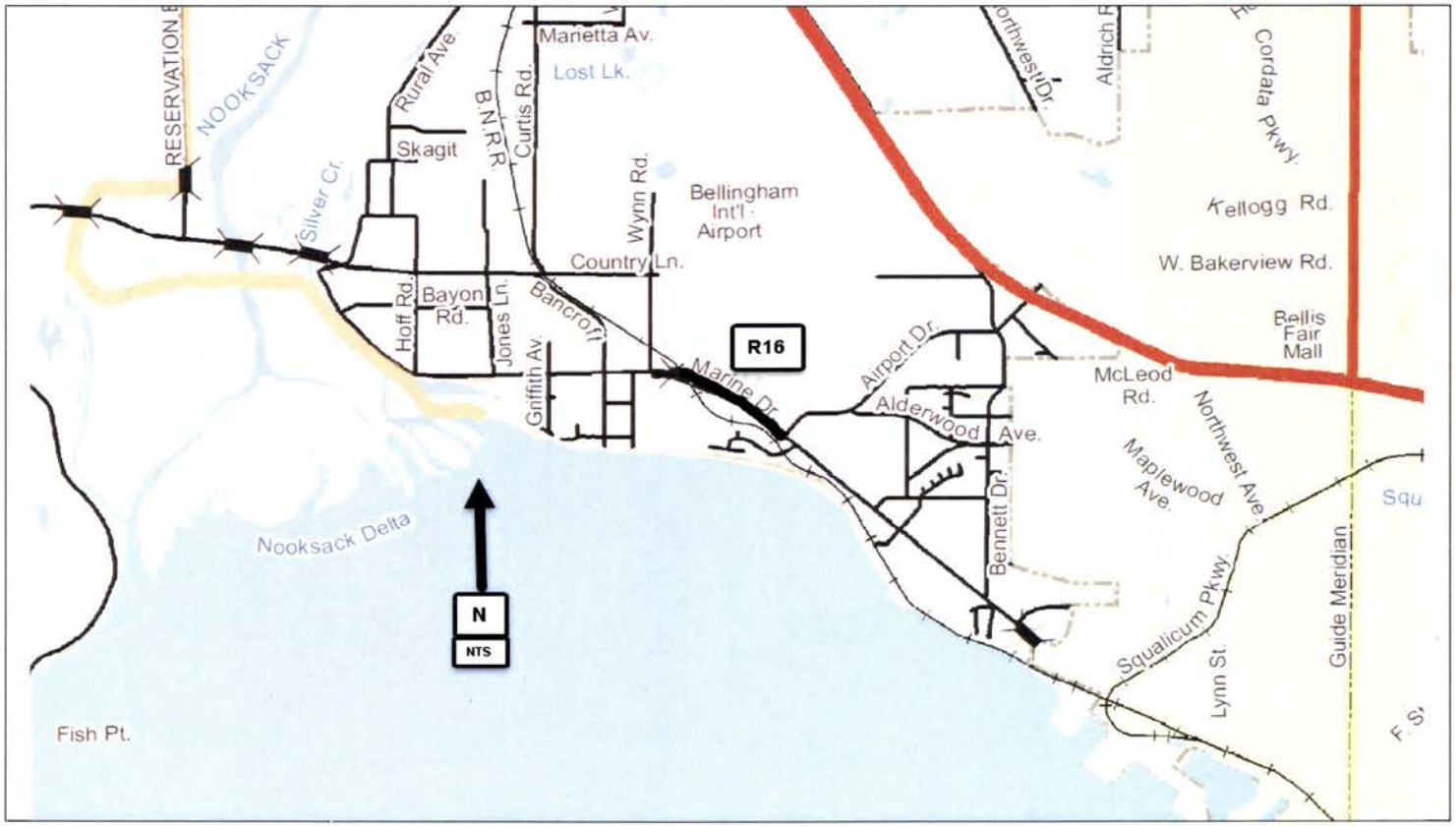
Project Narrative:
This Marine Drive project is located between Alderwood Avenue and Bridge No. 172 in Section 15 of T38N, R2E. The work involves reconstruction of approximately ½ mile of roadway with emphasis on bike/pedestrian enhancements. This project is listed **#R16** on the 2021-2026 Six-Year Transportation Improvement Program.

Project Status:
Design, permitting, R/W and construction time frames would be contingent on availability of additional grant monies to fund the project. A grant application was submitted in August 2020 to the WSDOT 2020 Pedestrian and Bike Program for PE funds. If awarded, preliminary engineering could start summer / fall of 2021.

Total Estimated Project Cost:	TBD
Expenditures to Date:	$0

Funding Sources:	
Federal	$0
State	$0
Local	$25,000

Environmental Permitting	ECS, BA, SEPA, CLR/CAO, Corps of Engrs
Right-of-Way Acquisition (Estimate)	TBD
County Forces (Estimate)	N/A



Turkington Road/Jones Creek
CRP # 915013

Construction Funding Year(s):	2022

Project Narrative:
This project is located in Sections 6 & 7, T37N, R5E. This work involves completing design of road and bridge modifications in this area in coordination with a debris flow berm project being developed by the River and Flood Division. The project is listed **#R17** on the 2021-2026 Six-Year Transportation Improvement Program.

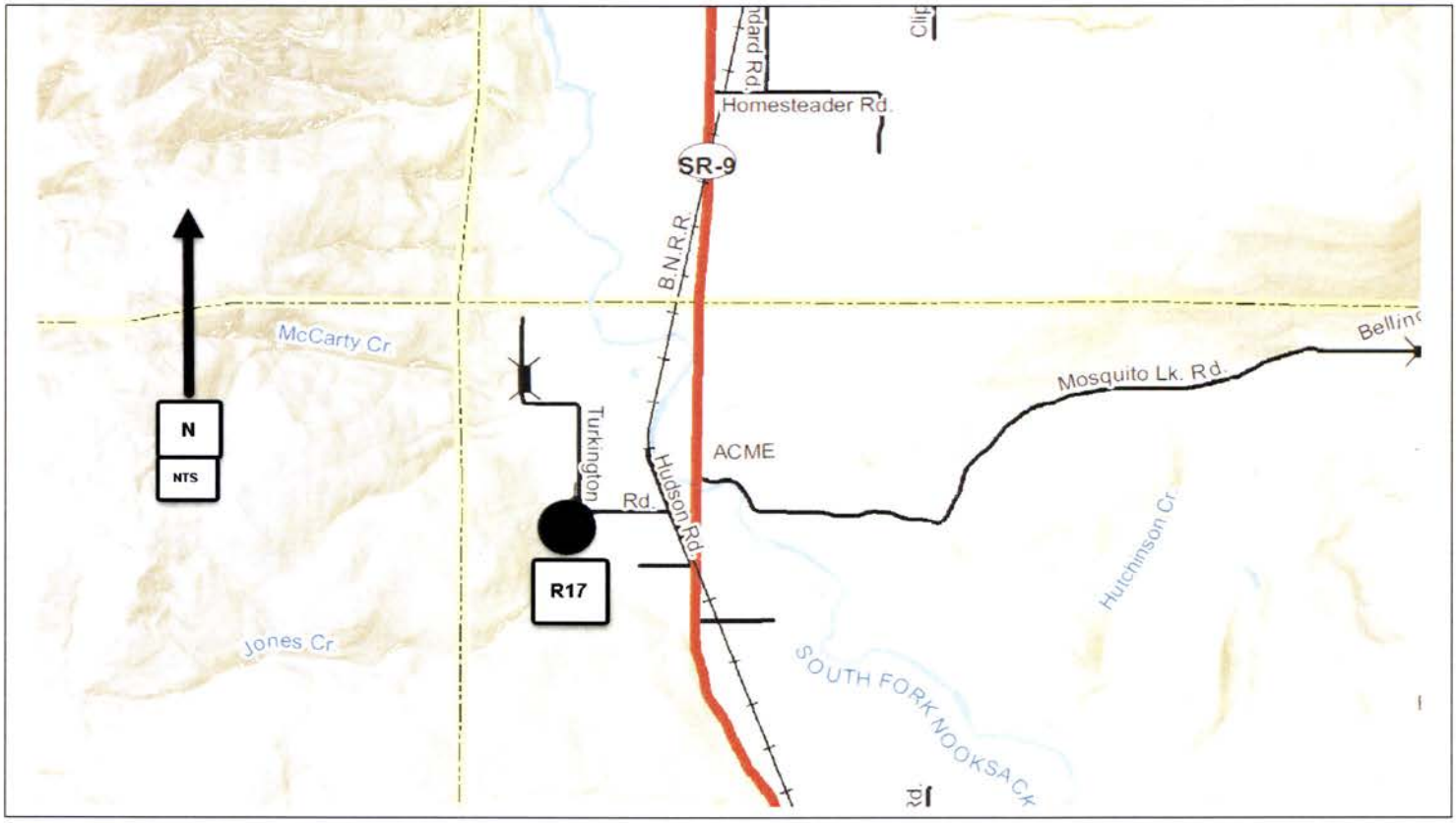
Project Status:
Design work and ROW acquisition work is underway by the River & Flood Division, and both phases are expected to be completed in 2021. Construction is dependent on grant funding, and a grant application for construction funding has been submitted to the State DOE Floodplains By Design program. Construction is scheduled to begin in 2022 if successful in obtaining construction funding.

Total Estimated Project Cost: $ 585,000

Expenditures to Date: $0

Funding Sources:	
Federal	$0
State	$0
Local	$585,000 (2021-2022)

Environmental Permitting	BA, HPA, SEPA, Corps of Engrs, CLR/CAO, Shorelines, DNR
Right-of-Way Acquisition (Estimate)	$50,000
County Forces (Estimate)	N/A



Truck Road
Flood Damage Repair
CRP # 921003

Construction Funding Year(s):	2021

Project Narrative:
This project is located in Sections 6 & 7, T37N, R5E. The project is listed **#R18** on the 2021-2026 Six-Year Transportation Improvement Program. During high-water events of the 2017/2018 winter, the North Fork Nooksack River eroded the unprotected bank of Truck Road to within 13 feet of the roadway surface. This prompted an emergency project to construct a passive riprap revetment underneath a section of the roadway to provide immediate protection. Flooding during 2020 eroded the remaining bank exposing the recently constructed riprap revetment and destabilizing a portion of the north bound lane. Jersey barriers were placed by county crews to block off this lane to traffic. The FCZD is evaluating road realignment and bank stabilization alternatives to provide a long-term solution in this area.

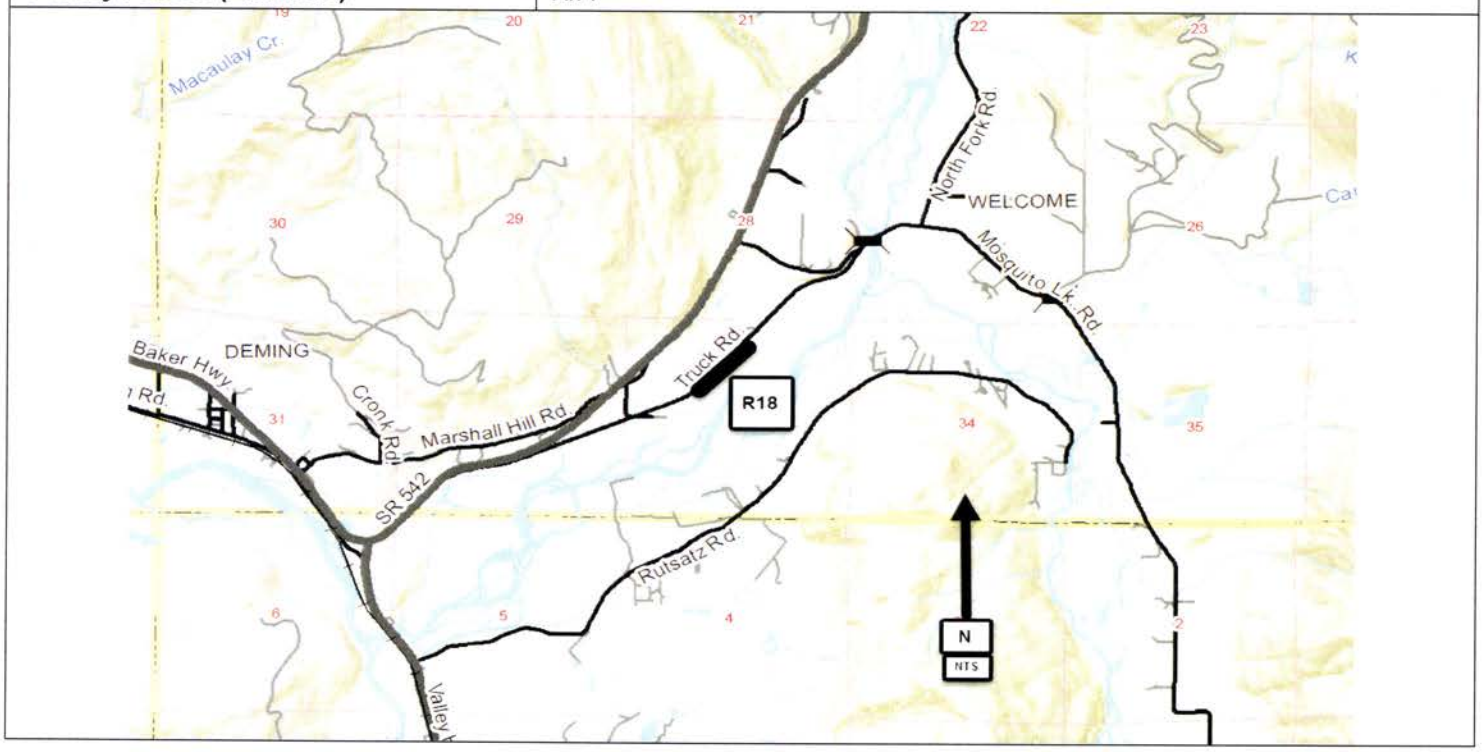
Project Status: An analysis of road realignment and bank stabilization alternatives is planned for 2021. Preliminary design of the preferred alternatives will be initiated once the preferred alternative is selected. Construction of the road setback is anticipated to occur in 2023. The FCZD is seeking FEMA funds to partially fund the project. Project cost listed is for design only.

Total Estimated Project Cost: $ 400,000

Expenditures to Date: $0

Funding Sources:	
Federal FEMA	$300,000
State	$0
Local	$100,000

Environmental Permitting	BA, HPA, SEPA, Corps of Engrs, CLR/CAO, Shorelines, DNR
Right-of-Way Acquisition (Estimate)	$50,000
County Forces (Estimate)	N/A



Abbott Road/Levee Improvements
CRP # 919002

Construction Funding Year(s):	**2021-2023**

Project Narrative:
This project is located in Section 27, T40N, R3E. This project proposes to stabilize an approximately 600-LF section of the left bank of the Nooksack River adjacent to Abbott Road and to extend the upstream end of the Abbott Levee and realigned it to run under Abbott Road. This project is listed **#R19** on the 2021-2026 Six-Year Transportation Improvement Program.

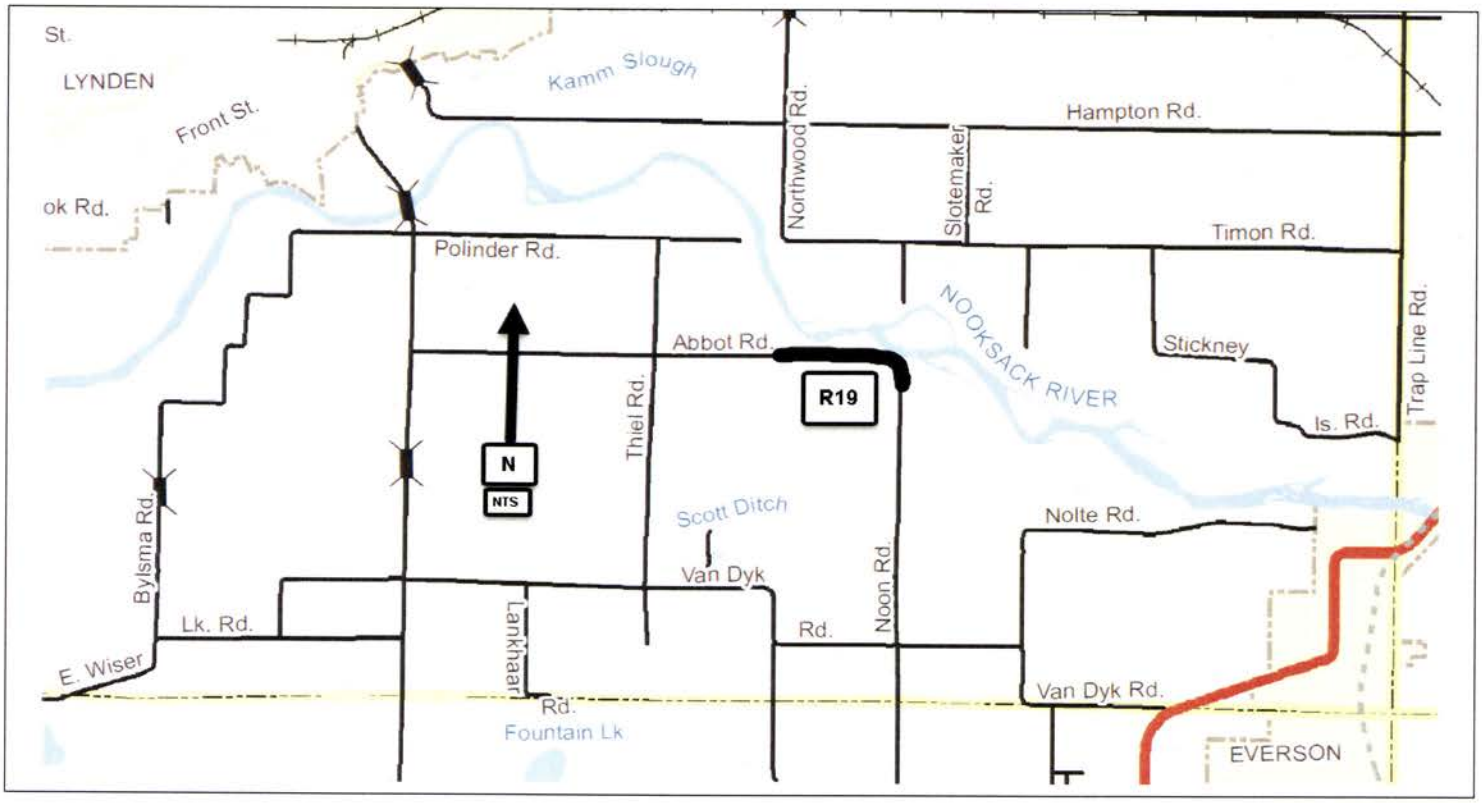
Project Status: The project managed by the River and Flood section and is currently in the preliminary engineering design phase. The FCZD has contracted with an engineering consultant to design measures to help arrest the ongoing erosion with construction planned for summer of 2021. The reach assessment will also provide the technical basis for developing alternatives for upstream improvements as Phase 2.

Total Estimated Project Cost: $400,000

Expenditures to Date: $0

Funding Sources:	
Federal	$
State	$
Local	$400,000 (2021-2022)

Environmental Permitting	HPA, ACOE, Shorelines, SEPA
Right-of-Way Acquisition (Estimate)	TBD
County Forces (Estimate)	TBD



Ferndale Road/Levee Improvements
CRP # 919001

Construction Funding Year(s):	**TBD**

Project Narrative:
This project is located in Sections 30 and 31, T39N, R2E. This project includes reconstruction of 1.2 miles of levee including the Ferndale Levee and Ferndale Treatment Plant Levee segments. The new levee will be set back slightly to Ferndale Road with the roadway serving as the crest of the levee. This project is listed **#R20** on the 2021-2026 Six-Year Transportation Improvement Program.

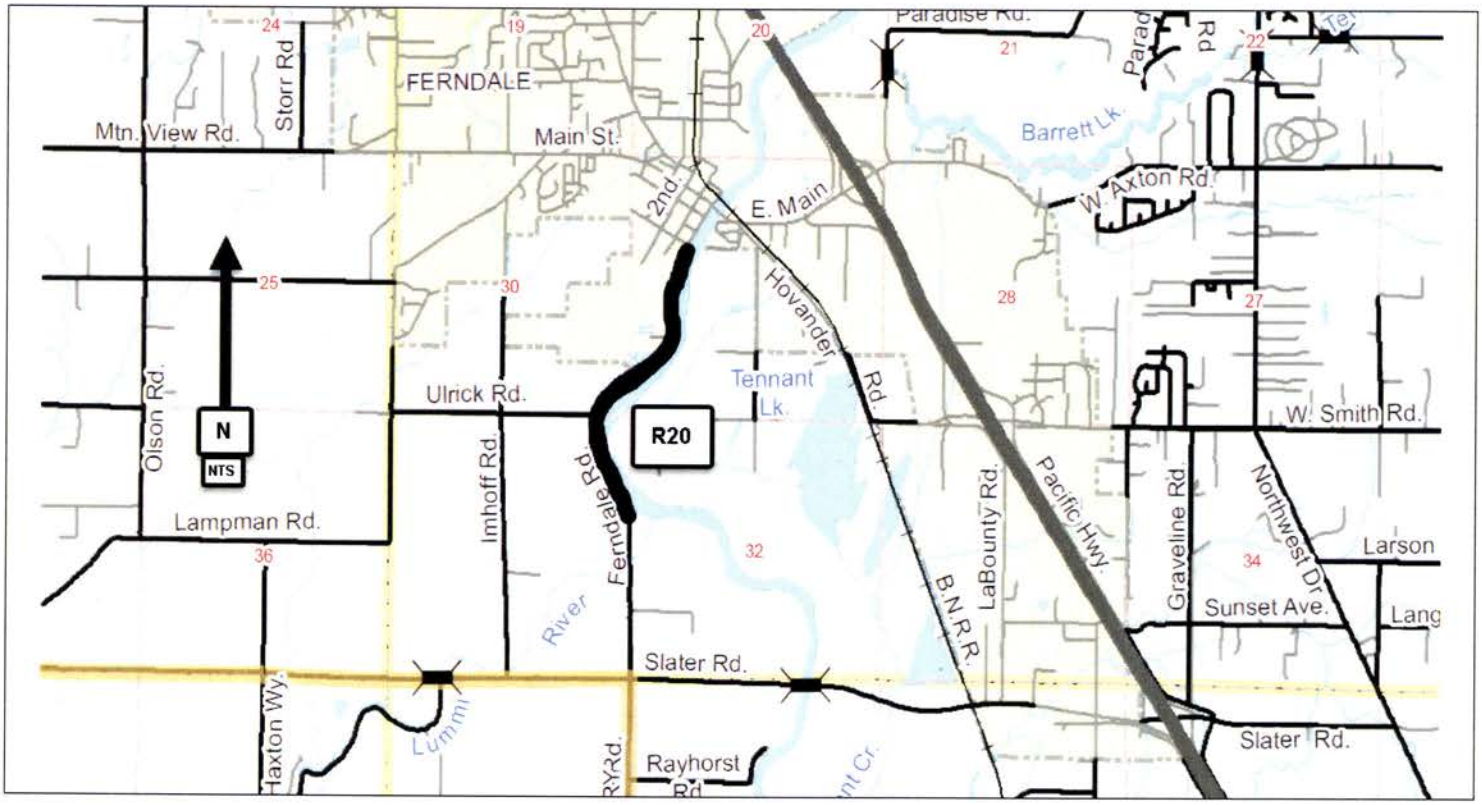
Project Status: Due to the high cost, outside funding will be sought. The WCFCZD will pursue funding through the Floodplains by Design grant program administered by the DOE.

Total Estimated Project Cost: $150,000

Expenditures to Date: $0

Funding Sources:	
Federal	$
State	$
Local	$150,000 (2021-2023)

Environmental Permitting	TBD
Right-of-Way Acquisition (Estimate)	TBD
County Forces (Estimate)	TBD



Lake Louise Rd., Austin Street to Lake Whatcom Blvd.
Pavement Rehabilitation
CRP # 921004

Construction Funding Year(s):	**2022**

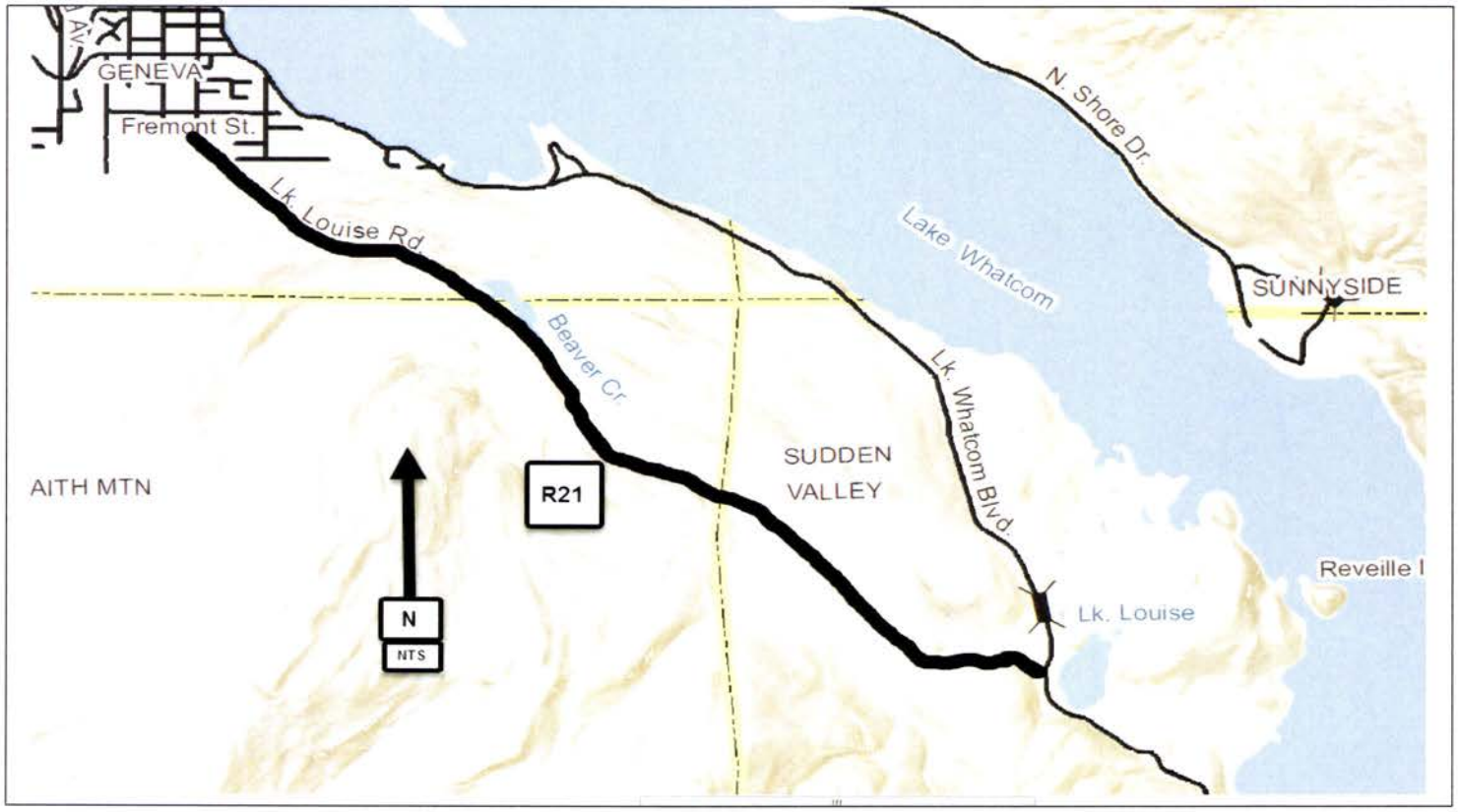
Project Narrative:
The Lake Louise Rd. , Austin St. to Lake Whatcom Blvd. project is located in Sections 35 and 36 of Township 38N , Range 3E and Sections 1, 6, 7, and 8 of Township 37N, Range 4E. The work will involve the pavement rehabilitation of approximately 4.06 miles of roadway and culvert replacements for fish passage. This project is listed **#R21** on the 2021-2026 Six-Year Transportation Improvement Program.

Project Status: Design work will begin in late 2021, with construction planned for summer of 2022.

Total Estimated Project Cost:	$2,050,000
Expenditures to Date:	$ 0

Funding Sources:	
Federal	$ 0
State	$ 0
Local	$2,050,000

Environmental Permitting	SEPA,
Right-of-Way Acquisition (Estimate)	$0
County Forces (Estimate)	TBD



Austin Street, Lake Louise to Cable
Pavement Rehabilitation with ADA Improvements
CRP # 921005

Construction Funding Year(s):	**2021**

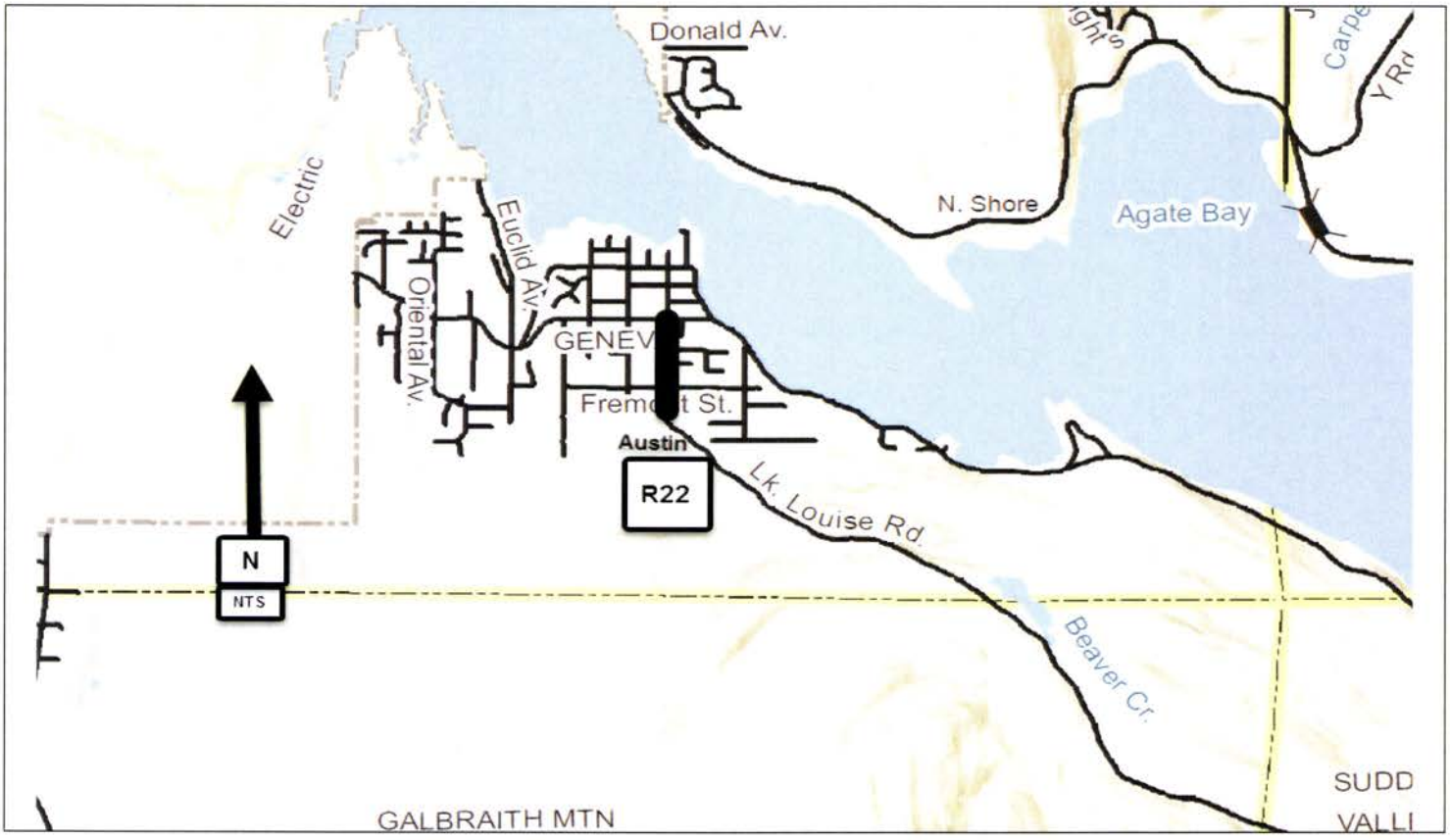
Project Narrative:
This Lakeway Drive/Terrace, City of Bellingham to Cable St. project is located in Sections . The work will involve the structural overlay of approximately .79 miles of roadway along with other minor improvements. This project is listed **#R22** on the 2021-2026 Six-Year Transportation Improvement Program.

Project Status: Design work will occur in late 2023, with Construction planned for Summer of 2025.

Total Estimated Project Cost:	$510,000
Expenditures to Date:	$ 0

Funding Sources:	
Federal	$ 0
State	$ 0
Local	$510,000

Environmental Permitting	SEPA,
Right-of-Way Acquisition (Estimate)	$0
County Forces (Estimate)	TBD



Lakeway Drive Corridor Improvements
Preliminary Engineering Study
CRP # 921019

Construction Funding Year(s):	**TBD**

Project Narrative:
This project is located in Section 34, T38N, R3E. This project proposes to rechannelize 1.4 miles of Lakeway Drive to coordinate with the proposed rechannelization of Lakeway Drive within the city limits. This project is listed **#R28** on the 2021-2026 Six-Year Transportation Improvement Program.

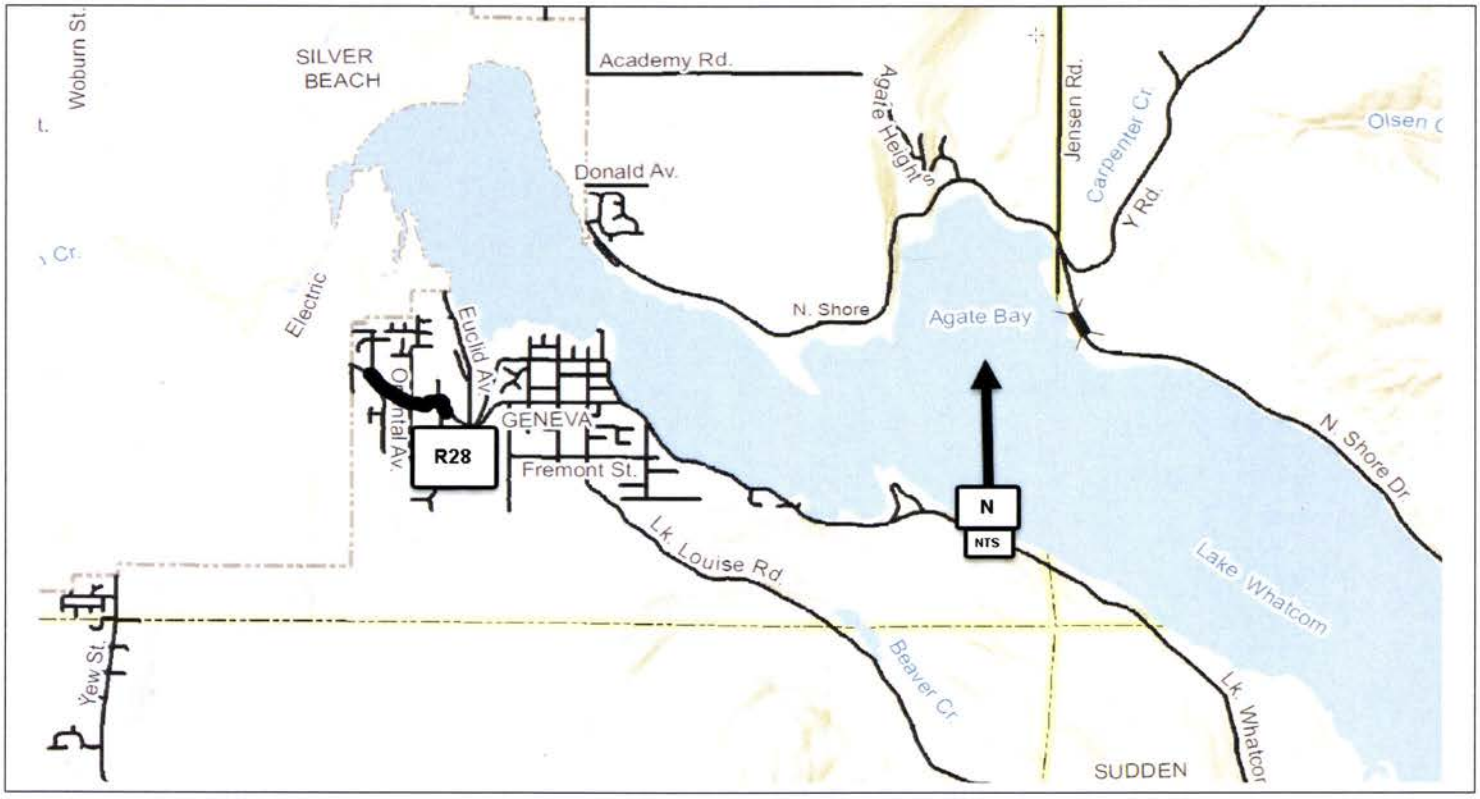
Project Status: Close coordination with the City of Bellingham on their channelization plans and associated construction activities will drive the preliminary engineering efforts in the County.

Total Estimated Project Cost: TBD

Expenditures to Date: $0

Funding Sources:	
Federal	$0
State	$0
Local	$50,000

Environmental Permitting	TBD
Right-of-Way Acquisition (Estimate)	TBD
County Forces (Estimate)	N/A



Small Area Paving
Bridge Approach, Pavement Rehabilitation, Minor Widening
CRP # 921006

Construction Funding Year(s):	**2022**

Project Narrative:
This work will address multiple locations throughout Whatcom County that are in need of corrections to settling bridge approaches, minor widening for safety issues, and pavement rehabilitation.This project is listed **#R31** on the 2021-2026 Six-Year Transportation Improvement Program.

Project Status: Working with the Maintenance & Operations Division to scope out potential projects.

Total Estimated Project Cost:	$250,000
Expenditures to Date:	$ 0

Funding Sources:	
Federal	$ 0
State	$ 0
Local	$250,000

Environmental Permitting	
Right-of-Way Acquisition (Estimate)	
County Forces (Estimate)	

Due to the nature of this item, no map exists. Final locations of the Small Area Paving sites will be determined in late 2021 / early 2022.

South Pass Road
Flood Damage Repair
CRP # 921007

Construction Funding Year(s):	**2022**

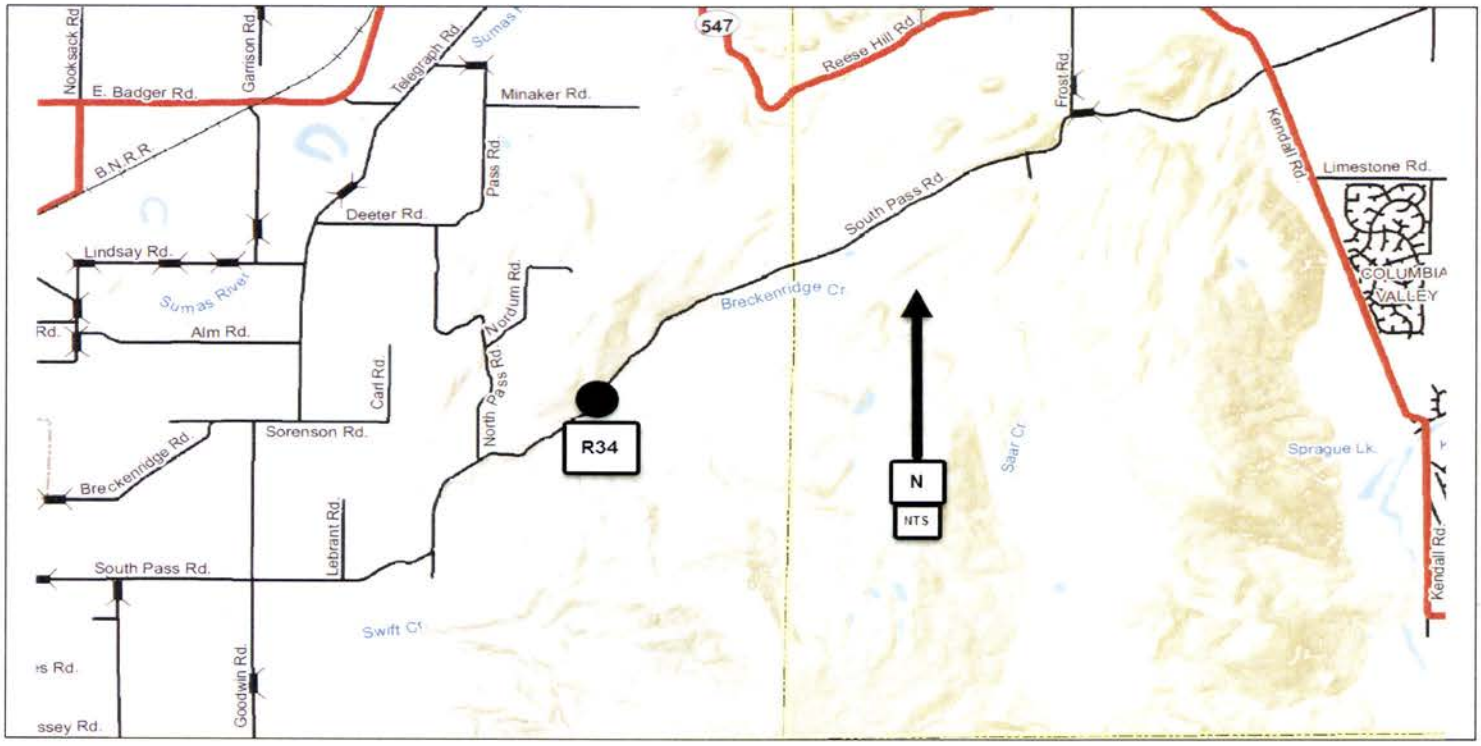
Project Narrative:
This project is listed **#R34** on the 2021-2026 Six-Year Transportation Improvement Program.

Project Status:

Total Estimated Project Cost:	$440,000
Expenditures to Date:	$ 0

Funding Sources:	
Federal	$380,000
State	$ 0
Local	$60,000

Environmental Permitting	
Right-of-Way Acquisition (Estimate)	
County Forces (Estimate)	



Jackson Road / Terrell Creek - Bridge No. 81 Replacement
CRP # 917004

Construction Funding Year(s):	TBD

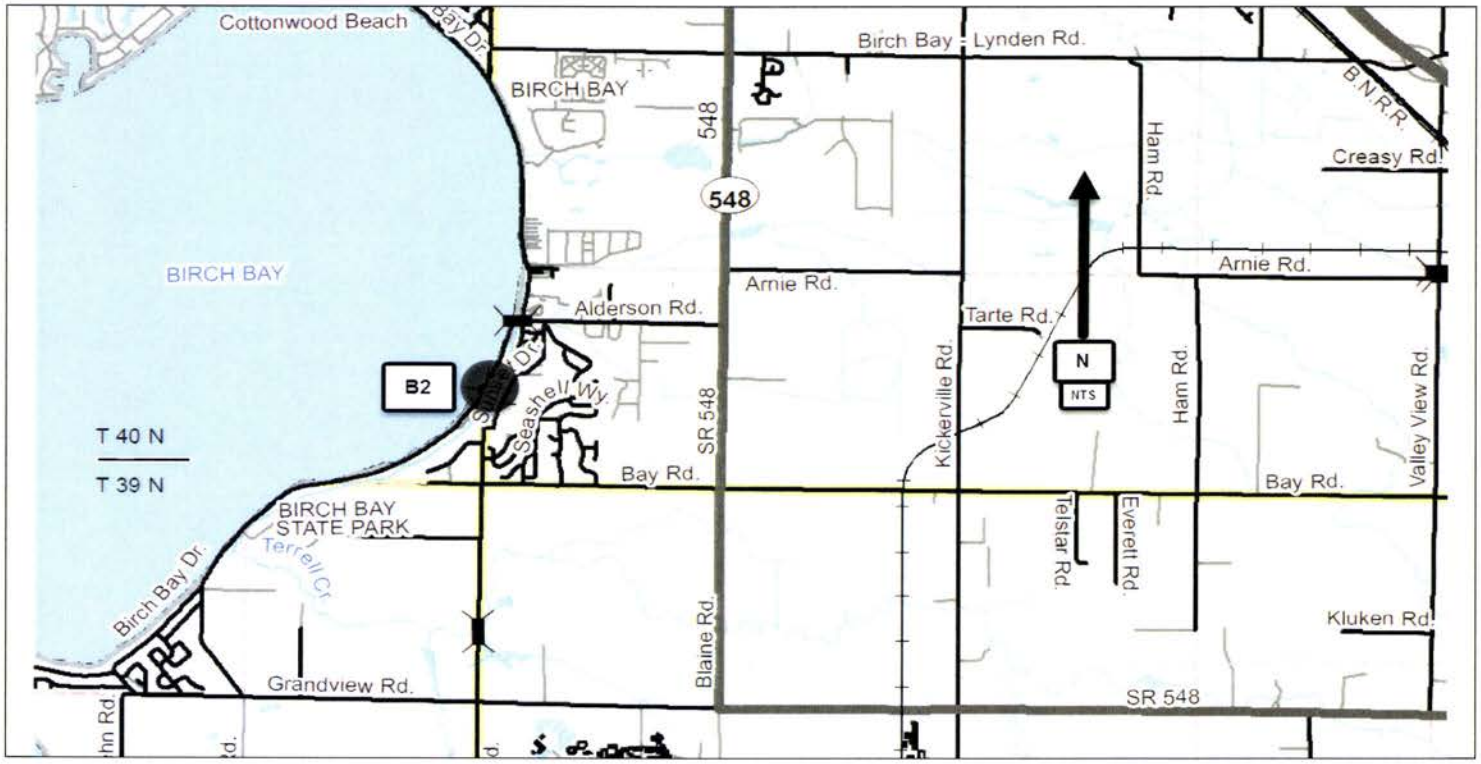
Project Narrative:
This project is located near Birch Bay in Section 31, T40N, R1W. This is a project to replace the existing 62-foot structurally deficient bridge. This project is listed **#B2** on the 2021-2026 Six Year Transportation Improvement Program.

Project Status:
Preliminary design work, including a type, size, and location study began in 2020. Outside funding will be pursued for the construction phase of this project.

Total Estimated Project Cost:	$ TBD
Expenditures to Date:	$ 100,000

Funding Sources:	
Federal	$
State	$
Local	$450,000

Environmental Permitting	TBD
Right-of-Way Acquisition (Estimate)	TBD
County Forces (Estimate)	TBD



N. Lake Samish Road Bridge No. 107 Replacement
CRP # 913006 (Project Based Budget 378100)

Construction Funding Year(s):	2023

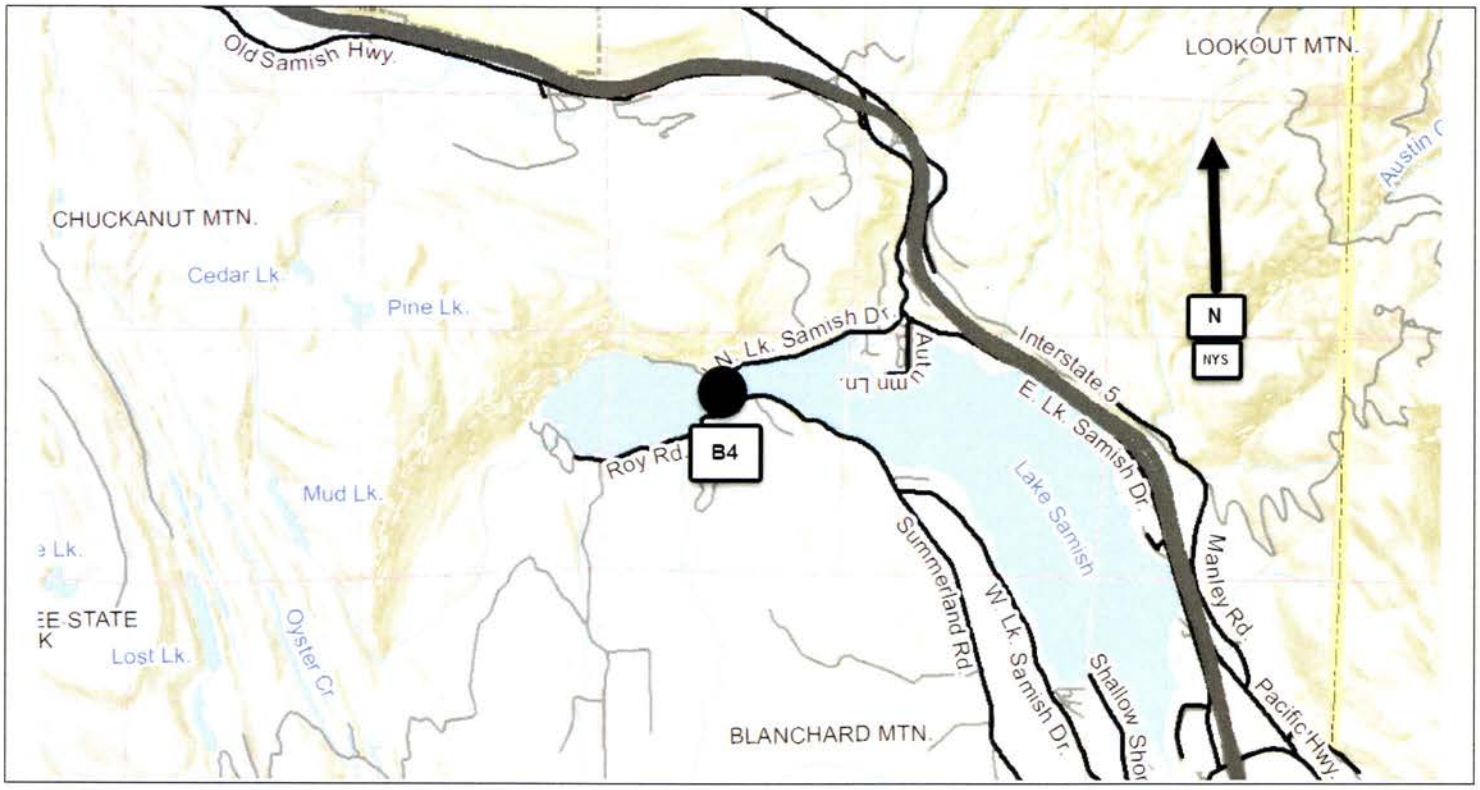
Project Narrative:
This project is located on Lake Samish in Section 27, T37N, R3E. This project will replace the existing 250-foot timber bridge which is structurally deficient. This project is listed **#B4** on the 2021-2026 Six-Year Transportation Improvement Program.

Project Status:
The type, size, and location study for the replacement bridge was completed in 2017. Design, permitting, and real estate work is underway and it is anticipated that the design will be at the 90% stage by the end of 2019. Approximately $9.5 million in Federal Bridge Replacement funds were secured in late 2019 for the construction phase of the project. Construction is scheduled for 2023 pending completion of real estate and environmental work.

Total Estimated Project Cost:	$10,750,000
Expenditures to Date:	$1,050,000

Funding Sources:	
Federal	$9,500,000 (BR funds)
State	$0
Local	$1,250,000

Environmental Permitting	TBD
Right-of-Way Acquisition	TBD
County Forces	TBD



Goshen Road/Anderson Creek Bridge No. 248 Replacement
CRP # 920003

Construction Funding Year(s):	TBD

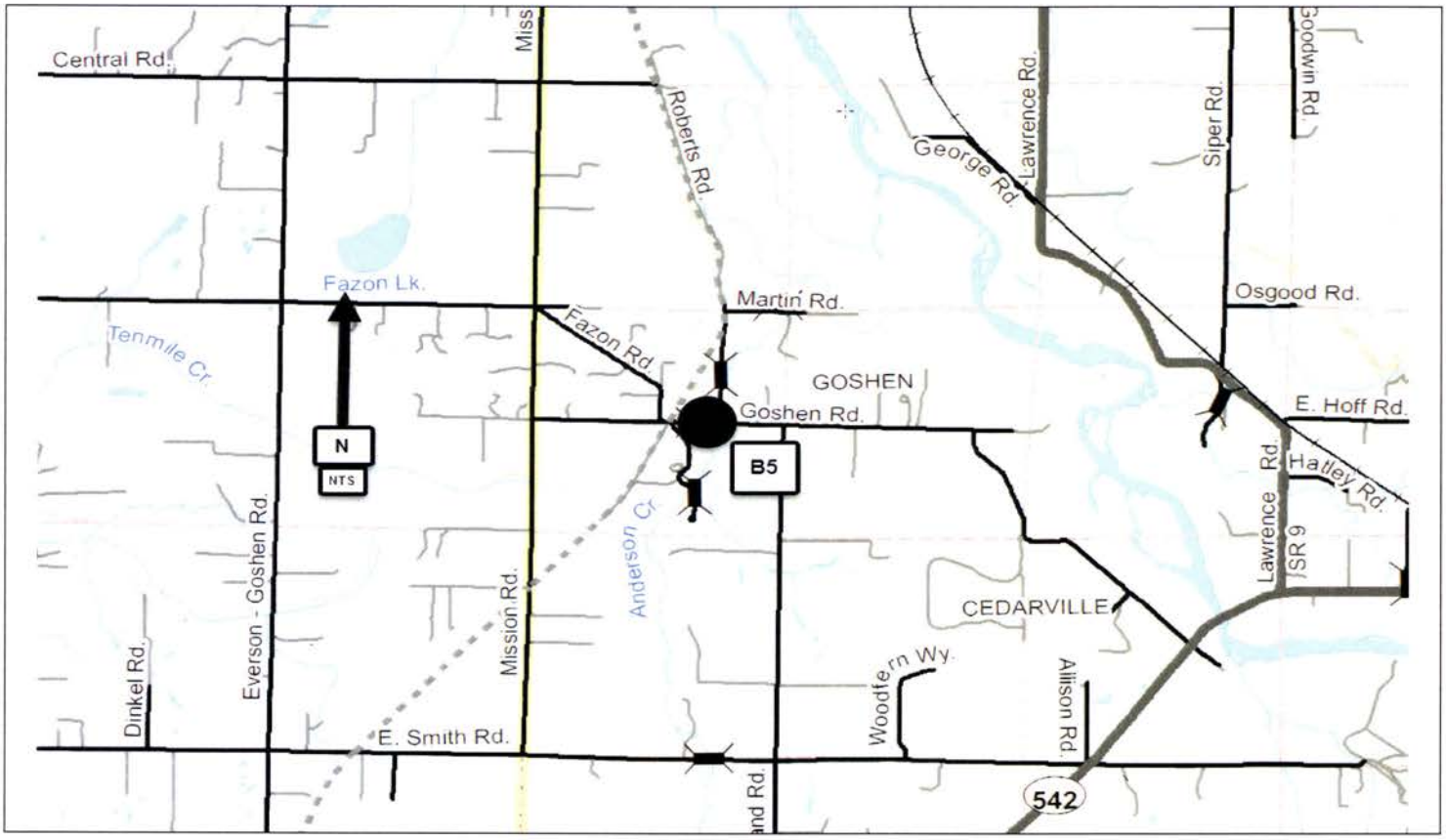
Project Narrative:
This project is located south of Everson/Goshen in Section 19, T39N, R4E. This is a project to replace the existing 62-foot structurally deficient bridge. This project is listed **#B5** on the 2021-2026 Six Year Transportation Improvement Program.

Project Status: Preliminary design, permitting and real estate work began in 2020. Approximately $4 million in Federal Bridge Replacement funds were secured in late 2019 for the preliminary engineering and construction phases of this project.

Total Estimated Project Cost:	$ 4,200,000
Expenditures to Date:	$ 150,000

Funding Sources:	
Federal	$4,000,000
State	$0
Local	$200,000

Environmental Permitting	TBD
Right-of-Way Acquisition (Estimate)	TBD
County Forces (Estimate)	TBD



Mosquito Lake Rd/Hutchinson Creek Tributary Fish Passage
CRP # 919006

Construction Funding Year(s):	2021

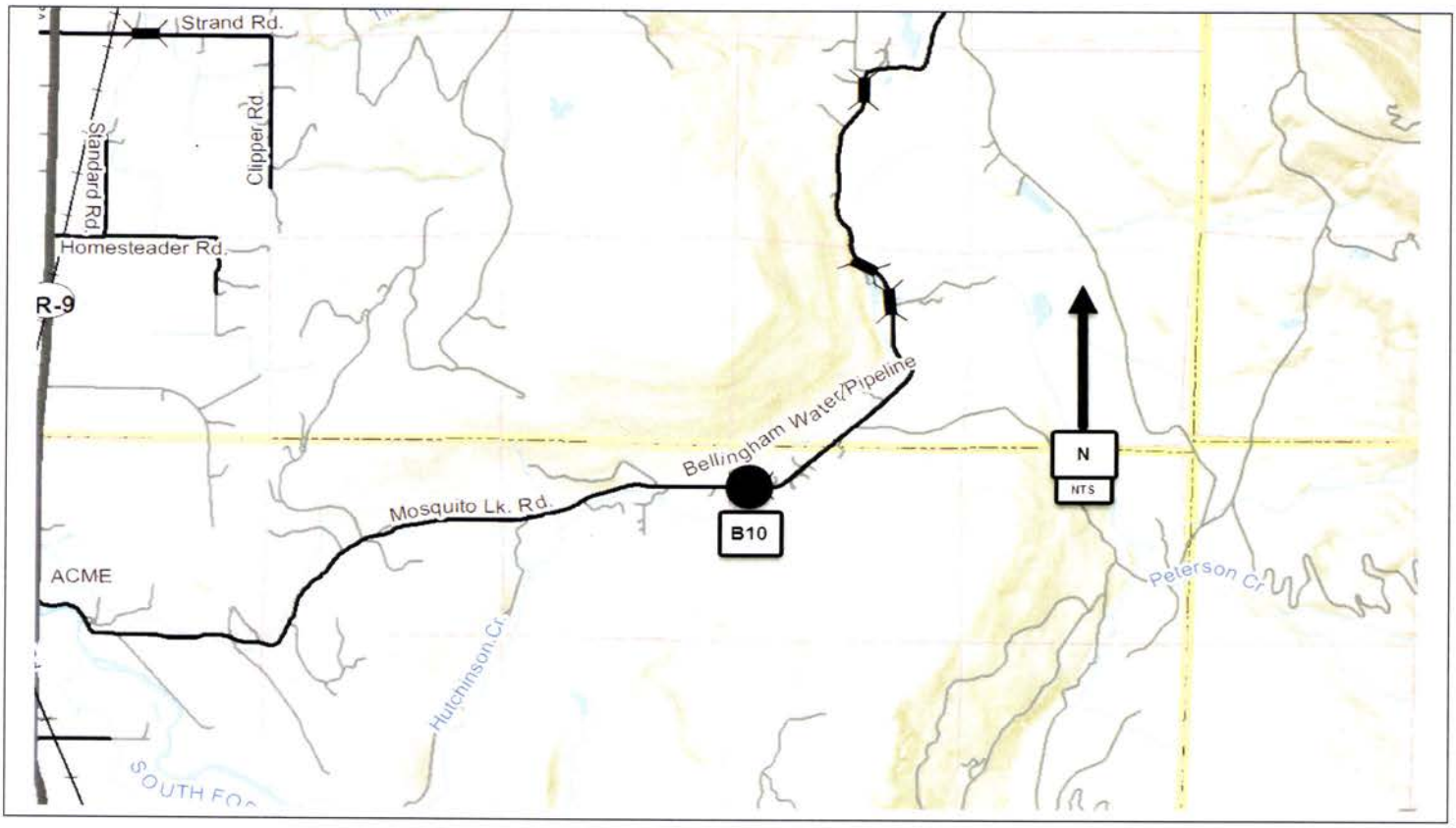
Project Narrative: The existing 30-inch diameter concrete culvert at this location was damaged in early 2018 and a temporary fix completed in late 2018. This culvert has been identified as a barrier to fish passage. Permits for the temporary repair project requires that the existing culvert is replaced with a structure that meets current fish passage requirements. This project is listed **#B10** on the 2021-2026 Six-Year Transportation Improvement Program.

Project Status: Design, permitting and real estate work underway. Construction of this project planned for 2021.

Total Estimated Project Cost:	$625,000
Expenditures to Date:	$65,000

Funding Sources:	
Federal	$0
State	$0
Local	$625,000

Environmental Permitting	TBD
Right-of-Way Acquisition (Estimate)	TBD
County Forces (Estimate)	TBD



North Fork Road/Kenny Creek Fish Passage
CRP # 919007

Construction Funding Year(s):	**TBD**

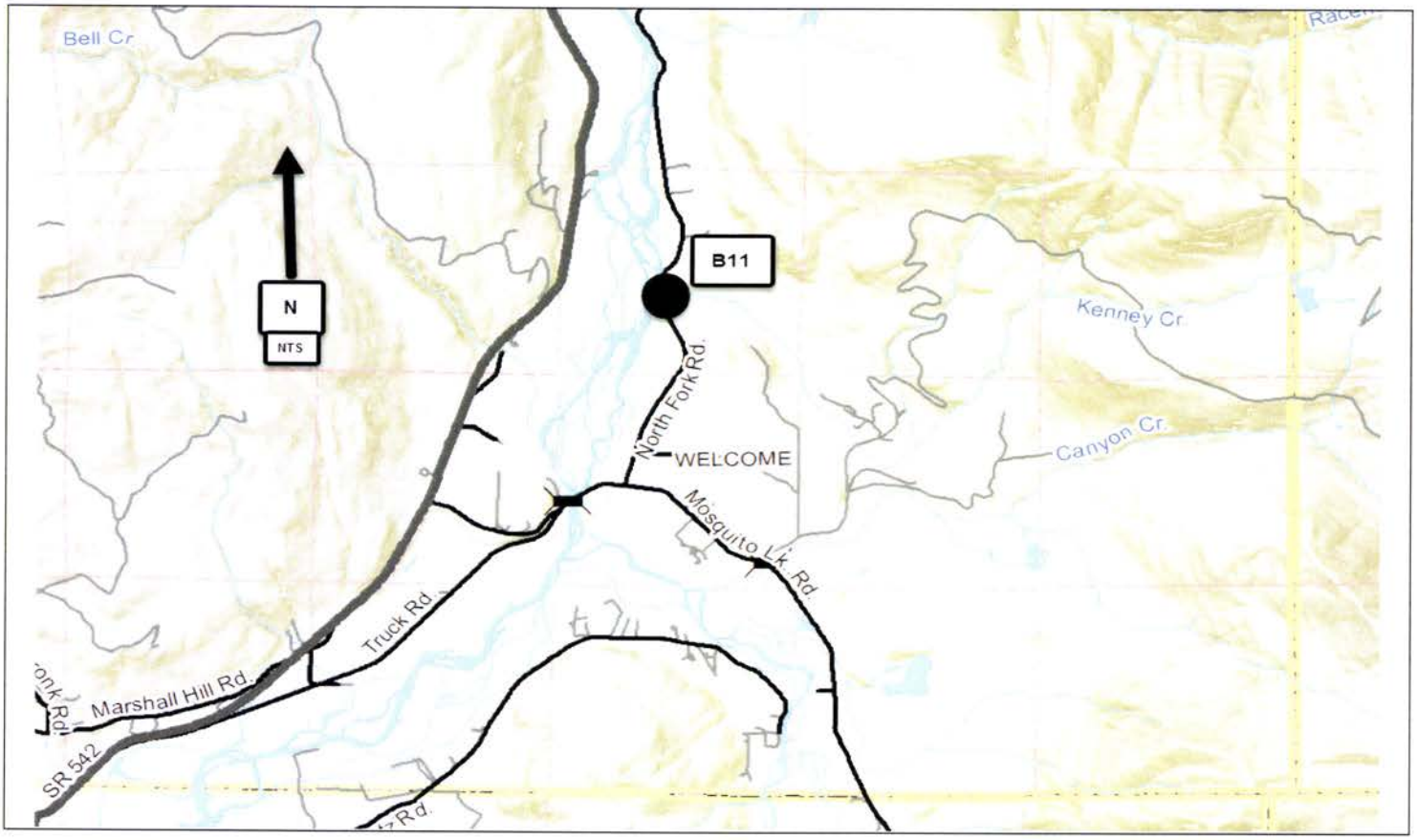
Project Narrative: The existing 5-foot diameter corrugated steel culvert which carries Kenny Creek under the North Fork Road has been identified as a barrier to fish passage and, considering habitat to be gained, is considered one of the highest priority barriers within the County road system. Washington State Fish Barrier Removal Board (FBRB) funding has been secured for the design phase of this fish passage project. This project is listed as **#B11** on the 2021-2026 Six-Year Transportation Improvement Program.

Project Status: Project design, permitting and real estate began in 2019. Design work expected to be complete in the spring of 2021. Whatcom County has been awarded $443,000 of State FBRB funds for the design phase of this project. Additional FBRB funds will be pursued for the construction phase of this project.

Total Estimated Project Cost:	TBD
Expenditures to Date:	$ 300,000

Funding Sources:	
Federal	$0
State	$ 443,000 (FBRB funds)
Local	$ 80,000

Environmental Permitting	TBD
Right-of-Way Acquisition (Estimate)	TBD
County Forces (Estimate)	TBD



Whatcom County Public Works
Project Narrative

Truck Road
Fish Passage Culvert
CRP # 920004

Construction Funding Year(s):	2021

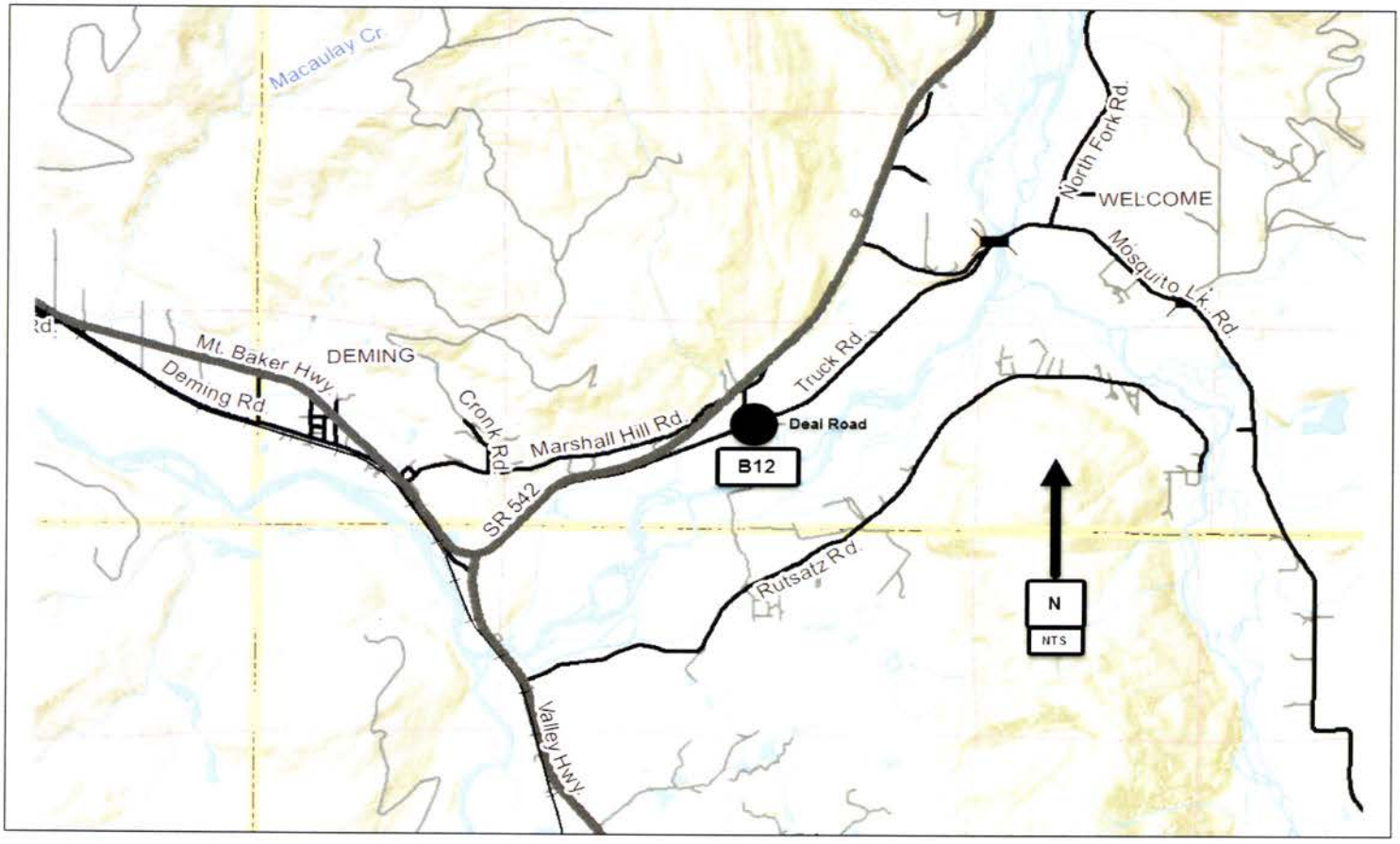
Project Narrative: This project is located in Sections 33, T39N, R5E. The project. This project is listed **#B12** on the 2021-2026 Six-Year Transportation Improvement Program. Project includes replacing the exsiting 5' diameter culvert that has been identified as a barrier to fish passage on Truck Road with a culvert that meets current fish passage requirements.

Project Status: Preliminary design and environmental permitting work underway. Construction scheduled for summer of 2021.

Total Estimated Project Cost:	$ 400,000
Expenditures to Date:	$ 70,000

Funding Sources:	
Federal	$ 0
State	$ 0
Local	$400,000

Environmental Permitting	SEPA, CLR/CAO, Shorelines, HPA
Right-of-Way Acquisition (Estimate)	TBD
County Forces (Estimate)	TBD



Deal Road
Fish Passage Culverts
CRP # 921008

Construction Funding Year(s):	TBD

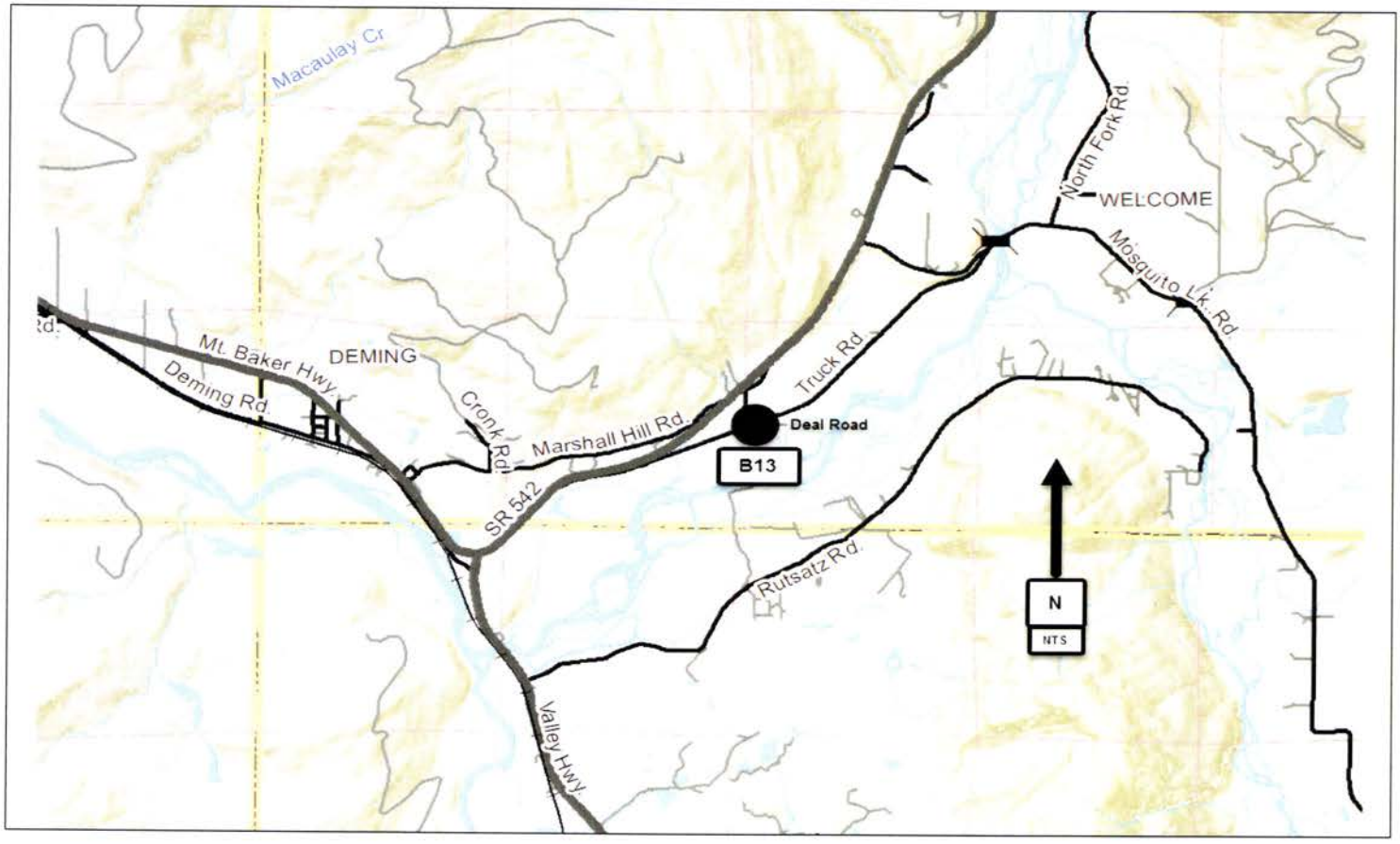
Project Narrative: This project is located in Sections 33, T39N, R5E. The project. This project is listed **#B13** on the 2021-2026 Six-Year Transportation Improvement Program. Project includes replacing two exsiting culverts that have been identified as barriers to fish passage in the Deal Road area with culverts that meet current fish passage requirements.

Project Status: Preliminary design and permitting to begin in 2021.

Total Estimated Project Cost: $ 0
Expenditures to Date: $ 0

Funding Sources:	
Federal	$ 0
State	$ 0
Local	$80,000

Environmental Permitting	TBD
Right-of-Way Acquisition (Estimate)	TBD
County Forces (Estimate)	TBD



Replacement of Whatcom Chief & Terminal Modification
CRP # 919008

Construction Funding Year(s):	TBD

Project Narrative:
This project includes replacement of the Whatcom Chief with a 34 car vessel and modifications of the existing ferry terminals to accommodate the new vessel. This work will be accomplished as outlined in the Lummi Island Ferry Service Level of Service Action Plan approved by the Whatcom County Council via Resolution 2018-026. This project is listed **#F1** on the 2021-2026 Six Year Transportation Improvement Program.

Project Status:
Design work for the new vessel is underway. This work will coincide with the next cycle of funding by the County Road Administration Board.

Total Estimated Project Cost:	TBD
Expenditures to Date:	$450,000

Funding Sources:	
Federal	$0
State	$0
Local	$750,000

Environmental Permitting	None Required
Right-of-Way Acquisition (Estimate)	None Required
County Forces (Estimate)	N/A

M/V Whatcom Chief



Gooseberry Point Terminal Preservation Project
CRP # 919021

Construction Funding Year(s):	2021

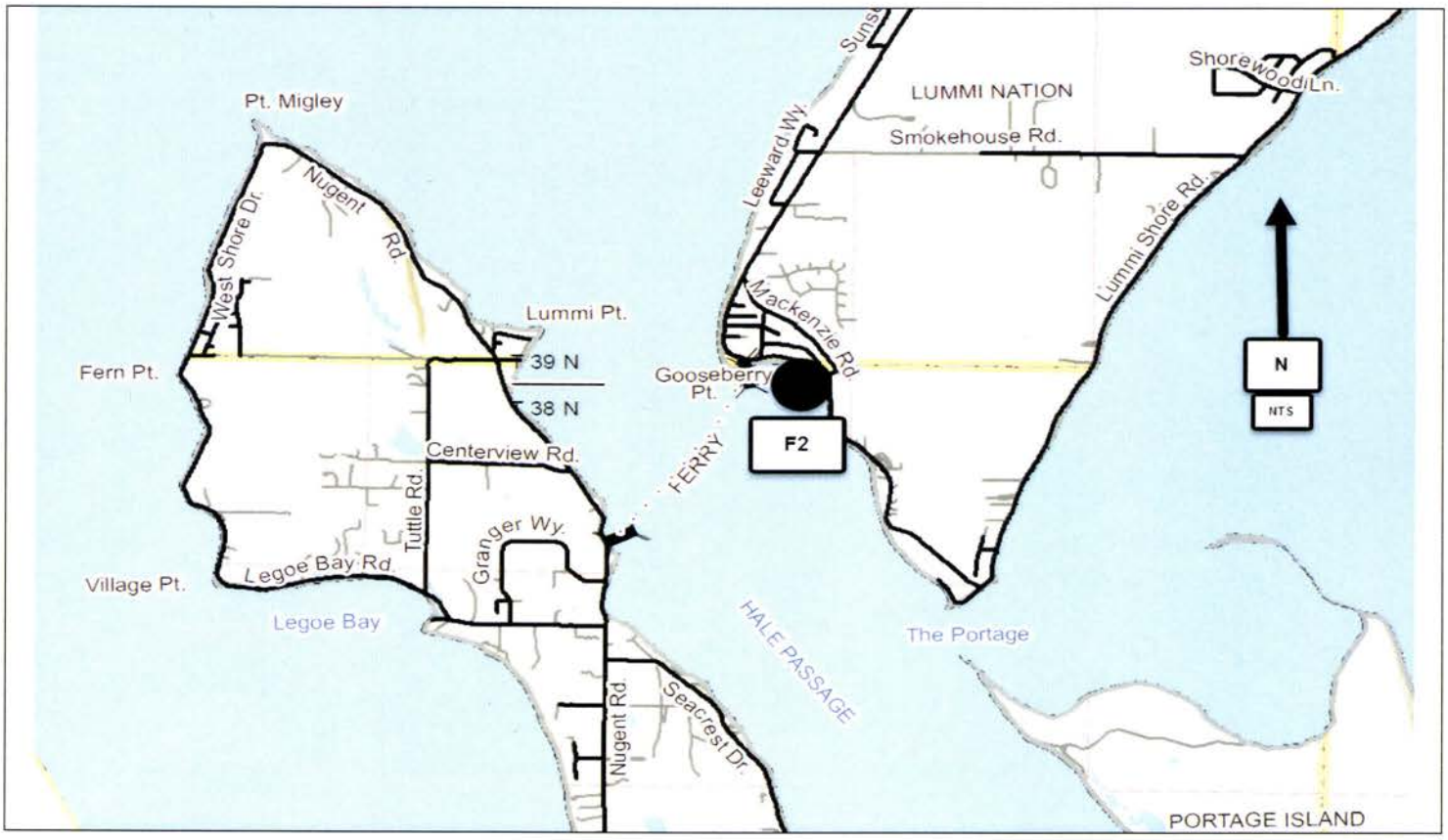
Project Narrative: This project includes removing and replacing the transfer span paint system and application of overcoat paint system to the tower and apron systems. This project is listed #**F2** on the 2021-2026 Six Year Transportation Improvement Program.

Project Status: Design and permitting work anticipated to be completed in 2020. Construction scheduled for 2021 to coincide with the dry dock period of the Whatcom Chief.

Total Estimated Project Cost:	$850,000
Expenditures to Date:	$ 50,000

Funding Sources:	
Federal	$
State	$
Local	$850,000

Environmental Permitting	HPA, SEPA, CORPS 404, COUNTY SHORELINES
Right-of-Way Acquisition (Estimate)	None Required
County Forces (Estimate)	N/A



Whatcom County Public Works
Project Narrative

Lummi Island Breakwater Replacement
CRP #914015

Construction Funding Year(s):	**2021**

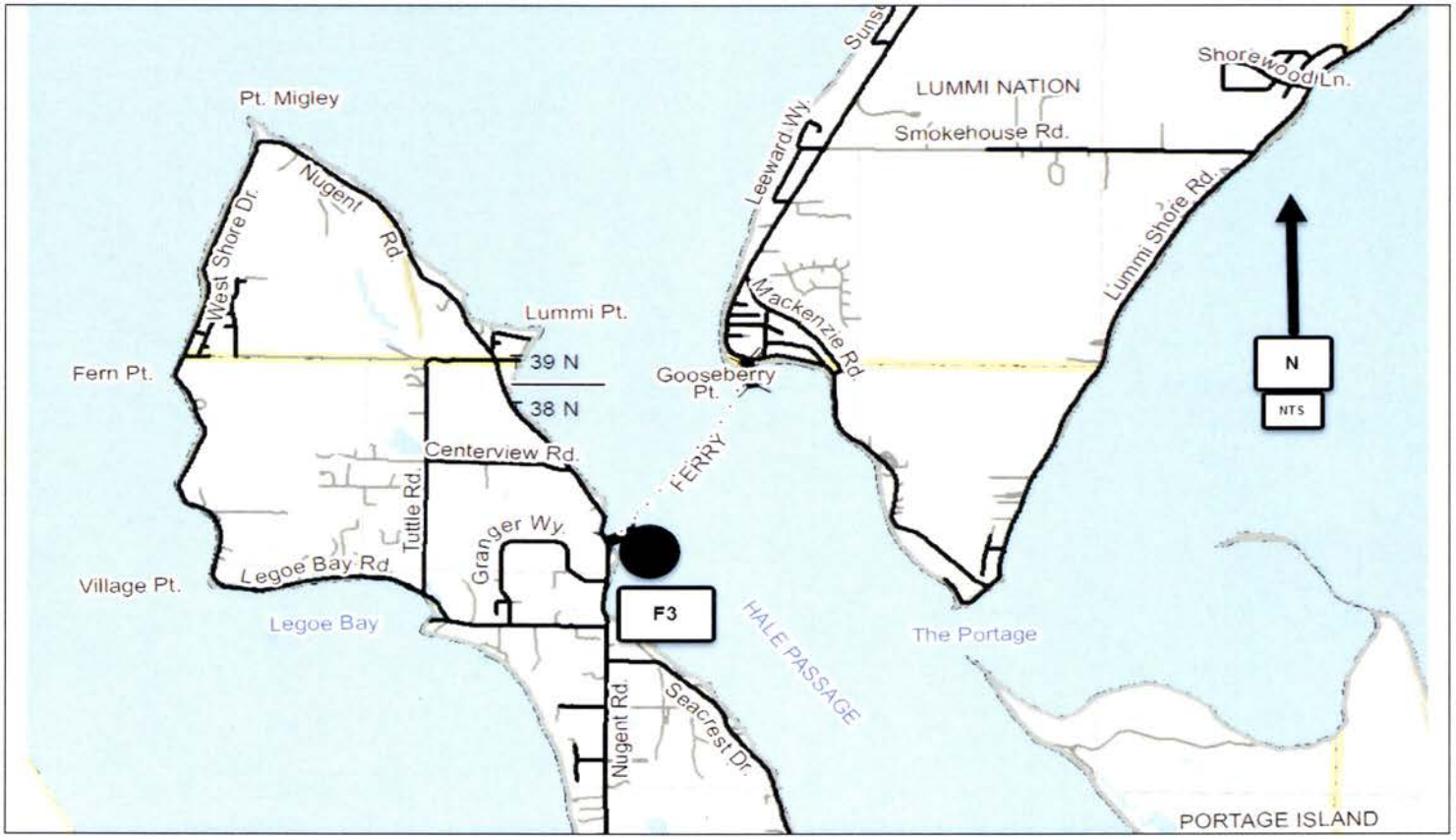
Project Narrative:
This project includes replacing the southerly breakwater at the Lummi Island ferry terminal. This structure was constructed in the mid 1980's and is reaching the end of its service life. This project is listed **#F3** on the 2021-2026 Six Year Transportation Improvement Program.

Project Status:
Design and permitting work expected to be completed in early 2021, with construction of this project scheduled in late 2021. Approximately $1,005,000 in federal Ferry Boat Program funds will be utilized for the preliminary engineering and construction phases of this project.

Total Estimated Project Cost:	$2,235,000
Expenditures to Date:	$185,000

Funding Sources:	
Federal	$1,005,000 (FBP)
State	$
Local	$1,230,000

Environmental Permitting	HPA, SEPA, CORPS 404, COUNTY SHORELINES
Right-of-Way Acquisition (Estimate)	None Required
County Forces (Estimate)	N/A



Relocation of Gooseberry Terminal
CRP # 919009

Construction Funding Year(s):	**TBD**

Project Narrative:
This project involves relocation of the Gooseberry Point Ferry Terminal. This work will be accomplished as outlined in the Lummi Island Ferry Service Level of Service Action Plan approved by the Whatcom County Council via Resolution 2018-026. This project is listed **#F4** on the 2021-2026 Six Year Transportation Improvement Program.

Project Status:
Early action items will likely include EIS and real estate work. This work will coincide with the next cycle of funding by the County Road Administration Board.

Total Estimated Project Cost: TBD

Expenditures to Date: $ 0

Funding Sources:	
Federal	$0
State	$0
Local	$150,000

Environmental Permitting	None Required
Right-of-Way Acquisition (Estimate)	None Required
County Forces (Estimate)	None Required



Various Bridges Rehabilitation / Replacement
CRP # 921009

Construction Funding Year(s):	**2021 - 2026**

Project Narrative:
This item provides funding to address unanticipated bridge rehabilitation and/or replacement. It is listed **#Y1** on the 2021-2026 Six Year Transportation Improvement Program.

Project Status:
Design and construction to occur as necessary.

Total Estimated Project Cost: $1,800,000

Expenditures to Date: N/A

Funding Sources:	
Federal	$
State	$
Local	$1,800,000 (STIP 2021-2026)

Environmental Permitting	TBD
Right-of-Way Acquisition (Estimate)	TBD
County Forces (Estimate)	TBD

Due to the nature of this item, no map exists. Council review and prioritization will be sought at the appropriate times.

Right of Way Acquisition
CRP # 921010

Construction Funding Year(s):	**2021-2026**

Project Narrative:
This item addresses the unanticipated need for Right-of-Way that may arise during a given year that requires immediate action. This project is listed **#Y2** on the 2021-2026 Six Year Transportation Improvement Program.

Project Status:
N/A.

Total Estimated Project Cost: $150,000

Expenditures to Date:

Funding Sources:	
Federal	$0
State	$0
Local	$150,000 (2021-2026)

Environmental Permitting	TBD
Right-of-Way Acquisition (Estimate)	TBD
County Forces (Estimate)	N/A

Due to the nature of this program item, no map exists. Council review and prioritization will be sought at the appropriate time.

Unanticipated Site Improvements
CRP # 921011

Construction Funding Year(s):	**2021 - 2026**

Project Narrative:
This Annual Construction Program item addresses the unanticipated project(s) that may arise during a given year that require immediate action due to safety concerns, environmental factors, traffic volumes, accident history, funding or grant availability and other issues not related to an existing program project. This project is listed **#Y3** on the 2021-2026 Six Year Transportation Improvement Program.

Project Status:
It is anticipated that the design and construction of projects will occur yearly as the needs and locations are determined.

Total Estimated Project Cost: $1,800,000

Expenditures to Date:

Funding Sources:	
Federal	$0
State	$0
Local	$1,800,000 (2021-2026)

Environmental Permitting	TBD
Right-of-Way Acquisition (Estimate)	TBD
County Forces (Estimate)	N/A

Due to the nature of this program item, no map exists. Council review and prioritization will be sought at the appropriate time.

Unanticipated Stormwater Quality Improvements
CRP # 921012

Construction Funding Year(s):	**2021 - 2026**

Project Narrative:
This project varies in location. Identification and prioritization to be addressed and reviewed through County Council. This project is listed **#Y4** on the 2021-2026 Six Year Transportation Improvement Program.

Project Status:
It is anticipated that the design and construction of projects will occur yearly as the needs and locations are determined.

Total Estimated Project Cost: $720,000

Expenditures to Date:

Funding Sources:	
Federal	$0
State	$0
Local	$720,000 (2021-2026)

Environmental Permitting	TBD
Right-of-Way Acquisition (Estimate)	TBD
County Forces (Estimate)	TBD

Due to the nature of this program item, no map exists. Council review and prioritization will be sought at the appropriate time.

Unanticipated Non-motorized Transportation Improvements
CRP # 921013

Construction Funding Year(s):	**2021 - 2026**

Project Narrative:
This program item addresses the need to identify and prioritize non-motorized projects for future consideration. Projects would include pedestrian and bike facilities (eg: sidewalks, trails, shoulder widening) in various locations around the county. This project is listed **#Y5** on the 2021-2026 Six Year Transportation Improvement Program.

Project Status:
It is anticipated that the design and construction of projects will occur yearly as the needs and locations are determined.

Total Estimated Project Cost: $160,000

Expenditures to Date:

Funding Sources:	
Federal	$0
State	$0
Local	$160,000 (2021-2026)

Environmental Permitting	TBD
Right-of-Way Acquisition (Estimate)	TBD
County Forces (Estimate)	TBD

Due to the nature of this program item, no map exists. Council review and prioritization will be sought at the appropriate time.

Fish Passage Project
CRP # 921014

Construction Funding Year(s):	**2021**

Project Narrative:
This project is for the design and construction of fish passage projects. This project is listed **#Y6** on the 2021-2026 Six Year Transportation Improvement Program.

Project Status:
Design work will begin in 2020 with construction of the first project scheduled for 2021.

Total Estimated Project Cost:	TBD
Expenditures to Date:	N/A

Funding Sources:	
Federal	$0
State	$0
Local	$300,000 (2021-2026)

Environmental Permitting	TBD
Right-of-Way Acquisition (Estimate)	TBD
County Forces (Estimate)	N/A

Due to the nature of this program item, no map exists. Council review and prioritization will be sought at the appropriate time.

Swift Creek Transportation Impacts
CRP # 921015

Construction Funding Year(s):	**TBD**

Project Narrative:
This item addresses the various projects related to Sumas Mountain/Swift Creek Slide. Locations to be determined. This project is **#Y7** on the 2021-2026 Six Year Transportation Improvement Program.

Project Status:
Design and construction for the various projects will be initiated in 2020 and extend through 2026.

Total Estimated Project Cost: $400,000

Expenditures to Date:

Funding Sources:	
Federal	$0
State	$0
Local	$400,000 (2021-2026)

Environmental Permitting	N/A
Right-of-Way Acquisition (Estimate)	N/A
County Forces (Estimate)	N/A

Due to the nature of this program item, no map exists. Council review and prioritization will be sought at the appropriate time.

Railroad Crossing Improvements
CRP # 921016

Construction Funding Year(s):	**2021 - 2026**

Project Narrative:
Locations to be determined. Identification and prioritization to be addressed. This project is listed **#Y8** on the 2021-2026 Six Year Transportation Improvement Program.

Project Status:
Locations and prioritization of projects is on-going. Negotiations with BNSF will be a factor on timing and cost.

Total Estimated Project Cost: $300,000

Expenditures to Date: - 0 -

Funding Sources:	
Federal	$0
State	$0
Local	$300,000 (2021-2026)

Environmental Permitting	TBD
Right-of-Way Acquisition (Estimate)	TBD
County Forces (Estimate)	TBD

Due to the nature of this program item, no map exists. Council review and prioritization will be sought at the appropriate time.

Beam Guardrail Replacements/Upgrades
CRP # 921017

Construction Funding Year(s):	**2021 - 2026**

Project Narrative:
Locations to be determined. Identification and prioritization to be addressed. This project is listed **#Y9** on the 2021-2026 Six Year Transportation Improvement Program.

Project Status:
Locations and prioritization of projects is on-going, with close coordination with M&O Division and Trafffic Section.

Total Estimated Project Cost: $1,200,000

Expenditures to Date: - 0 -

Funding Sources:	
Federal	$0
State	$0
Local	$1,200,000 (2021-2026)

Environmental Permitting	SEPA, Clrg/CAO,
Right-of-Way Acquisition (Estimate)	TBD
County Forces (Estimate)	TBD

Due to the nature of this program item, no map exists. Council review and prioritization will be sought at the appropriate time.

ADA Barrier Removal
ADA Transition Plan, Multiple Locations
CRP # 921018

Construction Funding Year(s):	**TBD**

Project Narrative:
Whatcom County will be addressing an update to its Americans with Disabilities Act (ADA) Transition Plan in 2019, concentrating on an assessment of facilities in County road rights-of-way. This project will involve the removal of a number of barriers yearly, in a systematic and prioritized method. This project is listed **#Y10** on the 2021-2026 Six-Year Transportation Improvement Program.

Project Status: ADA Transition Plan update will be completed in 2020, with a number of priority barrier locations highlighted by the study, addressed by design efforts in 2020.

Total Estimated Project Cost:	$1,200,000
Expenditures to Date:	$0

Funding Sources:	
Federal	$0
State	$0
Local	$1,200,000

Environmental Permitting	
Right-of-Way Acquisition (Estimate)	
County Forces (Estimate)	

Due to the nature of this item, no map exists. Location and priority of the ADA Barrier Removals will be determined when the updated Transition Plan is complete.

Whatcom County

COUNTY COURTHOUSE
311 Grand Avenue, Ste #105
Bellingham, WA 98225-4038
(360) 778-5010

Agenda Bill Master Report

File Number: AB2020-471

File ID:	AB2020-471	**Version:**	1	**Status:**	Agenda Ready
File Created:	10/21/2020	**Entered by:**	DBrown@co.whatcom.wa.us		
Department:	Council Office	**File Type:**	Resolution		
Assigned to:	Council			**Final Action:**	
Agenda Date:				**Enactment #:**	

Primary Contact Email: DBrown@co.whatcom.wa..us

TITLE FOR AGENDA ITEM:

Resolution approving Whatcom County Council meeting dates for 2021

SUMMARY STATEMENT OR LEGAL NOTICE LANGUAGE:

Resolution approving Whatcom County Council meeting dates for 2021

HISTORY OF LEGISLATIVE FILE

Date:	Acting Body:	Action:	Sent To:

Attachments: Resolution

PROPOSED BY: Council Clerk
INTRODUCTION DATE: October 27, 2020

RESOLUTION NO. _____

APPROVING REGULAR WHATCOM COUNTY COUNCIL MEETING DATES FOR 2021

WHEREAS, the Whatcom County Council has set every other Tuesday as its regular meeting schedule; and

WHEREAS, all departments should schedule agenda items in accordance with the Council's approved meeting schedule to avoid the need for special meetings; and

WHEREAS, it is the Council's policy to plan for breaks in its schedule in August and December and to avoid scheduling meetings on or around specific days of the year.

NOW, THEREFORE, BE IT RESOLVED by the Whatcom County Council that regular Council and Council committee meetings shall be scheduled for the following dates in 2021:

January 12 and 26
February 9 and 23
March 9 and 23
April 6 and 20
May 4 and 18
June 1, 15, and 29
July 13 and 27
August 10
September 14 and 28
October 12 and 26
November 9 and 23
December 7

BE IT FURTHER RESOLVED that when members of the Council sit in an administrative or legislative capacity in situations such as, but not limited to, supervisors of special districts or members of the county health board, all business in these capacities shall be treated as regular items of business during council meetings and the council's agenda shall include a notation for any item being considered in one of more of these other capacities.

APPROVED this _____ day of _____, 2020.

ATTEST:

_____
Dana Brown-Davis, Clerk of the Council

WHATCOM COUNTY COUNCIL
WHATCOM COUNTY, WASHINGTON

_____
Barry Buchanan, Council Chair

APPROVED AS TO FORM:

_____
Civil Deputy Prosecutor

Whatcom County

COUNTY COURTHOUSE
311 Grand Avenue, Ste #105
Bellingham, WA 98225-4038
(360) 778-5010

Agenda Bill Master Report

File Number: AB2020-432

File ID:	AB2020-432	**Version:**	1	**Status:**	Introduced
File Created:	09/30/2020	**Entered by:**	JNixon@co.whatcom.wa.us		
Department:	Council Office	**File Type:**	Council Appointment Requiring Introduction		
Assigned to:	Council			**Final Action:**	
Agenda Date:	10/27/2020			**Enactment #:**	

Primary Contact Email: jnixon@co.whatcom.wa.us

TITLE FOR AGENDA ITEM:

Receipt of application for the Drainage Improvement District #6, Supervisor Position 3 - Applicant(s): Thomas Shaffer (Deadline for additional applications for this position is 10:00 a.m. on October 20, 2020)

SUMMARY STATEMENT OR LEGAL NOTICE LANGUAGE:

This is a Special District Appointment. Applicants must be registered voters in the State of Washington and own land in the district they represent. Appointments are made by the County Council. Appointees will serve until the next special district election in February 2022.

Duties include field review of drainage needs, attending an annual meeting to determine the next year's work schedule and assessment levy, elect internal officers, and review, discuss, or act on any other official and district business. (RCW 85.06 and RCW 85.38.170 and .180)

District boundary is generally located midway between Lynden and Ferndale and bounded and/or transected by portions of W. Pole, Old Guide, King Tut, Aldrich, and Woodlyn Roads. Unnamed tributary ditch to Cougar Creek/Nooksack River is the primary channel.

HISTORY OF LEGISLATIVE FILE

Date:	Acting Body:	Action:	Sent To:

10/13/2020	Council	INTRODUCED	Council

Attachments: Shaffer Application

EXECUTIVE:
Satpal Sidhu

COUNCILMEMBERS:
Rud Browne
Barry Buchanan
Tyler Byrd
Todd Donovan
Ben Elenbaas
Carol Frazey
Kathy Kershner

APPLICATION FOR APPOINTMENT TO WHATCOM COUNTY BOARDS AND COMMISSIONS

PLEASE PRINT LEGIBLY and COMPLETE ALL ITEMS

Name: Thomas R. Shaffer Date: 9/21/2020

Street Address: 6679 TH TERRANCO

City: Bellingham WA Zip Code: 98226

Mailing Address (if different from street address):

Day Telephone: 360-398-2747 Evening Telephone: Cell Phone: 360-224-6282

E-mail address: montanasky98072@yahoo.com

1. Name of board or committee-**please see reverse**: Drainage Imp Dist #6
2. You must specify which position you are applying for. **Please refer to vacancy list.** Supervisor Position #3
3. Do you meet the residency, employment, and/or affiliation requirements of the position for which you're applying? (**If applicable, please refer to vacancy list.**) (✓) yes ( ) no
4. Which Council district do you live in? ( ) One ( ) Two ( ) Three (✓) Four ( ) Five
5. Are you a US citizen? (✓) yes ( ) no
6. Are you registered to vote in Whatcom County? (✓) yes ( ) no
7. Have you ever been a member of this Board/Commission? ( ) yes (✓) no
   If yes, dates:
8. Do you or your spouse have a financial interest in or are you an employee or officer of any business or agency that does business with Whatcom County? ( ) yes (✓) no
   If yes, please explain:
9. Have you declared candidacy (as defined by RCW 42.17A.055, see instructions) for a paid elected office in any jurisdiction within the county? ( ) yes (✓) no

You may attach a résumé or detailed summary of experience, qualifications, & interest in response to the following questions.

10. Please describe your occupation (or former occupation if retired), qualifications, professional and/or community activities, and education. Depart. of Homeland Sec / CBP
11. Please describe why you're interested in serving on this board or commission: Asked by Board Members

References (please include daytime telephone number): MARK West
H# 360-306-5302 C# 360-220-5073

Signature of applicant:

THIS IS A PUBLIC DOCUMENT: As a candidate for a public board or commission, the above information will be available to the County Council, County Executive, and the public. All board and commission members are expected to be fair, impartial, and respectful of the public, County staff, and each other. Failure to abide by these expectations may result in revocation of appointment and removal from the appointive position.

Whatcom County

COUNTY COURTHOUSE
311 Grand Avenue, Ste #105
Bellingham, WA 98225-4038
(360) 778-5010

Agenda Bill Master Report

File Number: AB2020-445

File ID:	AB2020-445	**Version:**	1	**Status:**	Agenda Ready
File Created:	10/13/2020	**Entered by:**	CStrong@co.whatcom.wa.us		
Department:	Planning and Development Services Department	**File Type:**	Ordinance Requiring a Public Hearing		
Assigned to:	Council			**Final Action:**	
Agenda Date:	10/27/2020			**Enactment #:**	

Primary Contact Email: cstrong@co.whatcom.wa.us

TITLE FOR AGENDA ITEM:

Ordinance adopting amendments to Whatcom County Code 20.72, Point Roberts Special District

SUMMARY STATEMENT OR LEGAL NOTICE LANGUAGE:

Proposed amendments to Whatcom County Code 20.72, Point Roberts Special District

HISTORY OF LEGISLATIVE FILE

Date:	Acting Body:	Action:	Sent To:

Attachments: Staff Report, Proposed Ordinance, Exhibit A - Code Amendments, Exhibit B Zoning Map, Exhibit C - PRCAC 20.72 Minutes Discussion, Exhibit D - O'Brien comments

Whatcom County
Planning & Development Services
Staff Report

WCC 20.72 Point Roberts Special District Amendments

I. Background Information

File # PLN2019-00007

File Name: WCC 20.72 Point Roberts Special District Amendments

Applicants: Point Roberts Community Advisory Committee (PRCAC) & Whatcom County Planning and Development Services (PDS)

Summary of Request: Proposed amendments to WCC 20.72 Point Roberts Special District

Location: Point Roberts

Planning Commission Recommendation: Approve

Staff Recommendation: Approve

Background: The PRCAC is proposing amendments to WCC 20.72 to address changes in land use demand.

The Point Roberts Special District is an overlay zone. From the zoning map provided (Exhibit B) it can be seen that Point Roberts is zoned with many of the County's standard zones (Rural, Small Town Commercial, Resort Commercial, etc.), but laid over the entire peninsula is this Special District that modifies the underlying zoning. It was created as a way to help realize the Point Roberts Subarea Plan (a part of the Comprehensive Plan), first adopted back in 1979 (though updated a few times since).

The Point Roberts Subarea Plan (and its subsequent iterations) was developed during a different economic time. In particular, the U.S. dollar was low compared to the Canadian dollar, and travel was quite easy pre-9/11 (and now pre-COVID-19). Simply put, there were a lot more Canadians investing in and visiting Point Roberts for recreation. Thus, the subarea plan was based on an economic development strategy of creating a quaint, walkable downtown commercial core geared towards capturing tourist dollars. It was thought that there would be high demand for hotels, motels, bars and restaurants, small shops, and recreational opportunities.

However, since then, things haven't gone according to plan: Most commercial development in Point Roberts has been new gas stations, commercial mailboxes, and storage for Canadians; or local construction/services businesses. This has led to struggles between those citizens wanting to maintain the Subarea Plan's vision and those wanting to start businesses that may work better under the current economic conditions. This in turn has resulted in multiple code violation complaints, in particular about commercial storage uses.

The genesis of the amendments included herein is an attempt by the PRCAC to balance these two competing demands. They know that until the Subarea Plan is updated any amendments to WCC 20.72 must remain consistent with it, but they would also like to allow some of the businesses attempting to make a go of it to do so, and, in the interim, resolve some of the code enforcement cases. At this time, the next opportunity to update the Pont Roberts Subarea Plan would be a part of the next

Comprehensive Plan update cycle due in 2025. However, PDS will work with the PRCAC and the County Council to identify any earlier opportunities.

II. Code Amendments

The proposed code amendments are found in Exhibit A. Please refer to that attachment; explanations are provided therein. Briefly, in addition to simplifying and clarifying some of the language of 20.72, the substantive amendments would:

1. Allow permitted businesses in the Small Town Commercial district to have up to two on-site storage containers as an accessory use (WCC 20.72.102(1)), and up to three through a conditional use permit (WCC 20.72.154(4)), and add setback standards for them (WCC 20.72.350(3)). This amendment would alleviate certain code enforcement cases where some storage of goods and materials has been found necessary, contrary to the existing code.
2. Make it clear that businesses with fleet vehicles are not considered accessory to a commercial use in the Small Town Commercial district (WCC 20.72.101(2), in keeping with the subarea plan's goal of encouraging a pedestrian-friendly commercial core (and not allowing vehicle storage).
3. Allow hotels, motels, and timeshare condominiums in the Small Town Commercial district as a conditional use (in addition to the Resort Commercial district, which is already allowed) (WCC 20.72.154(1)). This amendment would potentially allow for additional economic development in the commercial core.
4. Allow kennels for kenneling up to 6 animals when associated with an animal groomer in the Small Town Commercial district as a conditional use (WCC 20.72.154(2)). This would allow a proposed pet groomer with limited kenneling to locate in the commercial core. Large kennels would still be prohibited (WCC 20.72.204(2)).
5. Allow RV parks in the Small Town Commercial district as a conditional use (WCC 20.72.154(3)). This amendment would potentially allow for additional economic development in the commercial core.
6. Repeal the larger, 40-foot setback along Roosevelt Way (erroneously referred to as Roosevelt Road in the existing code), though the underlying zones' standard setbacks would still apply (WCC 20.72.350(1)). The larger, 50-foot setback along Tyee Drive, the main entrance to Point Roberts, would be maintained. This amendment would potentially allow for additional economic development in the commercial core.
7. Allow a 10-foot setback throughout the Small Town Commercial district, not just along Gulf Road (WCC 20.72.350(2)). This amendment would potentially allow for additional economic development in the commercial core.
8. Make the maximum building height of 45 feet apply throughout the Small Town Commercial district, not just along Gulf Road (WCC 20.72.401). This would complement the allowance of hotels, motels, and timeshare condominiums, limiting their height in the commercial core.
9. Add measurable standards to the existing screening requirements for trash and utility areas of commercial and institutional uses (WCC 20.72.653(a)) and for vehicle storage areas (WCC 20.72.653(b)). Though the code already required screening of these areas, it did not say to what standard, making it difficult to judge code compliance.

10. Allow some flexibility as to where businesses' parking lots area located in the Small Town Commercial district (WCC 20.72.659(a)). Though the subarea plan's goal is to have a pedestrian-oriented commercial core, some lots have been found to be too constrained to meet this requirement.

III. Comprehensive Plan Evaluation

The proposed amendments are consistent with the Comprehensive Plan, and in particular the Point Roberts Subarea Plan.

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, on behalf of the Point Roberts Community Advisory Committee, an application to make various amendments to Whatcom County Code (WCC) 20.72 (Point Roberts Special District).
2. A determination of non-significance (DNS) was issued under the State Environmental Policy Act (SEPA) on April 3, 2020.
3. Notice of the subject amendment was submitted to the Washington State Department of Commerce on September 9, 2020.
4. The Point Roberts Community Advisory Committee discussed these amendments in 27 public meetings over a two and a half year period. The PRCAC heard from members of the community in person at these meetings and through e-mail correspondence. PRCAC's at-large members reached out to Point Roberts for feedback outside the meetings. In addition the 3 member groups Chamber of Commerce, the Point Roberts Taxpayers Association and the Point Roberts Registered Voters Association all held multiple public meetings regarding 20.72 changes.
5. The Planning Commission held a duly noticed public hearing on the proposed amendments on October 8, 2020.
6. The County Council held a duly noticed public hearing on the proposed amendments on X[CES1], 2020.
7. The amendments are consistent with Comprehensive, and in particular the Point Roberts Subarea Plan.
8. In addition to simplifying and clarifying some of the language of 20.72, the amendments would:
    a. Allow permitted businesses in the Small Town Commercial district to have up to two on-site storage containers as an accessory use (WCC 20.72.102(1)), and more through a conditional use permit (WCC 20.72.154(4), and add setback standards for them (WCC 20.72.350(3)).
    b. Allow hotels, motels, and timeshare condominiums in the Small Town Commercial district as a conditional use (in addition to the Resort Commercial district, which is already allowed). (WCC 20.72.154(1))
    c. Allow kennels for kenneling up to 6 animals when associated with an animal groomer as a conditional use. (WCC 20.72.154(2))
    d. Allow RV parks in the Small Town Commercial as a conditional use. (WCC 20.72.154(3))

e. Repeal the larger, 40-foot setback along Roosevelt Road (though the underlying zones' standard setbacks would still apply) (WCC 20.72.350(1)

f. Allow a 10-foot setback throughout the Small Town Commercial district, not just along Gulf Road (WCC 20.72.350(2))

g. Make the maximum building height of 45 feet apply throughout the Small Town Commercial district, not just along Gulf Road. (WCC 20.72.401)

h. Add measurable standards to the existing screening requirements for trash and utility areas of commercial and institutional uses (WCC 20.72.653(a)) and for vehicle storage areas. (WCC 20.72.653(b))

i. Allow some flexibility as to where businesses' parking lots area located in the Small Town Commercial district. (WCC 20.72.659(a))

V. Proposed Conclusions

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

VI. Recommendations

The Planning Commission and the Department of Planning and Development Services recommend that the County Council approve the proposed amendments.

Attachments

1. Draft Ordinance
2. Exhibit A – Proposed Code Amendments
3. Exhibit B – Point Roberts Zoning Map
4. Exhibit C – Excerpts from the PRCAC minutes regarding discussions of WCC 20.72 amendments
5. Exhibit D – Written comments from Thomas O'Brien representing the Point Roberts Independent Business Council submitted to the Planning Commission

PROPOSED BY: _____
INTRODUCTION DATE:_____

ORDINANCE NO. _____

ADOPTING AMENDMENTS TO WHATCOM COUNTY CODE CHAPTER 20.72, POINT ROBERTS SPECIAL DISTRICT

WHEREAS, the Point Roberts Community Advisory Committee has proposed amendments to Whatcom County Code Chapter 20.72, Point Roberts Special District; 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, on behalf of the Point Roberts Community Advisory Committee, an application to make various amendments to Whatcom County Code (WCC) 20.72 (Point Roberts Special District).
2. A determination of non-significance (DNS) was issued under the State Environmental Policy Act (SEPA) on April 3, 2020.
3. Notice of the subject amendment was submitted to the Washington State Department of Commerce on September 9, 2020.
4. The Point Roberts Community Advisory Committee discussed these amendments in 27 public meetings over a two and a half year period. The PRCAC heard from members of the community in person at these meetings and through e-mail correspondence. PRCAC's at-large members reached out to Point Roberts for feedback outside the meetings. In addition the 3 member groups Chamber of Commerce, the Point Roberts Taxpayers Association and the Point Roberts Registered Voters Association all held multiple public meetings regarding 20.72 changes.
5. The Planning Commission held a duly noticed public hearing on the proposed amendments on October 8, 2020.
6. The County Council held a duly noticed public hearing on the proposed amendments on X[CES1], 2020.
7. The amendments are consistent with Comprehensive, and in particular the Point Roberts Subarea Plan.
8. In addition to simplifying and clarifying some of the language of 20.72, the amendments would:
    a. Allow permitted businesses in the Small Town Commercial district to have up to two on-site storage containers as an accessory use (WCC 20.72.102(1)), and more through a conditional use permit (WCC 20.72.154(4), and add setback standards for them (WCC 20.72.350(3)).
    b. Allow hotels, motels, and timeshare condominiums in the Small Town Commercial district as a conditional use (in addition to the Resort Commercial district, which is already allowed). (WCC 20.72.154(1))

c. Allow kennels for kenneling up to 6 animals when associated with an animal groomer as a conditional use. (WCC 20.72.154(2))

d. Allow RV parks in the Small Town Commercial as a conditional use. (WCC 20.72.154(3))

e. Repeal the larger, 40-foot setback along Roosevelt Road (though the underlying zones' standard setbacks would still apply) (WCC 20.72.350(1)

f. Allow a 10-foot setback throughout the Small Town Commercial district, not just along Gulf Road (WCC 20.72.350(2))

g. Make the maximum building height of 45 feet apply throughout the Small Town Commercial district, not just along Gulf Road. (WCC 20.72.401)

h. Add measurable standards to the existing screening requirements for trash and utility areas of commercial and institutional uses (WCC 20.72.653(a)) and for vehicle storage areas. (WCC 20.72.653(b))

i. Allow some flexibility as to where businesses' parking lots area located in the Small Town Commercial district. (WCC 20.72.659(a))

CONCLUSIONS

1. The amendments to the development regulations are 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 in Exhibit A.

Section 2. Staff is authorized to work with Code Publishing to correct and update any cross-references made ineffective by these amendments.

ADOPTED this _____ day of _____, 2020.

WHATCOM COUNTY COUNCIL
WHATCOM COUNTY, WASHINGTON

ATTEST:

_____ _____

Dana Brown-Davis, Council Clerk Barry Buchanan, Council Chair

APPROVED as to form: ( ) Approved ( ) Denied

_____ _____

Civil Deputy Prosecutor Satpal Sidhu, Executive

Date: _____

Exhibit A: WCC Chapter 20.72 Point Roberts Special District

FINAL DRAFT from PRCAC 01/27/2020

20.72.010 Purpose.

Point Roberts is a unique area of Whatcom County because of its relatively small size, its mixed development character, its relative isolation and the constraints on normal growth patterns caused by the impact of access only via an international border crossing. This geographic isolation from the remainder of Whatcom County complicates the direct application of other zone districts within this title. Point Roberts is considered a limited area of more intense rural development, being clearly bounded by the border and marine environment. However, within these boundaries are zoning districts allowing a variety of development intensities. Proposed changes in uses or lots, and new proposed uses, must be consistent with rural land use as set forth in the Comprehensive Plan.

The Point Roberts Special District is an overlay zone which imposes additional controls and creates opportunities not available in the underlying zone districts to fit the needs of Point Roberts. This district is designed to protect the rural character of Point Roberts while allowing opportunities for community growth and self-reliance.

20.72.020 Application.

20.72.022 Area and applicability.

The Point Roberts Special District is an overlay zone which covers the entire geographic area of Point Roberts. Any regulations contained herein which are more restrictive than those in the underlying zone districts or in the Shoreline Management Program shall apply. Opportunities, or lesser restrictions, shall also override the requirements of the underlying zone. However, if the provisions of this chapter conflict with the provisions of the Shoreline Management Program, then the most restrictive shall apply.

20.72.030 Review of Permit Applications by the Point Roberts Community Advisory Committee.

(1) The Point Roberts Community Advisory Committee (PRCAC) is a local body advisory to Whatcom County through the office of the Whatcom County Executive and of the Whatcom County Council.

(2) The pertinent purpose of the PRCAC, as it relates to development permits, is to examine commercial and institutional permit applications in the Point Roberts subarea and make recommendations to Whatcom County planning and development services as to their compliance with this chapter and consistency with the Point Roberts design guidelines.

(3) Upon receipt of a permit application, planning and development services will forward the application to the PRCAC for review and comment. Permit applications are to be promptly examined by the PRCAC and a determination made, with or without recommendations, within 30 days of receipt of the application.

(4) Planning and development services will consider all pertinent comments received by the PRCAC prior to issuing a decision on the permit.

20.72.050 Permitted Uses.

All permitted uses in the underlying zone districts are permitted except as expressly prohibited or made conditional, or further conditioned by this chapter. In addition, the following uses are permitted:

.051 In the Resort Commercial District~~rc Zone~~:~~,~~

(1) Bed and breakfast establishments and bed and breakfast inns.~~;~~

20.72.100 Accessory uses.

.101 All accessory uses permitted as accessory uses in the underlying zone~~ing~~ districts are permitted as accessory uses.

.102 In the Small Town Commercial District:

(1) No more than two storage containers or other similar temporary storage units per lot if accessory to an approved commercial use on the same lot.

(2) Accessory vehicles shall be limited to two per each approved commercial use on a lot. The outdoor storage of contractor equipment or fleet vehicles shall not be permitted as accessory uses.

Comment [CES1]: Proposed so as to dissuade businesses with large fleets (i.e., storage of vehicles) from locating in STC, similar to 20.72.204(2).

20.72.130 Administrative approval uses.

All administrative approval uses in the underlying zone districts are permitted except as expressly prohibited or made conditional, or further conditioned by this chapter. In addition, the following uses are permitted subject to administrative approval pursuant to WCC 20.84.235:

.135 One private, noncommercial, recreational vehicle or park model trailer and one accessory guest RV per lot; provided, that the following minimum requirements and standards are met and/or followed:

(1) All recreational vehicles that remain on the site for more than 14 consecutive days shall be connected to a permitted on-site sewage system or public sewer.

(2) Maximum length of stay of any recreational vehicle on a lot shall not exceed 120 days per calendar year; provided, that no accessory guest RV shall remain on the subject lot for more than 14 consecutive days or more than 30 days total per calendar year.

(3) All recreational vehicles shall be screened from neighboring properties not using RVs and from public roads. Such screening may consist of landscaped buffer areas, native vegetation or a fence.

(4) Lots shall not be leased or rented out on a daily or overnight basis for recreational use.

(5) Accessory structures are limited to one personal storage building no larger than 200 square feet.

(6) The locations of parked RVs on vacant lots shall observe normal building setback standards for a single-family residence.

(7) All recreational vehicles shall be supported by their own wheels or camper jacks, and not be fastened to accessory structures. Placement of a recreational vehicle on a foundation or removal of the wheels of a recreational vehicle, except for temporary purposes for repair, is prohibited.

20.72.150 Conditional uses.

All conditional uses in the underlying zone districts shall remain conditional uses unless expressly prohibited by this chapter. In addition, the following uses ~~shall only~~may be conditionally permitted:

.151 In the Resort Commercial District:

~~(1) Hotels, motels and time share condominiums.~~

(1) Dry boat storage, including stacked boat storage, and boat trailer storage associated with a marina.

.152 In the Rural District:

(1) Surface and subsurface mining including the extraction of sand and gravel ~~shall~~ pursuant to ~~be conditionally permitted in the Rural Zone under~~ the provisions ~~set forth in~~of WCC 20.36.15~~0~~9 (Rural District, Conditional Uses).

~~(1)~~(2) Private commercial recreation facilities and clubs.

.153 In the R5A Zone located west of the Point Roberts Marina and east of Marine Drive, an air park facility/subdivision and commercial activities incidental to aviation facilities ~~may be conditionally permitted~~; provided, that:

(1) The proposed air park will comply with national, state, and local aviation regulations and safety standards; and

(2) Residential development shall be subordinate to the primary airstrip operations; and

(3) An air park shall include a 50-foot vegetated buffer between the proposed facility/subdivision and adjacent parcels; provided, that the required buffer may be reduced or eliminated where such a buffer might otherwise interfere with site access; use of the airstrip and/or taxi way(s); health and safety of air park residents, visitors or operators; and/or FAA regulations. Any open space reserve tract(s) associated with the proposed air park shall be exempt from the buffer requirements of this section; provided, that the open space reserve tract establishes a minimum distance of 50 feet between the air park facility/subdivision and adjacent parcels; and

(4) If a proposed subdivision, binding site plan, or short subdivision is located adjacent to an existing airstrip, the developer and any subsequent purchasers or successors in interest shall agree to refrain from any legal action to restrain or collect damages from the owners or users, or from Whatcom County, arising out of normal operation or use of the airstrip. The agreement shall appear as a covenant or deed restriction upon the plat, tract or instrument of conveyance and shall run with the land.

~~**.154** In the Rural District, private commercial sports facilities and clubs are permitted as conditional uses under WCC 20.36.165 shall include horse racing facilities and pari-mutuel wagering as regulated and licensed by the Washington State Horse Racing Commission, together with the usual accessory uses including club house, food and beverage service, restaurant and stables.~~

~~**.155** In the Resort Commercial District, dry boat storage, including stacked storage, and boat trailer storage associated with a marina.~~

.154 In the Small Town Commercial District ~~the following are permitted as conditional uses~~:

(1) Hotels, motels, and timeshare condominiums.

(2) Animal kennels for kenneling up to 6 animals and that are associated with an animal groomer.

Comment [CES2]: Moved to new .154

Comment [CES3]: Moved from .155

Comment [CES4]: Moved from .154 and curtailed (see comment below).

Comment [CES5]: Moved to .152(2) and curtailed. This language was included in 20.72 as at the time of its development (years ago) there was a proposal to have some sort of horse betting facility. However, this is no longer the case. The amended language above puts it in line with other zones.

Comment [CES6]: Moved to .151(1)

Comment [CES7]: Moved from .151

Comment [CES8]: Moved from 20.72.204 to allow small kenneling if associated with an animal groomer.

(3) ~~Additional r~~Recreational vehicle parks meeting the requirements of WCC 20.80.950 (Mobile home and recreational vehicle park standards).

(4) Up to three storage containers or similar temporary storage units per lot if accessory to an approved commercial use on the same lot.

Comment [CES9]: Moved from 20.72.204 (prohibited uses).

Comment [CES10]: Added to allow up to 3 storage containers per business as a conditional use.

20.72.200 Prohibited uses.

In addition to the uses prohibited in the underlying zone districts, the following uses are prohibited:

.201 Service stations in all zones, except expansion of existing service stations by adding additional pumps or hose dispensers.

.202 The following uses are prohibited in the Resort Commercial Zone District in the Maple Beach area of Point Roberts:

(1) Rooming houses.

(2) Taverns.

(3) Commercial parking lots or garages.

.204 The following uses are prohibited in the Small Town Commercial Zone District ~~along Gulf Road only~~:

(1) Mini storage facilities.

(2) Animal kennels ~~not associated with a veterinary practice~~, except as allowed pursuant to WCC 20.72.154(2).

(3) Facilities for commercial rental, sale, storage, service, repair, or washing of ~~M~~motorized vehicles and equipment, motorcycles, marine vessels or equipment, farm implements, light and heavy equipment, or recreational vehicles ~~service, repair, washing facilities, commercial storage or sale~~.

~~(4) Additional recreational vehicle parks.~~

~~(5)~~(4) Cemeteries.

Comment [CES11]: Deleted by PRCAC to make the prohibitions apply throughout the zone, not just along Gulf Road.

Comment [CES12]: Moved by PRCAC to 20.72.154 to allow through a CUP.

20.72.250 Minimum lot size.

.251 Where the cluster subdivision option is used to protect a critical area:

(1) A parcel size reduction of five percent may be granted where average parcel size (except the reserve tract) is less than 10,000 square feet; or

(2) A parcel size reduction of 10 percent may be granted where average parcel size (except the reserve tract) is 10,000 square feet; or

(3) More of a reduction may be granted only if the resultant lots are able to meet the applicable development standards of this title and other county ordinances, including setbacks and minimum reserve tract area.

20.72.260 Maximum density.

.261 Except as modified by this chapter, all residential densities in the Rural General Commercial, Small Town Commercial and Resort Commercial Zones shall not exceed 10 units per acre.

.262 For the purpose of developing an air park facility only, the parcels zoned R5A that are located west of the Point Roberts Marina and east of Marine Drive, including the airstrip property, may be developed as a cluster development at a maximum density of one dwelling unit per acre.

20.72.270 Subdivision requirements.

.271 Lands within the Rural Zone District in Point Roberts shall be exempt from the provisions of the Agriculture Protection Overlay District, Chapter 20.38 WCC.

20.72.350 Building setbacks/buffer areas. (Adopted by reference in WCCP Chapter 2.)

(1) Building setbacks along Tyee Drive ~~and Roosevelt Road~~ are increased to 50 feet ~~and 40 feet respectively~~. In existing treed areas along Tyee Drive ~~and Roosevelt Road~~, a 50-foot ~~/40 foot~~ vegetative buffer comprised of existing trees shall be maintained for visual or aesthetic purposes except for necessary ingress and egress points. In ~~open~~ non-treed areas a 50-foot ~~/40 foot~~ planted buffer shall be developed as part of the normal landscape requirements for site development.

(2) Within the Small Town Commercial Zone ~~along Gulf Road~~, commercial, institutional, and mixed use building setbacks shall be reduced to 10 feet. Buildings oriented towards the street edge shall be encouraged and the front of buildings shall be designated for landscaping and pedestrian traffic.

~~(2)~~(3) In the Small Town Commercial district any storage containers or other similar temporary storage units accessory to a permitted business shall be set back 50 feet from any adjacent right-of-way.

~~(3)~~(4) The provisions of WCC 20.64.353 (Building setbacks, Resort Commercial District) shall not apply to single-family residences in the Resort Commercial District at Point Roberts.

20.72.400 Height limitations.

.401 The maximum building height within the Small Town Commercial Zone ~~along Gulf Road~~ shall be 45 feet. Height of structures shall also conform to the view corridor provisions of WCC 20.72.654 and the general requirements of WCC 20.80.675.

.402 The maximum building height in all other zones shall be 25 feet unless further restricted by the Whatcom County Shoreline Management Program. Height of structures shall also conform to the general requirements of WCC 20.80.675 where applicable.

.403 Through the variance process established in Chapter 20.84 WCC, the maximum building height for any use outside of the Small Town Commercial Zone may be increased to 45 feet under the following conditions:

(1) The resultant higher structure will not unreasonably impede views from other properties any more than would a similar structure of the same mass which conforms to the 25-foot maximum building height.

(2) Building setbacks pursuant to this chapter and WCC 20.80.200 shall be increased by one foot for each foot of building height in excess of 25 feet as applicable to all setbacks.

20.72.650 Development criteria.

20.72.651 Facility design. (Adopted by reference in WCCP Chapter 2.)

(1) All commercial and institutional use structures shall be consistent with the Point Roberts design guidelines, which are herein adopted by reference as an addendum to this chapter.

Comment [CES13]: Deleted by PRCAC

Comment [CES14]: Deleted by PRCAC to make the standard apply throughout the zone, not just along Gulf Road.

Comment [CES15]: Added by PRCAC to add setback for now allowed storage containers.

Comment [CES16]: Deleted by PRCAC to make the standard apply throughout the zone, not just along Gulf Road.

(2) All commercial and institutional structures shall screen roof-mounted mechanical equipment so as not to be visible by surrounding uses or roads.

20.72.652 Archaeological resources.

(1) Applicability. This section shall apply to regulated development activities within 500 feet of all known archaeological sites, including all recorded sites listed with the Washington State Office of Archaeology and Historic Preservation. The provisions of this section shall also apply to any archaeological resources that are inadvertently discovered in association with regulated development activities pursuant to this title; provided, that the provisions of this section may be waived if the technical administrator determines that the proposed development activities do not include any ground-disturbing activities and will not impact a regulated archaeological resource.

(2) Archaeological Resource Protection.

(a) Upon receipt of application for a development permit on properties within 500 feet of a site known to contain archaeological resources, the department shall require an archaeological resources site assessment. The site assessment shall be conducted by a professional archaeologist at the expense of the applicant or project proponent to determine the presence of significant archaeological resources.

(b) If the archaeological resources site assessment identifies the presence of significant archaeological resources, an Archaeological Resource Management Plan (ARMP) shall be prepared by a professional archaeologist. The professional archaeologist shall solicit comments from the Washington State Office of Archaeology and Historic Preservation, Lummi Nation Historic Preservation Office, and Nooksack Tribe. Comments received shall be incorporated into the conclusions and recommended conditions of the ARMP to the maximum practicable.

i. An ARMP shall contain the following minimum elements:

(A) The purpose of the project, an examination of project on-site design alternatives, and an explanation of why the proposed activity requires a location on, or access across and/or through, a significant archaeological resource; and

(B) A description of the archaeological resources affected by the proposal; and

(C) An assessment of the archaeological resource and an analysis of the potential adverse impacts as a result of the activity; and

(D) An analysis of how these impacts have been avoided; or

(E) Where avoidance is not possible, how these impacts have been mitigated/minimized; and

(F) A recommendation of appropriate mitigation measures, which may include but are not limited to the following:

1. Recording the site with the State Office of Archaeology and Historic Preservation;
2. Re-interment in the case of grave sites;
3. Covering the site with a nonstructural surface to discourage pilferage (e.g., maintained grass or pavement);

4. Excavation and recovery of resources;
5. Inventorying prior to covering of resources with structures or development; and
6. Monitoring of construction excavation.

ii. The recommendations and conclusions of the ARMP shall be used to assist the technical administrator in making final administrative decisions concerning the presence and extent of archaeological resources and appropriate mitigating measures. The technical administrator shall consult with the Washington State Office of Archaeology and Historic Preservation, Lummi Nation Historic Preservation Office, and Nooksack Tribe prior to approval of the ARMP.

iii. The technical administrator may reject or request revision of the conclusions reached in an ARMP when the technical administrator can demonstrate that the assessment is inaccurate or does not fully address the archaeological resource management concerns involved.

(c) Within 15 days of receipt of a complete development permit application in an area of known archaeological resources, the county shall notify and request a recommendation from appropriate agencies such as the Whatcom Museum, Western Washington University Anthropology Department, the Office of Archaeology and Historic Preservation, the Lummi Nation Historic Preservation Office, and Nooksack Tribe. Recommendations of such agencies and other affected persons shall be duly considered and adhered to whenever possible and reasonable. Notification shall include the following information:

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

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

iii. A site map including the street address, tax parcel number, township, range, and section of the proposed project area;

iv. 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;

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

vi. The identification of existing environmental documents that evaluate the proposed project and, if not otherwise stated on the document providing notice of application, the location where the application and any studies can be reviewed;

vii. Any other information determined appropriate by the county;

viii. 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;

ix. A statement of the limits of the public comment period, the right of each agency to comment on the application within a 15-day time period, 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

agency wishing to receive personal notice of any hearings must notify the hearing examiner's office within 15 days of the date of the notice of application.

(d) In granting development permits, the county may attach reasonable conditions to provide sufficient time and/or conditions for consultation with the Washington State Office of Archaeology and Historic Preservation, Lummi Nation Historic Preservation Office and Nooksack Tribe, and to assure that valuable information and materials are properly protected, or for appropriate agencies to contact property owners regarding purchase or other long-term arrangements. Provision for the protection and preservation of archaeological sites shall be incorporated to the maximum extent possible.

(3) Inadvertent Discovery.

(a) Whenever historic, cultural or archaeological sites or artifacts of potential significance are discovered in the process of development, work on that portion of the development site shall be stopped immediately and the find reported as soon as possible to the county.

(b) The administrator shall then notify the Washington State Office of Archaeology and Historic Preservation, Lummi Nation Historic Preservation Office, Nooksack Tribe and other appropriate agencies and shall request that an immediate site assessment be conducted by a professional archaeologist pursuant to subsection (2)(a) of this section to determine the significance of the discovery. If a positive determination is not received within 14 days of receipt of such request, or if a negative determination is received, such stopped work may resume.

(c) On receipt of a positive determination of the site's significance, the administrator may invoke the provisions of subsection (2)(b) of this section.

20.72.653 Landscaping, screening, and tree canopy retention. (Adopted by reference in WCCP Chapter 2.)

In addition to compliance with all other requirements of this title and other titles of the Whatcom County Code, development activities shall be subject to the following provisions:

(1) Landscaping.

(a) Where possible the removal of existing vegetation should be minimized in areas that possess a natural beauty.

(b) Special efforts shall be made to preserve existing stands of healthy trees throughout the area proposed for development.

(c) Long expanses of fencing should be broken up by the use of landscaping.

(d) The practice of monoculture shall be avoided. Plantings should have variety in their design.

(e) Attention should be given to the growth rate of the planting materials used and how they will relate to the site in the future.

(2) Screening.

(a) Dumpster and utility areas of commercial and institutional uses~~businesses or other use buildings~~ shall be screened pursuant to WCC 20.80.355 (Trash or garbage collection storage areas – Screening and placement).

Comment [CES17]: Added by PRCAC so that there are screening standards.

~~(a)~~(b) ~~and stored~~ Commercial storage of vehicles, trailers, or truck containers ~~in commercial areas~~ shall be screened from public rights-of-way and adjacent properties to a height of 6 feet~~,~~ using earth berms, landscaping or building wall, or living wall (i.e., fabricated wall with vertical living vegetation).

Comment [CES18]: Amended by PRCAC so that there are screening standards.

(3) Tree Canopy Retention.

(a) Permit Required for Removal of Trees. No person shall remove, directly or indirectly, any tree canopy on any property within the Point Roberts subarea without first obtaining a tree removal permit unless the activity is exempted below:

(i) Pruning and maintenance of trees of up to 25 percent of the existing tree canopy.

(b) In the RC, RGC, and STC Districts, existing tree canopy areas (as defined by the dripline of the tree(s)) may be used to meet all or part of the open space requirements of this title. If existing tree canopy areas do not fully satisfy the minimum open space requirements of the applicable zone district, the remainder of the required open space shall be subject to the landscaping requirements established in WCC 20.80.300.

(c) In the RR, TZ, and R Districts:

i. Residential Development.

(A) Lots less than one-half acre may remove 100 percent of the existing tree canopy on site; provided, that 30 percent of the pre-existing tree canopy shall be replanted.

(B) Lots greater than, or equal to, one-half acre shall retain 30 percent of the existing tree canopy area on a lot. Trees may be removed within areas to be cleared for purposes of a building site, driveways, parking areas, and areas to be landscaped, but such areas shall not exceed 5,000 square feet or 70 percent, whichever is greater, of the total lot area.

(C) On lots greater than one acre, no more than 50 percent of the existing tree canopy area shall be removed.

ii. Commercial, institutional and recreational development may use existing tree canopy areas to meet all or part of the landscaping requirements of this title.

(d) The following criteria shall be used to determine which tree canopy areas are to be prioritized for retention:

i. Stands of mature native trees;

ii. Trees on sensitive slopes, on lands classified as having landslide hazards, or high erosion hazards, as defined under the critical areas ordinance;

iii. Trees within critical areas or their associated setback and/or buffer areas as defined under WCC Title 16 or 23; or

iv. Trees with significant habitat value as identified by a qualified wildlife biologist or by the technical administrator, per WCC Title 16.

(e) A 200-meter protective buffer of existing trees and vegetation shall be maintained around the Heronry.

(f) Buffering ~~which~~ that recognizes the need for safety and the unique features of Lily Point shall be required on ~~the~~ Lily Point. No development shall take place in such areas.

(g) The county shall require that tree canopy areas to be retained are identified on a site plan and clearly flagged, or delineated, on the site. A tree canopy area retention plan must accompany a project or clearing permit application and be approved by the technical administrator before clearing activity takes place. The plan shall contain the following components:
    i. A scaled drawing identifying the following:
        (A) North arrow;
        (B) Property boundaries;
        (C) Existing structures;
        (D) Site access;
        (E) Tree canopy areas to be removed;
        (F) The outer dripline of tree canopy areas to be retained;
        (G) Critical areas including, but not limited to, slopes, wetlands, and habitat conservation areas;
        (H) Protection measures to be utilized for areas that will be undisturbed; and
        (I) Areas to be replanted pursuant to subsection (3)(i) of this section;
    ii. A planting schedule that indicates the time frame for replanting of trees as applicable; and
    iii. Provisions for maintenance and monitoring.

(h) Prior to any land clearing activity or development activity, any tree canopy areas designated for retention shall be delineated by temporary fencing, tape, or other indicators around the outer dripline of the trees. Temporary fencing, tape, or other indicators shall be clearly visible and shall be maintained for the duration of the proposed clearing or development activity. Any tree canopy areas designated for retention shall be field verified by the technical administrator before clearing activities begin. Trees within canopy areas designated for retention shall not be damaged by clearing, excavation, ground surface level changes, soil compaction, or any other activities that may cause damage of roots or trunks. Machinery, impervious surfaces, fill and storage of construction materials shall be kept outside of the dripline of tree canopy areas designated for retention.

(i) Tree canopy areas may be removed when limited to those canopy areas affected under the following circumstances:
    i. Fire prevention methods when supported by the county fire marshal;
    ii. Hazard trees, as defined in Chapter 20.97 WCC, are identified (an evaluation and determination by a licensed arborist or forester may be required);
    iii. Encroachments where the trunk, branches or roots would be, or are, in contact with main or accessory structures; or
    iv. Where installation and/or maintenance of roads or utilities would unavoidably require removal or cut through the root system.

(j) In the event that tree canopy areas in excess of the applicable threshold must be removed to facilitate reasonable use of the site, or to eliminate hazard trees, not less than two replacement trees shall be planted for every tree removed. Replacement trees shall:
    i. Be of the same, or similar, native species as those trees removed from the site;

ii. Be planted to re-establish tree clusters where they previously existed, or to enhance protected tree clusters;
iii. Be planted in locations appropriate to the species' growth habitat and horticultural requirements; and
iv. Be located away from areas where damage is likely.

(k) If any trees within canopy areas designated for retention are damaged or destroyed through the fault of the applicant, agent or successor, the applicant, their agent or successor shall restore the site pursuant to a restoration plan approved by the county.

(l) The county may require a bond or other security in an amount not to exceed 125 percent of the merchantable timber to guarantee retention of existing trees within designated tree canopy areas during construction. In the event of a dispute between the landowner and the county over the established value, an assessment will be made by a professional forester or arborist whose selection will be made by mutual agreement between the county and the landowner. The fee for the services of the professional forester or arborist shall be paid by the landowner or responsible party. In the event any trees designated to be retained are removed, the county shall require that sufficient trees be replanted to replace those previously in existence. In the event that replanting does not occur, the county may enforce upon any bond posted. Each tree removed or destroyed shall constitute a separate violation.

20.72.654 Site design/view corridors. (Adopted by reference in WCCP Chapter 2.)
Scenic views and open space shall be considered in all developments and the site plan designed to ensure view access is maximized while maintaining reasonable use of the development site.

20.72.655 Public restrooms and trash facilities.
All new and redeveloped commercial establishments on Point Roberts that are open to the public shall make adequate provision for trash disposal and handicapped-accessible public restrooms. Establishments with less than four employees on premises at one time may utilize a unisex facility. Commercial complexes may provide common restrooms and/or trash disposal, or two or more establishments in one commercial area may jointly provide for such facilities, subject to appropriate agreements or covenants to ensure the facilities are available and properly maintained. Dumpsters within commercial areas shall be screened from public view using landscaping or building walls.

20.72.656 Vehicular access.
Driveways and curb cuts shall be minimized along all collector roads. Each existing lot shall be allowed only one driveway or curb cut; adjacent lots are encouraged to share access points. In new developments, lots or leased sites shall be oriented toward internal driveways, parking areas, or roads, with limited access to collector roads. These access points should normally not be closer than 400 feet apart.

20.72.657 Non-vehicular access.

(1) Commercial development or redevelopment of any parcel along Tyee Drive, Gulf Road, Marine Drive and APA Road shall be required to install appropriate street improvements along the road frontage of the parcel which may include curbs, gutters, sidewalks, boardwalks, benches, lighting, and appropriate provisions for bicycle and equestrian facilities in accordance with applicable Comprehensive Plan policies, land use regulations and current road standards. Planting of street trees along the road frontage(s) of the subject parcel shall be required. These requirements may be waived if a local improvement district, road improvement district, or transportation benefit district is formed for the purpose of providing the aforementioned improvements.

(2) Commercial development of any parcel along a collector street shall require a no-protest agreement to participate in a local improvement district, road improvement district, or transportation benefit district.

20.72.658 Drainage.

All development activity within Whatcom County shall be subject to the stormwater management provisions of WCC 20.80.630, Stormwater and drainage, unless specifically exempted. No project permit shall be issued prior to meeting the stormwater management requirements.

20.72.659 Parking.

Parking shall conform to the requirements of WCC 20.80.500 unless otherwise specified in this section.

Within the Small Town Commercial Zone:

(1) Parking lots shall be provided ~~only~~ at the rear or side of buildings, except, when infeasible due to site conditions, alternate on-site parking locations may be allowed.

(2) New parking lots shall connect with existing parking facilities and allow for connection to future lots where applicable.

(3) Minimum parking standards may be reduced if a shared parking agreement has been filed with the County Auditor's office establishing a shared parking lot for land uses with noncompeting hours of operation, or for multitenant retail and commercial facilities; provided, the parking lot is not located further than 700 feet from any of the uses it is intended to serve.
   (a) The minimum required parking in shared facilities shall be based on the land use with the highest parking demand.
   (b) Mixed use development with similar operating hours may be required to submit a parking demand study to determine if parking can be combined.

(4) Minimum parking standards along Gulf Road may be reduced to the minimum required emergency, ADA, and/or service parking only; provided, that it can be demonstrated that a public benefit parking area or other similar consolidated parking concept will adequately serve the proposed use.
   (a) A parking demand study shall be submitted which determines whether all land uses intending to utilize the consolidated parking area will be adequately served.
   (b) Pedestrian walkways connecting the proposed use with a consolidated parking area shall be provided.

Comment [CES19]: Amended by PRCAC to allow some flexibility in parking location.

Amended by staff to clarify that "infeasible" means due to site conditions rather than financial or desire.

20.72.670 Signs and flag poles.

(1) Signs in the Small Town Commercial (STC), Rural General Commercial (RGC), Rural Industrial Manufacturing (RIM), and Resort Commercial (RC) Zones are permitted subject to the provisions of WCC 20.80.410 and 20.80.470, and subject to the following:

(a) Not more than one freestanding sign is permitted on a lot of record, and a freestanding sign shall have no more than two sign faces. Freestanding signs shall not exceed 12 feet in height and shall not exceed 40 square feet in area per sign face.

(b) Not more than 10 square feet of sign area per sign face may be internally illuminated. Characters within the internally illuminated sign area shall be ~~achromatic and~~ no larger than six inches tall. Signs may be externally illuminated.

(c) Single-faced signs placed on walls or eaves of business establishments shall not exceed a total of 40 square feet per business establishment.

(d) Signs shall not rotate or otherwise be in motion, and copy or pictures on the sign shall not flash, scroll, or display a video or animated image.

(e) For purposes of this section, any sign erected or existing as of July 1, 2016, that has a valid permit from the department, but does not conform with the provisions of this section, is a nonconforming sign. A nonconforming sign may be maintained only by painting or refinishing the surface of the sign face or sign structure so as to keep the appearance of the sign as it was when the prior permit was issued. Any structural or other substantial maintenance to a nonconforming sign shall render the prior permit void and shall result in the reclassification of such sign as an illegal sign. Where there are conflicts between this section and Chapter 20.83 WCC, the provisions of this section shall prevail.

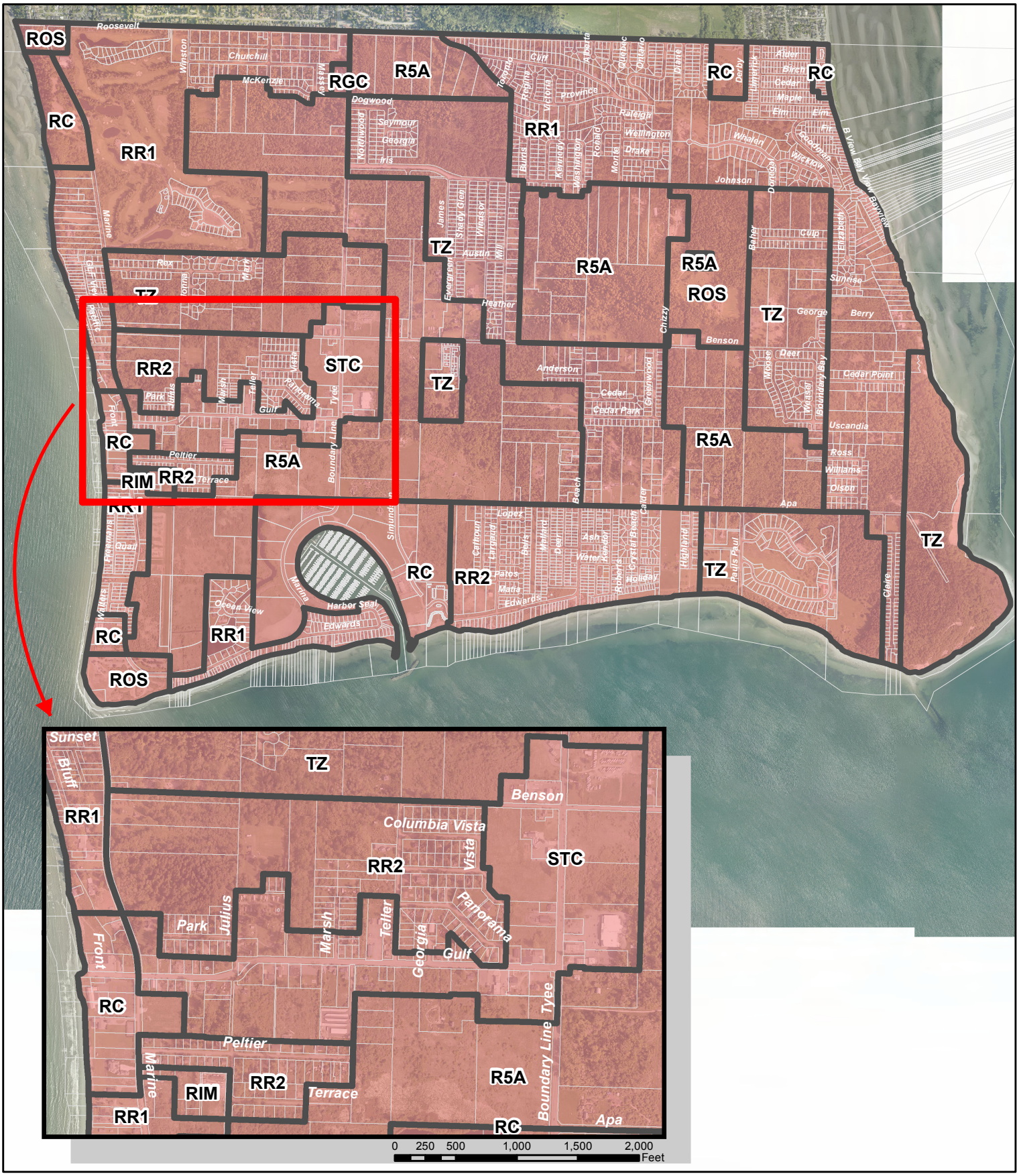
(2) Flag Poles.

(a) The height of flag poles shall not exceed 20 feet.

(b) Flag poles on top of buildings shall not exceed 10 feet above the roof top.

Comment [CES20]: Deleted by PRCAC to allow colored font.

Point Roberts



Legend

- Zoning Boundaries
- Rural Community Comprehensive Plan Designation

USE OF WHATCOM COUNTY'S GIS DATA IMPLIES THE USER'S AGREEMENT WITH THE FOLLOWING STATEMENT:

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0 0.125 0.25 0.5 0.75 1 Miles

Exhibit C – Excerpts of PRCAC Minutes Regarding WCC 20.72 Amendments

February 20, 2019 — no 20.72 votes

March 9, 2019 (special) — no 20.72 votes

March 19, 2019 — no 20.72 votes

April 1, 2019 (special) — no 20.72 votes

April 18, 2019 — no 20.72 votes (STF not present)

May 4, 2019 (special) — no 20.72 votes (discussion; no votes) (STF not present)

May 16, 2019 — no 20.72 votes (STF not present)

June 8, 2019 (special) — 20.72 discussion:

- .135 (2) - Under .130 Administrative Approval Uses, section .135 (2) limits the time an RV can be parked on an otherwise undeveloped residential property to 120 days per year. There is a fee (not in this provision) of $1200/year. PRCAC Questions: What is that $1200 for? What are the funds used for? Is that fee necessary or appropriate when considering that the property owner would have paid for the property, paid to have septic installed and paid to have water and electric service installed. Just having an RV on a property is not a cheap or simple option. The PRCAC may propose that the fee be lowered, perhaps to $300/year.
- .130 (5) - This section limits the property owner to one "Accessory" structure, namely a personal storage building no larger than 200 square feet. There was discussion of proposing a larger size, but the consensus was to propose permitting no more than two personal storage buildings, rather than just one.
- .154 - Under .150 Conditional Uses, in section .154, it was proposed to remove "shall include horse racing facilities and pari-mutuel wagering" [and presumably the rest of the same clause]: "In the Rural District, private commercial sports facilities and clubs permitted as conditional uses under WCC 20.36.165~~ shall include horse racing facilities and pari-mutuel wagering~~ [*as regulated and licensed by the Washington State Horse Racing Commission*], together with the usual accessory uses including club house, food and beverage service, restaurant and stables."
- .202 - Under .200 Prohibited Uses in Maple Beach, the suggestion was made to get input from the Maple Beach Residents Association regarding the prohibition on rooming houses, taverns and commercial parking areas in Maple Beach. DG will check with Olav Grabi and/or Paul Barrister on this.

- .204 - Under .200 Prohibited Uses in the "Small Town Commercial Zone District along Gulf Road only", there was a proposal to remove "along Gulf Road only" so that the STC restrictions would also apply along the relevant section of Tyee Drive.
- .204 - Under .200 Prohibited Uses, in section .204 (1), mini-storage facilities are prohibited. There was a proposal to amend .204 (1) to add "no additional" (as suggested by George Wright) in view of the existence of such property uses currently in the STC district:
    - 204(1) "No additional mini-storage facilities."
- There was a further proposal to add a percent limit on the number of properties in the STC district which could be used for mini-storage facilities.
- .204 - Under .200 Prohibited Uses, in section .204 (3), to make the restriction easier to understand, there were suggestions to separate the repair type restriction from the storage type restriction, and to re-write the provision as:
    - .204(3)(a) "Facilities for service, repair or washing of motorized vehicles and equipment, motorcycles, marine, farm implements, light and heavy equipment, and recreational vehicles" and
    - .204(3)(b) "Facilities for commercial storage or sale of motorized vehicles and equipment, motorcycles, marine [vessels or equipment], farm implements, light and heavy equipment, and recreational vehicles.
- .204 - There was a final proposal that each member send comments and proposed language for .204 to DG for him to review with Cliff Strong.

June 18, 2019 (special) — 20.72 discussion:

- .350 - Building Setbacks/Buffer Areas - The prior meeting ended with brief discussion about setbacks under section .350. **No changes were proposed.**
- .401 - Under section .400 Height Limitations, **no changes were proposed** to this section.
- .653(2) - Under section .650 Development Criteria, section .653 covers Landscaping, Screening, and Tree Canopy Retention. In part (2) Screening, at the end of "(a)", LH proposed to amend (as struck out or underlined): (a) Dumpster and utility areas of businesses or other use buildings in commercial areas shall be screened, using earth berms, landscaping, ~~or~~ building wall, or living wall (i.e., fabricated wall with vertical living vegetation).
- .653(3) - Under section .650 Development Criteria, section .653 covers Landscaping, Screening, and Tree Canopy Retention. In part (3) Tree Canopy Retention, in "(e)", the reference to "the Point" seemed colloquial and/or vague, it was suggested to clarify the Point as being Lily Point: (e) Buffering which recognizes the need for safety and the unique features of Lily Point shall be required on ~~the~~ Lily Point. No development shall take place in such areas.
- .656 - Vehicular Access - LH suggested that we ask Cliff Strong about options for revising this provision.
- .659 - Parking - LH suggested that we notify the public that this section will be discussed at the regular meeting on June 20, 2019, to elicit more public input before any revisions are drafted by the PRCAC.
- In connection with Parking, Allison Calder suggested that 10.24.0304, .0404 and .0600 be discussed as well. These sections deal with on street parking, including on Gulf Road. It could useful to ask Cliff Strong about modifying these provisions.

- Allison Calder raised an issue concerning .135 (discussed at the June 8, 2019 special meeting), suggesting that it be re-written to make clear that properties with a house can have an RV parked on the property.
- .670 - Signs and Flag Poles - LH suggested that this section be limited to the Small Town Commercial (STC) zone, and that it applicability to "Rural General Commercial (RGC), Rural Industrial Manufacturing (RIM), and Resort Commercial (RC) Zones" be removed.
- In connection with restrictions on lighted signs, Judson Meraw suggested that provisions be added to limit light pollution in Point Roberts. He proposed that there be no (new) signs that light up the night sky.

June 20, 2019 — 20.72 discussion:

The PRCAC members discussed the following sections of WCC 20.72:

* .659 - Parking - In .659(1), in STC, parking "shall" be at the rear or side of the building. There was discussion of revising the language to make it preferred to have parking at the rear or side, but not an absolute requirement if that would destroy the viability of the project:

  Within the Small Town Commercial Zone:

  (1) When feasible, parking lots shall be provided only at the rear or side of buildings; however, when necessary to allow permitting of the project, alternate parking lot locations may be approved.

- In .659(2), SW questions the clarity of the terms "connect" and "connecting". SW will ask Cliff Strong about his concerns.
- In .659(4), there is mention of sidewalks. SW has an issue about sidewalks on one side of Gulf Road that he will raise with Cliff Strong.
- In connection with parking, Allison Calder brought to the PRCAC's attention that there are restrictions on Point Roberts in WCC 10.24.030 (Gulf Road), 10.24.040 (Front Street (gone!)), and 10.24.60 (Edwards Drive). There is a suggestion to delete these restrictions. Even though this is not part of 20.72, this will be raised with Cliff Strong.
- Design Guidelines - SW suggested having a high-level discussion about how to address the Design Guidelines which were incorporated by reference into WCC 20.72 in 2017. He noted that PDS treats the "guidelines" as law and they may contain too many mandatory provisions.
- Referring back to Judson Meraw comments that the June 18, 2019 special meeting regarding light pollution in Point Roberts, LH drew attention to the Lighting provisions of the Design Guidelines. There was discussion about incorporating the standards of the "Dark Skies Initiative". SW agreed to find and share the language of the Dark Skies Initiative.
- LH raised the question whether any issues/problems have come up as a result of the Design Guidelines; whether is anything in need of "fixing". There do not appear to be any issues that have come up at the PRCAC when reviewing recent projects. SW agreed to ask Cliff Strong if the Design Guidelines have caused problems with any commercial developments in Point Roberts.
- For now, LH moved that the Design Guidelines be left as they are. TP seconded. Approved.
- LH will prepare a draft of WCC 20.72 with proposed changes to provide to Cliff Strong before the July 9, 2019 special meeting, and to share locally. LH intends to prepare this by June 26, 2019.

July 18, 2019 — 20.72 discussion (meeting with Cliff Strong in attendance):

Administrative Approval Uses:

- .135(3) - Regarding screening, Isobel Brophy, asked how high screening needs to be; Mr. Strong noted that this can depend on the geography and distance from the road, but that in general the fence or screening should be high enough to obscure the item at issue, such as blocking view of RVs.
- .135(5) - The number of "accessory structures" could be increased from one, but allowing two or more would tend to encourage use of properties without homes and extended time with RVs; generally that is not what is favored and encouraged.

Conditional Uses

- .151 - Having "hotels, motels and timeshare condominiums" as Conditional Uses could be changed if there were community support to permit such uses more generally.
- .154 - Deleting horse racing and pari-mutuel betting facilities from "sports facilities" could be done, but those items would still be interpreted as being only conditional uses.

Prohibited Uses

- .202 - The prohibition of rooming houses, taverns and commercial parking in Maple Beach could be changed to follow standard code in Whatcom County if residents, particularly those in Maple Beach supported the change.
- .204(1) - There was considerable discussion about the prohibition of mini-storage facilities. The existing storage business on Gulf Road is "grandfathered in" as pre-existing non-conforming use. If there was some tolerance for such uses, they could be governed under "Conditional Uses," for example, if permissible with appropriate screening.
- .204(3) - Separating the auto service and vehicle storage prohibitions into two provisions makes both provisions clearer.
- There was considerable discussion in connection with Prohibited Uses on the issues related to the compliance action regarding 1480 Gulf Road. There was no clear way to make the storage of commercial vehicles and truck containers permitted without opening up the entire Gulf Road commercial area to such uses.
- .350 - Regarding building setbacks, the applicability to Roosevelt Road could be removed if that was what the community wanted.
- On the Design Guidelines, Mr. Strong noted that they are guidelines. The mandatory "shall" usage in the Design Guidelines does not alter their status as only recommended guidelines. They provide a framework for property owners to use in their planning and for the PRCAC to use it is review of new commercial projects.
- .659 - Parking - The PRCAC had noted provisions of WCC 10.24 that should be changed. Mr. Strong commented that those limitations are under the purview of Whatcom County Public Works (CPW). Those provisions could be changed. Regarding covering ditches to install sidewalks, CPW would have practical concerns about maintaining draining ditches which could prevent such action.
- Mr. Strong suggested that the zoning change process should involve getting out a map of the community, drawing out what uses one wants where, and then making the rules fit those goals.

July 27, 2019 (special) — 20.72 discussion:

For the working session, the members present took up the compilation prepared by SW showing proposed changes, questions, and comments from PDS (Cliff Strong). The compilation included a new section .052 proposed in an e-mail from DG earlier that day.

New 0.52 in Permitted Uses:

In the STC zone, licensed business related storage of containers, wheeled trailers and other movable units provided such storage units are screened from view. The number of such units shall not exceed two (2) per business unless approved through an application for conditional use.

SW proposed some changes to the new provision:

In the STC zone, licensed business related storage of containers, wheeled trailers and other movable units provided such storage units are screened from view per standard Whatcom County screening rules and setback from the street by 50 feet. The number of such units shall not exceed two (2) per business unless approved through an application for conditional use.

The members present discussed the pros and cons of this provision. There was discussion about whether "licensed business related" should be removed from the draft section. There was further discussion about whether this change would effectively address the enforcement action regarding 1480 Gulf Road since, currently, the Potty Wagon business is not known to have an office at that location, and the storage containers are not believed to be connected to a business at that location. With respect to 1480 Gulf Road, these considerations were complicated by the point raised earlier by Pam Sheppard that 1480 Gulf Road is only permitted to have one business in the building on the property and it seems that the owner has not applied for a license to have multiple businesses operating from that building.

August 15, 2019 — 20.72 discussion:

Scheduled 2 more special meetings in lieu of discussion at this meeting.

August 24, 2019 (special) — 20.72 discussion:

The committee members reviewed all of the sections of WCC 20.72 which had been previously discussed at earlier meetings, as well as comments to those and other sections provided to the PRCAC by the PRRVA and the PRTA. Informal votes were taken on each section at issue, whether it was to be left unaltered, modified or deleted.

The results of the Working Session are set forth in the attached copy of WCC 20.72 indicating which sections were addressed (shown in bold type), with the outcome (no action taken, revisions, deletions). Changes to code provisions are in red and deletions are struck through. In all cases in which the vote was not 5:0, the "dissenting" vote was from SF.

August 29, 2019 (special) — 20.72 discussion:

Each provision of WCC 20.72 which the PRCAC has reviewed or which has been the subject of significant comments from PRRVA, PRTA, CoC or individuals, was read or described to the meeting attendees and further discussed. In addition to the notes included in the attached copy of revised WCC 20.72, the following comments came up during the discussions:

.010 — PRTA suggested additional language to add to the Purpose section. DG suggested this be reviewed at a later date.

.052 — DG suggested that the PRCAC approve the new provision for storage units and have it reviewed by PDS (Cliff Strong). LH reiterated her suggestion to remove "licensed business related" from the provision to allow greater flexibility. Samantha Scholefield asked why local businesses need more storage. Erica Conlan expressed concern about enforcement of this new provision. Martin Hogan commented that he has never seen businesses needing more storage space than their buildings provide, and wondered whether this was enabling mini-storage units. SF noted that this would not create small scale mini-storage facilities if the "licensed business related" language is retained. LH noted that Rawganique needed 14 additional storage units and that that need contributed to the business' move to Blaine.

.053 — There was a question whether allowing two 200 sq. ft. storage sheds was permissible. PRCAC will seek feedback from PDS (Cliff Strong).

.130(5) — The change would allow for two 200 sq. ft. storage sheds for properties with RVs. They would have to be screened.

.151 — The question of permitting hotels in Resort Commercial zones was revived. It would allow up to 16-room hotels on properties in the few areas zones as Resort Commercial. The PRCAC voted 4:1 (SF "dissenting") to approve this change. (In response, SF drafted a new section .157 to provide this option, in addition to revising .151 to exclude Resort Commercial from its scope.)

.154 — This change just removes specific redundant language.

.156 — This provision was added for the Conditional Uses formerly part of the Prohibited Uses of .204.

.202 — DG did not have a chance to reach the MBRA to ask their position on the prohibition of boarding houses, taverns and commercial parking lots. One resident wrote to LH to express support to allow hotels in Maple Beach. The PRCAC agreed to take no action at this time, pending input from MBRA.

.204 — PRCAC voted earlier (4:1) to make the Prohibited Uses dog kennels, vehicle storage, repair, cleaning and sales facilities and RV parts to be Conditional Uses (see .156). It was mentioned that requests for such businesses in the STC zone would come before the PRCAC for review and positive or negative recommendation to PDS. SF and LH disagreed on the significance of PRCAC as a potential roadblock to approval of such Conditional Use requests. Samantha Scholefield questioned why we would permit such businesses if a major business goal is to increase tourism. Martin Hogan questioned whether there would be sufficient public input against such uses (in comparison to the strong reaction to the radio towers). Erica Conlan commented that part-time residents have a hard time attending meetings to contest plans they object to. She further questioned how these proposed changes could be consistent with the vision for Point Roberts. Martin Hogan suggested that an economic development plan should be updated before significant changes like the one to .204 is made. Allison and Ken Calder commented that the change was being implemented to resolve Lorne Nielson's issue at 1480 Gulf Road.

.350 — It was noted that the parenthetical heading should be removed, as agreed earlier for other sections. PRCAC earlier agreed to remove the deeper treed setbacks along Roosevelt Road. The setback would revert to 25 feet on Roosevelt Road.

.400 — The "along Gulf Road" limitation would be removed to have the 45 foot height limitation apply in STC on Gulf Road as well.

.653 — In the section on screening ((2)(a)), in which PRCAC previously agreed to propose including "living walls", it was also agreed to add that screening be used to block the view of stored containers,

trailers or vehicles. No change was made to tree retention provisions. A typographical error was corrected in (e).

.659 — In subsection (1), it was previously agreed to encourage parking at the rear of businesses in STC, but to allow alternatives when the parking requirement would prevent the project from proceeding.

.670 — There was further discussion about LH's proposal to remove the achromatic requirement for internally lit signs and the prohibition of moving signs. PRTA has reviewed these issues, but PRRVA and CoC have not yet had a chance to consider the issue. No action was taken at this time.

Design Guidelines — LH suggested that a change be made, if needed, to make sure that property "improvements", such as the total re-build of the store at the Chevron station, be required to come before the PRCAC during the permitting process. DG suggested that that particular project was slated to come before the PRCAC, but that that previous Chairperson did not get it on a meeting agenda at the time.

10.24 — On the plan to seek a change to the prohibition on parking along much of Gulf Road, Martin Hogan commented that the parking-free shoulders give a place for pedestrians and cyclists. PRCAC members noted that if parking on both sides of Gulf Road is not approved, parking on one side would still be an advantage.

September 19, 2019 — 20.72 discussion:

DG reported that he had spoken with Cliff Strong of Planning and Development Services (PDS). Mr. Strong did not want to provide oral comments on the PRCAC's proposed changes until after written comments have been completed. In addition, he noted that the changes are being reviewed by others in PDS (in Engineering and in Code Enforcement) and by County Public Works (CPW) (regarding the parking changes). It could be 2-3 weeks before review is completed and a response is provided to the PRCAC.

September 28, 2019 (special) — no 20.72 votes or discussion

October 17, 2019 — no 20.72 votes or discussion

October 24, 2019 (special) — 20.72 discussion:

Cliff Strong of PDS attended the Special Meeting to talk about the comments from his office and other County agencies on the changes to WCC 20.72 proposed by PRCAC in late August 2019. He noted that most of the changes were found to be acceptable, but noted three areas of particular concern:

Making vehicle repair, storage, etc. a conditional use in the STC zone, rather than being prohibited, is contradictory to the vision developed by the community and set forth in Subarea Plan. The zoning code must be consistent with the Sub Area Plan. If this proposed change is maintained, the Sub Area Plan must also be amended.

Allowing more than one storage unit on properties that do not have a "primary use" (e.g., a house) is a problem. This is not allowed anywhere within Whatcom County. Building Code Enforcement is concerned that storage units without a primary use on the property will eventually be used as a residence — which would be illegal and an enforcement issue. SW suggested that the provision could

be changed to require a primary use on the property. SW noted that allowing more storage units on a property could alleviate the need for more mini-storage units in Point Roberts.

The proposed parking changes were referred to WCPW which had objections. WCPW noted that parking on the prohibited areas of Gulf Road would create hazards for pedestrian traffic in the STC zone which is intended to be "pedestrian friendly". SW asked how the PRCAC could make a case for the proposed change. Mr. Strong suggested that the request should be accompanied by drawings, plans, etc. to show how the proposed change would affect pedestrians, etc. [QUESTION: Was this plan to be about "regular" parking along Gulf Road, or about working to establish a shared parking lot somewhere in the STC zone?]

At this point, Mr. Strong reviewed each change in WCC 20.72 proposed by the PRCAC and the comments from PDS on those changes. At the conclusion of this part of the discussion, Mr. Strong said he would revise his earlier document with updates based on his better understanding of the PRCAC's intentions behind those changes. When received, a copy of that update response from PDS will be attached to these Minutes.

November 23, 2019 — 20.72 discussion:

SW noted that discussion is needed on the Tree Removal rules (e.g., $40 tree removal permit fee; Hazard Tree rules) and parking on Gulf Road, possibly on one side of the street. We should have one more special meeting to review WCC 20.72 issues. SW has asked for community feedback on the Tree Removal rules.

LH noted that we will have to have a special meeting on this topic.

December 19, 2019 — 20.72 discussion:

On November 8, 2019, Cliff Strong of PDS sent the PRCAC a second version of the PRCAC's proposed changes to WCC 20.72 with updated changes and comments from PDS. SW and SF had reviewed the changes and comments from Mr. Strong and provided their comments to the other members; copy attached.

At the meeting, the members reviewed the latest version of proposed changes to WCC 20.72:

Section .010 — With removal of "Above all" from the start of the fourth paragraph, the new additional Purpose language was approved 4:0.

Section .051 — Regarding the PDS language of allowing hotels etc. of "any number of units", it was decided to ask Mr. Strong why this open-end language was proposed. LH thought there could be problem setting a limit. SF was concerned that no stated limit could lead to maximal hotel structures (within the confines of other zoning or practical limitations (e.g., setbacks, septic)).

Section .102 — There was discussion to clarify the meaning of "two or fewer storage containers or other similar temporary storage units if accessory to a permitted business on the same lot", with respect to a single property with more than one businesses. It is understood to mean that each such business can have up to two storage containers. Ms. Baxter asked that such containers be screened from view. SW noted that that is dealt with elsewhere in WCC 20.72.

Section .151 — PRCAC members had no issue with the conditional uses in Resort Commercial district.

Section .152 — PRCAC members had no issue with the conditional uses in Rural district.

Section .154 — On the new "Conditional Use" businesses in the Small Town Commercial district, there was again concern about the hotels etc. with "any number of units". SF continued to question why the PRCAC was proposing to move RV parks and vehicle repair type businesses from "Prohibited" to "Conditional". SW suggested that PRCAC ask that PDS inform the PRCAC of all conditional use requests so that more of the community can be aware of the requests beyond those required to be notified. LH suggested that a PRCAC member should make it their business to inquire regularly to learn about any such requests.

Section .204 — On the reduced scope of "Prohibited Uses" in the Small Town Commercial district, SF renewed his concern about the changes agreed to earlier by a 4:1 vote.

Section .350 — PRCAC members had no issue with the new provision at (3) regarding setback for storage containers. Vote 4:0.

Section .653 — Regarding the proposed Tree Canopy provisions at (3) and Hazard Tree provisions at (4), the PRCAC members preferred to strike these possible changes for possible reconsideration later. Vote 4:0.

Parking — It was noted that WCPW did not like the PRCAC proposal to allow parking along Gulf Road. Ms. Calder of the PRRVA earlier suggested seeking approval for parking on one side of Gulf Road. The PRCAC deferred this issue to 2020.

January 23, 2020 — 20.72 discussion:

Rather than go through a few final amendments to the set of changes to WCC 20.72, it was decided to do that in a separate special meeting. The special meeting will take place on Monday, January 27, 2020 at 6 pm in the Community Center. The meeting will probably end at 7 pm due to member availability.

January 27, 2020 (special) — 20.72 discussion:

The limited purpose of this special meeting of the PRCAC was to address WCC 20.72, including possible further amendments to WCC 20.72, and possible review of a description of the zoning changes for local publication.

On the first point, SW noted that there were some questions raised by Planning and Development Services (PDS) to the final set of changes to WCC 20.72 and SW suggested that the PRCAC promptly address those remaining issues from its 2019 work. The following issues were discussed:

a) 20.72.010 – Purpose — Mark Robbins of PRTA had drafted language to include in the introductory portion of WCC 20.72 which the PRCAC earlier agreed to include. Cliff Strong of PDS suggested that this new language was more appropriate for inclusion in the Sub-Area Plan. The PRCAC members present voted 3:0 to withdraw this proposed change and to consider the language at some later time for inclusion in the Sub-Area Plan.

b) 20.72.100 – Accessory Uses — PRCAC had noted that there is no limit on the number of under-200 sq. ft. storage sheds, if they meet all other code requirements, and asked PDS whether this should be directly stated somewhere in 20.72 somewhere. PDS' comment was that it does not need to be said anywhere. It is based on the existing code for the underlying zones, which does not put a limit on them as accessory uses. The PRCAC members present voted 3:0 to accept the PDS recommendation.

In this context Heidi Baxter suggested that unpermitted sheds should be allowed even when there is no permitted structure on a property. She thought this could promote construction of tiny houses to provide low-cost housing in Point Roberts.

c) 20.72.051 – Hotels in Resort Commercial — In response to earlier discussion when Cliff Strong of PDS was present, PDS proposed changing .051 to read: Hotels, motels, and timeshare condominiums "of any number of units" were permitted uses in the Resort Commercial zones. SF said that he did not think that the PRCAC had meant to propose having no limit on the number of units. Allison Calder commented that the Sub-Area Plan supports the presence of public accommodations in Point Roberts and that 20.72 must be consistent with the Sub-Area Plan. Ms. Calder also noted that WCC 20.64.050 limits the number of units to 16 or fewer. The PRCAC members present voted 3:0 to seek guidance from PDS on whether WCC 20.72.051(2) was redundant and unnecessary in view of other existing requirements.

d) 20.72.102 – Storage Containers — The PRCAC had added to conditional uses in the STC zone the presence of two or fewer storage containers or other similar temporary storage units if accessory to a permitted business on the same lot. This led to a question whether that could be interpreted as only 2 for the whole property, or, as intended, as up to 2 for each permitted business on the property. To clarify, the PRCAC members present voted 3:0 to change the proposed language to read "if accessory to <u>each</u> permitted business".

e) 20.72.204 – Commercial Storage of Vehicles — Early on, the PRCAC had voted 4:1 to change the prohibition of having commercial storage of vehicles in the Small Town Commercial (STC) zone (.204) to, instead, be a conditional use in the STC zone (in new .154). PDS noted that this would contradict statements in the Sub-Area Plan. The PRCAC members present voted 3:0 to keep these uses as prohibited in the STC zone under .204.

f) 20.72.670 – Signs — The PRCAC earlier considered removing the requirement that internally illuminated signs be "achromatic." However, there had never been a direct vote on that issue once all the members had reached their final position on the question. SF reiterated his position that we do not need multicolored illuminated signs; that consumers can find all the local businesses just fine with current signage. The PRCAC members present voted 2:1 to remove "achromatic" from the internally illuminated signage requirement.

February 21, 2020 (special) — no 20.72 votes or discussion:

February 26, 2020 — no 20.72 votes or discussion:

SF noted that County Executive Satpal Sidhu commented when he was in Point Roberts that the PRCAC should pursue its current limited changes to WCC 20.72, but should also plan to take a much more comprehensive review with bolder changes as the outcome.

SW reported on a suggested from Cliff Strong at PDS that the PRCAC provide Mark Personius with excerpts from PRCAC Minutes which describe the rationale from the changes to WCC 20.72 being proposed by the PRCAC. Mr. Personius would use that information when he describes the proposed changes from PRCAC and the separate approach to WCC 20.72 proposed by the PRIBC to County Council at their March 10, 2020 meeting. SF will review the Minutes to identify such descriptions.

July 16, 2020

.102 (1) PDS wants to add: "Storage containers do not include truck trailers."

- *SW and SF felt that goes against our initial goal of allowing George's trailer as a storage container.*
- *PRCAC 07/16/2020 -- Reject ban on truck trailers VOTE 3:0*

.102 (2) PDS added this.

- *PRCAC OK*

.135 (4) "Lots or recreational vehicles shall not be leased or rented out for recreational use or permanent or temporary habitation, except in permitted recreational vehicle parks."

- *SBW and STF like it, as it means that only business owners' vehicles are allowed (e.g. no "rentals").*
- *PRCAC 07/16/2020 -- Reject the prohibition of renting or leasing said RV etc. -- VOTE 3:0*

.151 In the Resort Commercial District:

(1) Dry boat storage, including stacked boat storage, and boat trailer storage associated with a marina.

- *PRCAC 07/16/2020 – 1) Keep Conditional -- VOTE 2:1 2) QUESTION: PDS/Cliff Pros/Cons of Administrative instead.*

.154 In the Small Town Commercial District:

(1) Three or more storage containers or similar temporary storage units per lot if accessory to an approved commercial use on the same lot. Storage containers do not include truck trailers.

- *PDS was concerned that "3 or more" could allow, even under a CUP, a large number of storage containers thus creating a storage business which our vision doesn't want. SW and SF agree that "3 or more" is a loop hole under the Conditional Use flag. It could allow, if the applicant prevailed, to have many storage containers (a whole lot full?), defeating our goal of allowing some storage by businesses but not allow new open ended storage facilities. Perhaps say "up to 2 per business"?*
- *SBW and STF proposes eliminating "no truck trailers…" as that violates our vision.*
- *PRCAC 07/16/2020:*
    - *1) Use "not to exceed 3" and*
    - *2) remove "Storage containers do not include truck trailers" (also see .102 (1) -- VOTE 3:0*

.204 The following uses are prohibited in the Small Town Commercial Zone District

(1) Animal kennels, except as allowed pursuant to WCC 20.72.154(2).

- *SW and SF think this a needed change; limit it to "groomers" only.*
- *PRCAC 07/16/2020 – Approved -- VOTE 3:0*

(3) Facilities for commercial rental, sale, storage, service, repair, or washing of motorized vehicles and equipment, motorcycles, marine vessels or equipment, farm implements, light and heavy equipment, or recreational vehicles .

- *SW and SF think this is a good change.*
- *PRCAC 07/16/2020:*
    - *1) Approve adding "rental" -- VOTE 3:0:1(abstained).*
    - *2) Voted 2:2 Motion to discuss possible loss of repair biz in future.*
- *Subsequent PRCAC meeting (8/20/2020) discussed that the PR Subarea Plan may preclude eliminating the prohibition until we can agree on new (TBD) subarea Plan changes.*

20.72.350 Building setbacks/buffer areas. (Adopted by reference in WCCP Chapter 2.)

(1) In the Small Town Commercial district any storage containers or other similar temporary storage units accessory to a permitted business shall be set back 50 feet from any adjacent right-of-way.

- *PRCAC 07/16/2020 -- No comment needed*

20.72.653 Landscaping, screening, and tree canopy retention. (Adopted by reference in WCCP Chapter 2.)

(1) Screening.
    (a) Dumpster and utility areas of commercial and institutional uses shall be screened pursuant to WCC 20.80.355 (Trash or garbage collection storage areas – Screening and placement).
    (b) Commercial storage of vehicles, trailers, or truck containers shall be screened from public rights-of-way and adjacent properties to a height of 6 feet using earth berms, landscaping or building wall, or living wall (i.e., fabricated wall with vertical living vegetation).

- *PRCAC 07/16/2020 -- No comment needed*

20.72.659 Parking.

(1) Parking lots shall be provided at the rear or side of buildings, except, when infeasible due to site conditions, alternate on-site parking locations may be allowed.

- *PRCAC 07/16/2020 -- No comment needed*

Exhibit D

Written comments from Thomas O'Brien

From: Point Roberts Independent Business Council [mailto:pointrobertsibc@gmail.com]
Sent: Thursday, October 08, 2020 12:19 PM
To: PDS_Planning_Commission
Subject: Point Roberts Special District 20.72

To Whom It May Concern,

The PRIBC first identified in Mid-May of 2019, the glaring inconsistencies and rampant socio-economic disenfranchisements which are deeply embedded within 20.72, and the risks which 20.72 poses to the economy of Point Roberts.

Our 20.72 concerns were consistently brought to the attention of the Point Roberts Community Advisory Committee, Whatcom County Council, the Whatcom County Executive's office, as well as Planning and Development Services throughout 2019, and in our clearly articulated 2019 PDS Application to Request a Comprehensive Review of 20.72.

Sadly, earlier this year, Whatcom County Council ensured that no Comprehensive Review would take place.

We have thoroughly researched the threat that 20.72 poses to the economic well-being of Point Roberts, and we believe that this threat should be of particular concern to everyone on the Planning Commission at this 'critical tipping point'.

The PRIBC's position has not changed. We oppose implementation of the current updates.

We respectfully request that the Planning Commission recommend to Council that a moratorium be immediately established on 20.72, until such time as a reputable 'third party' provide can provide a Comprehensive Review of 20.72.

Prior to the Covid-19 outbreak, 20.72 did already pose a significant risk to the economic well-being of Point Roberts, as it is not only in stark contradiction to even its own Sub-Area Plan, it has countless flaws throughout which discriminate against certain social, ethnic, and economic sectors within the community.

Now that Point Roberts has already suffered an 80% decrease in economic output since International Border Restrictions were put in place, 20.72 poses an ongoing risk of further damaging Point Roberts' present and future economic prospects.

Throughout the nearly two decades long history of 20.72, Whatcom County has never willingly and transparently tested the efficacy of this unnecessary Small Town Commercial Code Overlay.

We thank you for your consideration on what is arguably the single most important governance and economic issue to face Point Roberts in its history.

Thomas O'Brien

On behalf of the Board of Directors
Point Roberts Independent Business Council
www.pribc.org

@pointrobertsibc
(360) 599-0899

Whatcom County

COUNTY COURTHOUSE
311 Grand Avenue, Ste #105
Bellingham, WA 98225-4038
(360) 778-5010

Agenda Bill Master Report

File Number: AB2020-447

File ID:	AB2020-447	**Version:**	1	**Status:**	Agenda Ready
File Created:	10/13/2020	**Entered by:**	MAamot@co.whatcom.wa.us		
Department:	Planning and Development Services Department	**File Type:**	Ordinance Requiring a Public Hearing		
Assigned to:	Council			**Final Action:**	
Agenda Date:	10/27/2020			**Enactment #:**	

Primary Contact Email: maamot@co.whatcom.wa.us

TITLE FOR AGENDA ITEM:

Ordinance adopting the Six-Year Capital Improvement Program (CIP) for Whatcom County Facilities (2021-2026) and repealing the Six-Year CIP for Whatcom County Facilities (2019-2024)

SUMMARY STATEMENT OR LEGAL NOTICE LANGUAGE:

Ordinance adopting the Six-Year Capital Improvement Program (CIP) for Whatcom County Facilities (2021-2026) and repealing the Six-Year CIP for Whatcom County Facilities (2019-2024). The Six-Year Capital Improvement Program (CIP) for Whatcom County Facilities addresses County parks, trails, activity centers, maintenance & operations, general government buildings and sites, Sheriff's Office, emergency management, adult corrections, juvenile detention, transportation, and stormwater facilities.

HISTORY OF LEGISLATIVE FILE

Date:	Acting Body:	Action:	Sent To:

Attachments: Staff Memo, Proposed Ordinance, Exhibit A, Exhibit B, Planning Commission Findings

WHATCOM COUNTY
Planning & Development Services
5280 Northwest Drive
Bellingham, WA 98226-9097
360-778-5900, TTY 800-833-6384
360-778-5901 Fax

Mark Personius
Director

Memorandum

October 14, 2020

To: The Honorable Satpal Sidhu, Whatcom County Executive
The Honorable Whatcom County Council

From: Matt Aamot, Senior Planner

Through: Mark Personius, Director

RE: Capital Facilities Planning – Comp Plan Amendments (PLN2020-00002)

The subject proposal is to modify the Whatcom County Comprehensive Plan as follows:

- Adopt the new Six-Year Capital Improvement Program (CIP) for Whatcom County Facilities 2021-2026, which is Appendix F of the Whatcom County Comprehensive Plan (Exhibit A).

- Repeal the existing Six-Year CIP for Whatcom County Facilities 2019-2024 (Exhibit B).

The Six-Year Capital Improvement Program (CIP) for Whatcom County Facilities addresses County parks, trails, activity centers, maintenance & operations, general government buildings and sites, Sheriff's Office, emergency management, adult corrections, juvenile detention, transportation, and stormwater facilities. The Whatcom County Comprehensive Plan indicates that the Six-Year CIP should be updated every two years. The last CIP update was approved by the County Council in 2018. Therefore, the CIP is being updated in 2020.

The Whatcom County Planning Commission issued recommendations on the Six-Year CIP on September 24, 2020. The Planning Commission made the following changes to Exhibit A from the version proposed by the Executive branch of County government:

- Added the following description of the Birch Bay Drive & Pedestrian Facility: <u>beach restoration and</u> berm project (p. F-7).

- Change "New Jail" to "Public Health, Safety, and Justice Facilities" (p. F-15).

- Change funding sources for the Public Health, Safety, and Justice Facilities from debt and new sales tax to "Investigate alternative funding sources outside of debt and sales tax" (p. F-15).

The Planning Commission also added Finding 25 stating: "The Planning Commission recommends that the County Council carefully consider sources of funding and budgetary restraints."

The County Administration requested adding the Real Estate Excise Tax as a funding source for the Central Shop Roof Replacement after the Planning Commission process. This change has been made on p. F-9 of the draft Six-Year CIP. Additionally, the "Total Cost" for Transportation on p. F-22 was updated to reflect the approved Six-Year Transportation Improvement Program (Resolution 2020-034).

The County Council's Public Works & Health Committee recommended introduction on October 13, 2020. It is anticipated that the County Council will hold a public hearing and make a final decision on these amendments with approval of the biennial budget in November.

Thank you for your review and consideration of this matter. We look forward to discussing it with you.

PROPOSED BY: Planning & Development Services
INTRODUCTION DATE: _____

ORDINANCE NO. _____

ADOPTING AMENDMENTS TO THE WHATCOM COUNTY COMPREHENSIVE PLAN RELATING TO CAPITAL FACILITIES PLANNING

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;

WHEREAS, The County Council held a public hearing; and

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

FINDINGS OF FACT

1. The proposal is to amend the Whatcom County Comprehensive Plan as follows:

   a. Adopting the new Six-Year Capital Improvement Program (CIP) for Whatcom County Facilities 2021-2026 (Appendix F of the Whatcom County Comprehensive Plan).

   b. Repealing the existing Six-Year CIP for Whatcom County Facilities 2019-2024.

2. Notice of the subject amendments was submitted to the Washington State Department of Commerce on August 21, 2020.

3. A determination of non-significance (DNS) was issued under the State Environmental Policy Act (SEPA) on August 28, 2020.

4. Notice of the Planning Commission hearing for the subject amendments was published in the Bellingham Herald on September 11, 2020.

5. Notice of the Planning Commission hearing was posted on the County website on September 14, 2020.

6. Notice of the Planning Commission hearing was sent to citizen, media, cities and other groups on the County's e-mail list on September 14, 2020.

7. The Planning Commission held a public hearing on the subject amendments on September 24, 2020.

8. Pursuant to WCC 22.10.060(1), in order to approve the proposed comprehensive plan amendments the County must 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.

9. The Growth Management Act (GMA) establishes planning goals in RCW 36.70A.020 to guide adoption of comprehensive plan amendments.

10. GMA planning goal # 12 is to "Ensure that those public facilities and services necessary to support development shall be adequate to serve the development at the time the development is available for occupancy and

use without decreasing current service levels below locally established minimum standards" (RCW 36.70A.020(12)).

11. The subject amendments include updating the Six-Year CIP for Whatcom County Facilities for the 2021-2026 planning period. Updating the CIP is one step in the process of planning regional facilities provided by the County to serve the people of Whatcom County.

12. The GMA, at RCW 36.70A.070(3), requires that a comprehensive plan must include a capital facilities plan element consisting of:

    a. An inventory of existing capital facilities owned by public entities, showing the locations and capacities of the capital facilities.

    b. A forecast of the future needs for such capital facilities.

    c. The proposed locations and capacities of expanded or new capital facilities.

    d. At least a six-year plan that will finance such capital facilities within projected funding capacities and clearly identifies sources of public money for such purposes.

    e. A requirement to reassess the land use element if probable funding falls short of meeting existing needs and to ensure that the land use element, capital facilities plan element, and financing plan within the capital facilities plan element are coordinated and consistent.

13. The Six-Year CIP for Whatcom County Facilities contains an inventory of existing facilities, a forecast of future needs based upon the level of service standards adopted in the Whatcom County Comprehensive Plan and/or other relevant factors, proposed renovated, expanded or new capital facilities, costs and funding sources.

14. Existing Comprehensive Plan Policy 4A-4 addresses the GMA requirement to reassess the land use element if probable capital facility funding falls short.

15. County-Wide Planning Policy K-1 indicates that, as part of the comprehensive planning process, the County must identify appropriate land for public facilities that meets the needs of the community including recreation, transportation and human service facilities.

16. The Six-Year CIP identifies County park, trail, transportation and other improvements as contemplated by the County Wide Planning Policies.

17. Existing interlocal agreements between Whatcom County and the cities indicate that the County will consult with the appropriate city in planning

new road construction projects within the city's urban growth area. The interlocal agreements also address joint planning for parks.

18. The County Engineer confirmed on August 31, 2020 that the County sends a copy of the six-year transportation improvement program to cities prior to approval, requests comments, and informs cities of the hearing date. The Whatcom County Parks Director confirmed on September 10, 2020 that the County Parks' staff maintains a consistent working relationship with appropriate staff from cities on joint park projects and planning. Therefore, the type of cooperation envisioned by the interlocal agreements is occurring.

19. The Whatcom County Comprehensive Plan calls for an update of the Six-Year CIP for County facilities every other year. Specifically, Policy 4B-1 is to:

> Maintain and update, on at least a biennial basis, a six-year capital improvement program (CIP) that identifies projects, outlines a schedule, and designates realistic funding sources for all county capital projects based on a review of population and revenue conditions existing at that time.

20. A revised CIP has been formulated for County owned or operated facilities, which presents improvement projects over the new six-year planning period.

21. The Six-Year CIP for Whatcom County Facilities 2021-2026 is based upon anticipated population growth over the six-year planning period and other relevant factors. Therefore, the proposal should complement the County's growth and development plans.

22. The Six-Year CIP for Whatcom County Facilities will have a positive impact on the County's ability to provide public facilities by planning ahead for such facilities.

23. The goal of the Six-Year CIP for Whatcom County Facilities is to plan for County owned or operated parks, trails, activity centers, maintenance & operations, general government buildings and sites, Sheriff's Office, emergency management, adult corrections, juvenile detention, transportation, and stormwater facilities to serve the people of Whatcom County. Planning for such County facilities is in the public interest.

24. The subject proposal does not involve rezoning property.

CONCLUSION

The subject Whatcom County Comprehensive Plan amendments are consistent with the approval criteria in WCC 22.10.060.

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

Section 1. The Six-Year Capital Improvement Program for Whatcom County Facilities 2021-2026 (Appendix F of the Whatcom County Comprehensive Plan) is hereby adopted as shown on Exhibit A.

Section 2. The Six-Year Capital Improvement Program for Whatcom County Facilities 2019-2024 is hereby repealed as shown on Exhibit B.

Section 3. 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 _____, 2020.

WHATCOM COUNTY COUNCIL
WHATCOM COUNTY, WASHINGTON

ATTEST:

_____ _____

Dana Brown-Davis, Council Clerk Barry Buchanan, Chairperson

APPROVED as to form: ( ) Approved ( ) Denied

_____ _____

Civil Deputy Prosecutor Satpal Sidhu, Executive

Date: _____

Exhibit A

Six-Year
Capital Improvement Program
For Whatcom County Facilities
2021-2026

Table of Contents

Chapter 1 – Introduction 3
Growth Management Act Requirements 3
Charter Provisions and the County Budget 4
Chapter 2 – Parks, Trails, and Activity Centers 5
Parks 5
Future Needs 6
Proposed Improvement Projects 6
Trails 6
Future Needs 7
Proposed Improvement Projects 7
Activity Centers 7
Future Needs 7
Proposed Improvement Projects 8
Six-Year Capital Improvement Program 8
Chapter 3 – Maintenance and Operations 9
Existing Maintenance and Operations Space 9
Future Needs 9
Proposed Improvement Projects 9
Chapter 4 – General Government Buildings and Sites 10
Existing Office Space 10
Future Needs 10
Proposed Improvement Projects 10
Chapter 5 – Sheriff's Office 11
Existing Sheriff's Office Space 11
Future Needs 11
Proposed Improvement Projects 11

Chapter 6 – Emergency Management 13
Existing Emergency Management Space 13
Future Needs 13
Proposed Improvement Projects 13
Chapter 7 – Adult Corrections 14
Existing Jail Facilities 14
Future Needs 14
Proposed Improvement Projects 15
Chapter 8 – Juvenile Detention 16
Existing Juvenile Detention Facilities 16
Future Needs 16
Proposed Improvement Projects 16
Chapter 9 – Transportation 17
Existing Roads 17
Future Needs 17
Proposed Improvement Projects 17
Existing Ferry Facilities 18
Future Needs 18
Proposed Improvement Projects 18
Total Transportation Costs 18
Chapter 10 – Stormwater Facilities 19
Existing Stormwater Management Facilities 19
Future Needs 20
Proposed Improvement Projects 20
Chapter 11 – Total Costs 22

Chapter 1 – Introduction

The Growth Management Act requires that the County's Comprehensive Plan include a "capital facilities plan element" (RCW 36.70A.070(3)). The Whatcom County Comprehensive Plan calls for the County to develop and update the Six-Year Capital Improvement Program (CIP) for County projects every two years. The main purpose of the Capital Improvement Program is to identify priority capital improvement projects and estimated costs, outline a schedule for project completion, and designate funding sources for these projects based on a review of existing and projected population and revenue conditions for the six year planning period.

Growth Management Act Requirements

According to the Growth Management Act, a county's capital facilities plan must include five items, which are shown below.

A. *An inventory of existing capital facilities owned by public entities, showing the locations and capacities of the capital facilities.*

Current inventories of existing County capital facilities, based upon information provided by various County departments, are included in each chapter of this document.

B. *A forecast of the future needs for such capital facilities.*

Chapter 4 of the Whatcom County Comprehensive Plan establishes numerical "level of service" standards for County parks and trails and contains policies relating to other County facilities. Capital facility needs are forecasted over the six-year planning period by applying the adopted level of service standards to the expected population in the year 2026 and by considering other relevant factors.

C. *Proposed locations and capacities of expanded or new capital facilities.*

General locations and capacities of proposed County facilities are indicated in this document (as applicable).

D. At least a six-year plan that will finance such capital facilities within projected funding capacities and clearly identifies sources of public money for such purposes.

This Six-Year Capital Improvement Program presents costs and funding sources for proposed County capital facilities (all figures are in 2020 dollars). There are a variety of funding sources that the County may utilize to pay for capital facilities, including real estate excise taxes (REET), sales tax, the Public Utilities Improvement Fund (also known as the Rural Sales Tax Fund, Economic Development Investment Fund or EDI Fund), Road Fund, state grants, federal grants and a variety of other sources.

E. *A requirement to reassess the land use element if probable funding falls short of meeting existing needs and to ensure that the land use element, capital facilities plan element, and financing plan within the capital facilities plan element are coordinated and consistent.*

Finally, in accordance with the Growth Management Act, a requirement to reassess the land use element of the Comprehensive Plan if probable funding falls short of meeting existing needs and to ensure consistency between plans already exists in the Comprehensive Plan (Policy 4A-4).

Charter Provisions and the County Budget

In addition to Growth Management Act provisions relating to capital facilities, Section 6.30 of the County Charter also requires the County to include a six-year capital improvement program as part of the budget. Appropriations for 2021-2022 capital projects may be included in the biennial budget or may be adopted through the supplemental budget process. Ultimate funding for capital improvement projects is subject to County Council authorization in the adopted budget. Costs identified for 2023-2026 are included for planning purposes and review of potential future needs, but not for budget authorization at this time.

Chapter 2 – Parks, Trails, and Activity Centers

Parks

The 2020 inventory of County parks and open space areas is over 16,200 acres. This inventory is shown below.

Table 1. Existing Parks

Site No.	Park Name and Location	Acres
1	Alderwood Park, 3479 Willowwood Rd.	1.9
2	Bay Horizon Park, 7467 Gemini St.	68.2
3	Birch Bay Beach Park, 7930 Birch Bay Dr.	13.7
4	Birch Bay Conservancy Area, 7000 Point Whitehorn Rd.	45.0
5	Birch Bay Tidelands	151.0
6	Boulevard Park, 471 Bayview Dr.	1.4
7	Broadway Beach Access, 7497 Birch Bay Dr.	0.1
8	Cagey Road, 3130 Haxton Way	20.0
9	Camp 2 RR ROW, 3775 Camp 2 Rd.	2.3
10	Canyon Lake Community Forest, 8300 Mt. Baker Hwy.	2,266.0
11	Chuckanut Mountain Park, 745 Old Samish Rd.	987.9
12	Cottonwood Beach Access, 8191 Birch Bay Dr.	5.1
13	Deming Eagle Homestead Park, 5615 Truck Rd.	33.0
14	Dittrich Park, 319 E Lake Samish Dr.	25.2
15	Drayton Harbor Tidelands	0.3
16	Euclid Park, 1570 Euclid Ave.	2.2
17	Galbraith Mountain Access, 800 Birch Falls Dr.	20.0
18	Glacier Cemetery	0.5
19	Halverson Park, 5075 Anderson Rd.	5.6
20	Haynie Road, 2876 Haynie Rd.	1.9
21	Hegg, 3845 Blue Canyon Rd.	3.5
22	Hovander Homestead Park and Tennant Lake, 5299 Nielsen Rd.	333.4
23	Jackson Rd. Beach Access, 7465 Birch Bay Dr.	0.2
24	Jensen Family Forest Park, 8051 Stein Rd.	21.5
25	Josh VanderYacht Park, 4106 Valley Highway	2.0
26	Kickerville Road, 4110 Bay Rd.	2.6
27	Lake Whatcom Park, 3220 North Shore Rd.	4,853.0
28	Lighthouse Marine Park, 811 Marine Dr. in Point Roberts	20.5
29	Lily Point Marine Park, 2315 APA Rd. in Point Roberts	262.1
30	Little Squalicum Park, 640 Marine Dr.	12.7
31	Lookout Mountain Forest Preserve, 2537 Lake Louise Rd.	4,682.8
32	Lummi Island Beach Access, 2198 N. Nugent Rd.	0.2
33	Maple Beach Tidelands	100.9
34	Maple Creek Park, 7842 Silver Lake Rd.	73.1
35	Maple Falls Community Park, 7470 Second St.	4.2
36	Monument Park, 25 Marine Dr. in Point Roberts	6.9
37	Nugent's Corner River Access, 3685 Mt. Baker Highway	14.2
38	Ostrom Conservation Site, 4304 South Pass Rd.	38.6
39	Phillips 66 Soccer Park, 5238 Northwest Dr.	36.6
40	Point Whitehorn Marine Reserve, 6770 Koehn Rd.	54.1
41	Redwood Park, 3310 Redwood Ave.	0.3
42	Samish Park, 673 N. Lake Samish Dr.	30.6
43	Samish Way, 5170 Samish Way	1.4
44	Semiahmoo Park, 9261 Semiahmoo Parkway	291.9
45	Silver Lake Park, 9006 Silver Lake Rd.	413.4
46	South Fork Park, 1530 Mosquito Lake Rd.	603.0
47	South Lake Whatcom Park, 4144 S Bay Dr.	79.5
48	South Pass East, 4900 South Pass Rd.	0.5
49	South Pass West, 4190 South Pass Rd.	0.4
50	Squires Lake Park, 2510 Nulle Rd.	84.2
51	Stimpson Family Nature Reserve, 2076 Lake Louise Rd.	400.4
52	Sunnyside Landing, 2870 Northshore Rd.	6.3
53	Sunset Beach, 2580 West Shore Dr. on Lummi Island	7.0
54	Sunset Farm Park, 7977 Blaine Rd.	69.5
55	Ted Edwards Park, 4150 Oriental Ave.	3.5
56	Teddy Bear Cove Park, 1467 Chuckanut Dr.	11.2
57	Terrell Creek Access, 7417 Jackson Rd.	0.5
58	Terrell Creek Heron Rookery, 7065 Jackson Rd.	15.0
59	Terrell Creek Point, 7685 Birch Bay Dr.	6.7
60	Turner-Jaeger, 1975 Lake Louise Rd.	3.8
61	Welcome Bridge River Access, 5585 Mosquito Lake Rd.	0.6
	TOTAL	**16,204.1**

Pursuant to RCW 36.87.130, there are also public access properties on right-of-way ends that intersect shorelines.

Future Needs

A level of service of 9.6 acres of developed parkland for every 1,000 people in the County was adopted in the Whatcom County Comprehensive Plan. The County's existing parks will meet the adopted level of service over the six-year planning period. However, the County is proposing park improvement projects to increase quality of existing park facilities and develop the Birch Bay Community Park to meet the longer term needs of a growing population.

Proposed Improvement Projects

Park improvement projects, totaling almost $6.5 million, are proposed over the six-year planning period.

Trails

Whatcom County currently has almost 74 miles of trails in various locations throughout the County. This inventory is shown below.

Table 2. Existing Trails

Site No.	Trail Name and Location	Miles
1	Bay Horizon/Bay Crest Trail	0.75
2	Bay to Baker Maple Falls-Glacier	4.00
3	Canyon Lake Community Forest	7.01
4	Chuckanut Mountain / Pine & Cedar Lakes	16.60
5	Deming Homestead Eagle Park, Truck Rd.	0.30
6	Hovander Homestead Park	3.20
7	Interurban, Chuckanut area	3.15
8	Jensen Family Forest Park, Stein Rd. and Birch Bay Lynden Rd.	0.67
9	Lake Whatcom Park	8.50
10	Lily Point, Point Roberts	2.00
11	Lookout Mountain Forest Preserve	6.80
12	Maple Creek Park, 7842 Silver Lake Rd., Maple Falls	1.28
13	Monument Park, 25 Marine Dr. in Point Roberts	0.35
14	Phillips 66 Soccer Park Trail (Used to be Northwest Soccer Park), Smith	0.38
15	Ostrom Conservation Site, 4304 South Pass Rd.	0.56
16	Point Whitehorn Marine Reserve, 6770 Koehn Rd, Birch Bay	0.81
17	Samish Park, 673 N. Lake Samish	1.38
18	Semiahmoo Park	0.63
19	Silver Lake Park, 9006 Silver Lake Rd.	5.28
20	South Fork Park	2.30
21	Squires Lake, 2510 Nulle Rd.	2.88
22	Stimpson Family Nature Reserve, 2076 Lake Louise Rd.	4.02
23	Sunset Farm, 7977 Blaine Rd.	0.56
24	Teddy Bear Cove	0.33
	TOTAL	**73.74**

Future Needs

A level of service of 0.60 miles of trails for every 1,000 people in the County was adopted in the Whatcom County Comprehensive Plan. With projected population growth in Whatcom County over the next six years, about 71 additional miles of trails would be needed by the year 2026 to serve the people of Whatcom County.

Proposed Improvement Projects

Trail improvement projects and associated facilities, totaling approximately $4.8 million dollars, are proposed over the six-year planning period. These projects would add 9 trail miles (the South Fork Park trails project would add 5 miles and the Lake Whatcom trails project would add 4 miles). Additionally, the Birch Bay Drive & Pedestrian Facility (beach restoration and berm project) will add 1 mile of trail.

While there is a shortfall in trail miles provided by the County, there are other trails that are owned/maintained by a variety of agencies or jurisdictions that provide recreational opportunities for Whatcom County residents and visitors.

Activity Centers

There are currently 13 activity centers that provide a variety of year-round programs for various age groups. The activity center inventory is shown below.

Table 3. Existing Activity Centers

Site No.	Activity Center Name and Location
1	Bay Horizon, 7511 Gemini Street
2	Bellingham Senior Activity Center, 315 Halleck Street
3	Blaine Community Senior Center, 763 G Street
4	East Whatcom Regional Resource Center, 8251 Kendall Rd.
5	Everson Senior Center, 111 W. Main Street
6	Ferndale Senior Center, 1999 Cherry Street
7	Lynden Senior Center, 401 Grover Street
8	Plantation Rifle Range, 5102 Samish Way
9	Point Roberts Senior Center, 1487 Gulf Road
10	Roeder Home, 2600 Sunset Dr.
11	Sumas Senior Center, 461 2nd Street
12	Van Zandt Community Hall, 4106 Valley Highway
13	Welcome Senior Center, 5103 Mosquito Lake Rd.

Note: The Blaine, Everson, Lynden and Sumas Centers are owned by these respective cities. The Point Roberts Center is owned by the Point Roberts Park District. Whatcom County provides and/or contracts for senior activities and recreational programming at these centers.

Future Needs

The Whatcom County Comprehensive Plan does not contain a level of service standard for activity centers. Rather, Comprehensive Plan Policy 4F-5 states:

Continue to provide and support activity centers, including senior centers, to serve the growing population of Whatcom County by the following methods, as needed, which are listed in priority order: (1) implementing programming changes, (2) adding space to existing centers, and/or (3) establishing new centers.

Proposed Improvement Projects

Two activity center projects, involving a boiler replacement at the East Whatcom Regional Resource Center and demolition of a building at Bay Horizon, are proposed. These project will cost about $591,000 within the six-year planning period.

Six-Year Capital Improvement Program

The park, trail, and activity center projects planned over the next six years are shown below.

Table 4. Park, Trail, and Activity Center Projects Planned Over the Next Six Years

Project #		Funding Source	2021	2022	2023	2024	2025	2026	Totals
1	Nugent's Corner Buiding Demolition	1	67,713						67,713
2	Parks Admin Offices HVAC Replacement & Upgrade	1	81,411						81,411
3	Lighthouse Marine Park Siding & Roofing	1		168,350					168,350
4	Silver Lake Restrooms & Day-Use Improvements	1	1,430,000	1,450,000	910,000				3,790,000
5	Birch Bay Beach Park Development	2, 3	140,000	392,825					532,825
6	Hovander Picnic Shelters	1		53,200	210,000	105,000			368,200
7	Silver Lake Cabins Capital Maintenance Program	1			250,603				250,603
8	Hertz Trail Capital Maintenance Program	1				25,000	195,000		220,000
9	Stimpson Family Nature Reserve Parking Improvements	1		80,075					80,075
10	Lookout Mtn Forest Preserve Parking Improvements	1			94,218				94,218
11	Lake Whatcom Park Trailhead	1	352,025			1,350,000	975,000		2,677,025
12	Lily Point Marine Park Parking Improvements	1					241,136		241,136
13	South Fork Park Bridges & Connector Trail	1, 2	29,000	125,000	125,000	515,000			794,000
14	Tennant Lake Interpretive Center Remodel	1					10,000	56,383	66,383
15	Hovander Park Access Improvements	1, 2						250,000	250,000
16	Samish Park Parking/Vehicular Circulation Improvement	1					75,000	225,000	300,000
17	Bay Horizon Hostel Demolition	1						456,248	456,248
18	Lake Whatcom Trail Development	1	189,000						189,000
19	Hovander Maintenance Shop	1	175,000						175,000
20	Maple Falls Park Trailhead Restroom & Parking	1, 2					182,500	750,000	932,500
21	East Whatcom Regional Resource Center-Replace Boiler	4		134,770					134,770
	Parks Totals		2,464,149	2,404,220	1,589,821	1,995,000	1,678,636	1,737,631	11,869,457

Funding Sources:

1. Real Estate Excise Tax (REET)
2. Grants
3. Parks Special Revenue Fund
4. Economic Development Investment (EDI) Funds

Chapter 3 – Maintenance and Operations

Existing Maintenance and Operations Space

The 2020 inventory of maintenance & operations/facilities management space is 70,681 square feet. This inventory is shown below.

Table 5. Existing Space

Site No.	Facility Name	Square feet
1	Central Shop, 901 W. Smith Rd. (Maintenance and Operations)	35,773
2	3720 Williamson Way (Facilities Management)	31,248
3	Minimum Security Correction Facility - 2030 Division St. (Facilities Management Storage)	3,660
	TOTAL	70,681

Future Needs

The Whatcom County Comprehensive Plan does not contain a level of service standard for maintenance and operations. The County will budget for improvements to such facilities as needed.

Proposed Improvement Projects

Improvement and maintenance projects on existing buildings and sites over the six-year planning period total over $812,000 as shown below.

Table 6. Proposed Maintenance and Operations Projects

Maintenance & Operations	Funding Source	2021	2022	2023	2024	2025	2026	Total Cost
1. Central Shop - Vactor Building	1	330,000						330,000
2. Central Shop - Road Oil Tank	1	236,500						236,500
3. Central Shop - Roof Replacement	2, 3	232,875						232,875
4. HVAC Programming (3720 Williamson Way)	3	13,000						13,000
TOTAL		812,375						812,375

Funding Sources
1. Road Fund
2. Equipment Rental & Revolving (ER&R) Fund
3. Real Estate Excise Tax (REET)

Chapter 4 – General Government Buildings and Sites

Existing Office Space

The 2020 inventory of County government office space is 331,141 square feet at nine locations. This inventory is shown below.

Table 7. Existing County Government Office Space

Site No.	Facility Name	Square feet
1	Civic Center Annex (322 North Commercial)	30,000
2	Central Plaza Building (215 N. Commercial)	10,307
3	County Courthouse (311 Grand Avenue)	200,000
4	Forest St. Annex (1000 North Forest St.)	14,000
5	509 Girard St.	13,189
6	3373 Mt. Baker Highway	2,110
7	1500 N. State St.	16,820
8	Northwest Annex (5280 Northwest Dr.)	20,265
9	Crisis Stabilization Center (2026 Division St.)	24,450
	TOTAL	331,141

Future Needs

The Whatcom County Comprehensive Plan does not contain a level of service standard for general government buildings. The County will budget for improvements to such facilities as needed.

Proposed Improvement Projects

Improvement and maintenance projects on existing buildings and sites over the six-year planning period total approximately $52.5 million as shown below.

Table 8. Proposed Government Building and Site Improvement Projects

		Funding Source	2021	2022	2023	2024	2025	2026	Totals
1	Courthouse Maintenance Projects (311 Grand Ave)	1, 2	311,837	1,020,514		500,000	500,000		2,332,351
2	Northwest Annex Campus	2, 3, 4	1,950,000	12,000,000	12,000,000				25,950,000
3	Courhouse Exterior Project - Phase 2 (311 Grand Ave)	1, 2	500,000	2,921,000	2,921,000				6,342,000
4	Improvements, including remodel and HVAC (1500 N. State St)	5, 6			750,000	8,717,000			9,467,000
5	Improvements, including roof, HVAC, and windows (509 Girard St)	2				80,000	1,380,000		1,460,000
6	Prosecuting Attorney - Office Update (311 Grand Ave)	1	60,514						60,514
7	Civic Center - Parking Lot (322 N. Commercial)	1, 4				75,000	400,000		475,000
8	Civic Center Building Renovation (322 N Commercial)	1, 4	3,000,000	1,600,000	400,000				5,000,000
9	Interior Painting, Carpets, Asphalt Repairs (various locations)	1	165,000	165,000	165,000	165,000	165,000	165,000	990,000
10	Central Plaza Debt Service (215 N. Commercial)	1	124,000	124,000	124,000				372,000
11	ADA Compliance (various locations)	1	40,000	40,000					80,000
	Totals		6,151,351	17,870,514	16,360,000	9,537,000	2,445,000	165,000	52,528,865

Funding Sources
1. Real Estate Excise Tax (REET)
2. Economic Development Initiative (EDI)
3. Debt
4. Road Fund
5. State Street Project Based Budget
6. Grants

Chapter 5 – Sheriff's Office

Existing Sheriff's Office Space

The 2020 inventory of Sheriff's office space is 22,902 square feet. This inventory is shown below.

Table 9. Existing Sheriff's Facilities

Site No.	Facility Name	Square Feet
1	Public Safety Building (311 Grand Ave)	15,102
2	Minimum Security Correction Facility (2030 Division St.)	6,000
3	Laurel Substation (194 W. Laurel Rd.)	1,800
	TOTAL	22,902

Notes: The Sheriff's Office also has storage facilities at various locations in Whatcom County. The County has two mobile homes and an old detention facility in Point Roberts. The resident deputies operate out of their homes or utilize space at the U.S. Customs office at the border.

Future Needs

The Whatcom County Comprehensive Plan does not contain a level of service standard for Sheriff's Office facilities. Rather, Comprehensive Plan Policy 4D-2 is to:

> Maintain Sheriff's Office adult corrections facilities and headquarters to provide a safe environment for the community, staff and inmates. . . Existing facilities may be expanded, remodeled, and/or new facilities developed in response to changing need.

Proposed Improvement Projects

A new Sheriff's Office, satellite office, and a new public safety radio system are planned within the next six years. The comprehensive radio system update will include infrastructure (such as towers), radio systems in buildings, radios in vehicles, and hand-held radios. These improvements will cost almost $22 million, as shown below.

Table 10. Proposed Sheriff's Office Improvement Projects

Project #	Funding Source	2021	2022	2023	2024	2025	2026	Totals
Sheriff's Office & Satellite Office	1, 2			1,200,000	14,400,000			15,600,000
Public Safety Radio System	3, 4, 5, 6	1,500,000	850,000	1,425,000	1,575,000	780,000		6,130,000
Totals		1,500,000	850,000	2,625,000	15,975,000	780,000	-	21,730,000

Funding Source
1. Real Estate Excise Tax (REET)
2. Debt
3. Grants
4. Economic Development Investment (EDI) Fund
5. Fire Districts/Departments
6. Countywide Emergency Medical Services (EMS) Fund

Chapter 6 – Emergency Management

Existing Emergency Management Space

The 2020 inventory of Sheriff's Office, Division of Emergency Management space is 24,000 square feet, located at the Whatcom Unified Emergency Coordination Center (WUECC). Rented by and shared between both Whatcom County and the City of Bellingham, the WUECC is comprised of 2,000 square feet of office space and an additional 22,000 square feet of support facilities (used for meetings, training, exercises, and during emergencies). The WUECC serves as the Emergency Operations Center for both the County and the City.

Table 11. Existing Emergency Management/EOC Facilities

Site No.	Facility Name	Square feet
1	Whatcom Unified Emergency Coordination Center 3888 Sound Way, Bellingham	24,000

Future Needs

The Whatcom County Comprehensive Plan does not contain a level of service standard for emergency management facilities. Rather, Comprehensive Plan Policy 4D-4 is to:

> Maintain adequate facilities for daily emergency management activities and, during an emergency or disaster, for the emergency operations center. The facilities will provide sufficient space for activities relating to emergency/disaster planning, mitigation, response and recovery. Existing facilities may be expanded, remodeled, and/ or new facilities developed in response to changing need.

The County will budget for improvements to such facilities as needed.

Proposed Improvement Projects

There are no emergency management capital improvement projects planned over the next six years.

Chapter 7 – Adult Corrections

Existing Jail Facilities

The County's Main Jail was designed and originally built to hold 148 beds, although with some limited remodeling and the use of double bunking, the operational capacity of the main jail should be for the use of 212 beds. Additionally, the jail is currently not in compliance with the Building/Fire Codes for double bunking, although a plan has been approved to bring it into partial compliance. Whatcom County completed construction of a 150 bed minimum security correction facility on Division St. in 2006. The Main Jail is located in the Public Safety Building next to the County Courthouse in downtown Bellingham and the Minimum Security Correction Facility is located in the Bakerview Rd. industrial area.

Table 12. Existing Jail Beds

Site No.	Facility Name	Jail Beds
1	Public Safety Building (311 Grand Ave.)	212
2	Jail Work Center (2030 Division St.)	150
	TOTAL	362

Note: As the result of the COVID-19 pandemic, the jail is operating at a reduced capacity to provide for social distancing until such time as the pandemic is declared under control by the Washington State Department of Health. Due to the mix of offenders, a firm population cap has not been set, but is anticipated to remain at approximately 150 offenders at the Downtown Jail.

Future Needs

There continues to be serious concerns among law and justice officials related to jail facility needs in the community. That need has been documented over the years, with the most recent being the *Building Assessment Studies and Cost Estimates for Capital Improvements at the Jail (Public Safety Building)* (Sept. 2017).

The Whatcom County Comprehensive Plan does not contain a level of service standard for jail facilities. Rather, Comprehensive Plan Policy 4D-2 is to:

> Maintain Sheriff's Office adult corrections facilities and headquarters to provide a safe environment for the community, staff and inmates. The number of jail beds in adult corrections facilities will be determined after review of multiple factors, including projected population growth, State sentencing laws, alternative programs, treatment diversion programs, early release programs, the need to separate violent inmates, the need to separate inmates by gender, the need to separate inmates by other classification considerations, average length of stay, peak inmate populations and available funding. Existing facilities may be expanded, remodeled, and/ or new facilities developed in response to changing need.

Proposed Improvement Projects

The adult corrections projects planned over the next six years are shown below.

Table 13. Proposed Improvement Projects

Project #		Funding Source	2021	2022	2023	2024	2025	2026	Totals
1	Public Health, Safety, and Justice Facilities	1			5,000,000	90,000,000			95,000,000
2	Jail Work Center - Hot Water Tanks	2	197,922						197,922
	Totals		197,922	0	5,000,000	90,000,000	0	0	95,197,922

Funding Sources

1. Investigate alternative funding sources outside of debt and sales tax
2. Jail Improvement Fund

Chapter 8 – Juvenile Detention

Existing Juvenile Detention Facilities

The 2020 inventory of County juvenile detention facilities includes 32 beds serving the countywide population. The juvenile detention facility is located on the sixth floor of the County Courthouse at 311 Grand Avenue.

Table 14. Existing Juvenile Detention Beds

Site No.	Facility Name	Beds
1	County Courthouse (311 Grand Ave.)	32

Future Needs

The Whatcom County Comprehensive Plan does not contain a level of service standard for juvenile detention facilities. Rather, Comprehensive Plan Policy 4D-3 is to:

> Maintain juvenile detention facilities and alternative corrections programs to provide safe and secure methods to provide accountability and support for minors who break the law. Existing facilities may be expanded, remodeled, and/or new facilities developed in response to changing need.

The County will budget for improvements to such facilities as needed.

Proposed Improvement Projects

There are no juvenile detention capital improvement projects planned in the six-year planning period.

Chapter 9 – Transportation

Existing Roads

The 2019 inventory shows a total of 935.44 miles of County roads.

Future Needs

The Whatcom County Comprehensive Plan sets level of service (LOS) standards for County roads. Future traffic and the level of service for roads can be forecasted using computer-modeling software. The Whatcom Council of Governments forecasts future traffic utilizing a computer transportation model. This modeling effort will inform transportation planning in Whatcom County.

Whatcom County accomplishes planning for County road improvements by approving a Six-Year Transportation Improvement Program each year, as required by RCW 36.81.121.

Proposed Improvement Projects

The Whatcom County Six-Year Transportation Improvement Program includes preliminary planning for two proposed new road projects:

- Horton Road connector (between Northwest Drive and Aldrich Road); and
- Lincoln Road extension (between Harborview Road and Blaine Road).

While these two projects are on the Six-Year Transportation Improvement Program, construction is not anticipated within the six-year planning period. Rather, preliminary engineering to determine project feasibility may be initiated within this time frame.

The six-year plan contains a variety of projects, including bridge replacements, intersection improvements, reconstruction, fish passage projects, and the Birch Bay Drive & Pedestrian Facility improvements, which include pedestrian and non-motorized enhancements along Birch Bay Dr.

Existing Ferry Facilities

Whatcom County currently has one ferry vessel serving Lummi Island. The ferry runs between Lummi Island and Gooseberry Point on a daily basis.

Future Needs

Current Whatcom County Comprehensive Plan Policy 6A-1 establishes the following LOS standard for the ferry:

> The Lummi Island Ferry Advisory Committee (LIFAC) is cooperating with Public Works to develop an updated LOS standard. LIFAC will present a revision to this section when that work is complete. The interim LOS is calculated using the scheduled trips, the estimated car units of the ferry and the Small Area Estimates Program (SAEP) population figure. The interim standard is established at 439 (LOS = (Scheduled one way trips X estimated car units for the boat) X 2 / SAEP [Small Area Estimate Program] population figure from OFM for Lummi Island).

The Special Programs Manager for the County Public Works Department confirmed that the ferry service currently meets the interim LOS standard.

Proposed Improvement Projects

The Six-Year Transportation Improvement Program includes construction of ferry terminal improvements, preliminary engineering and design for replacing the Whatcom Chief, and preliminary engineering and right-of-way acquisition for relocation of the ferry terminal.

Total Transportation Costs

Transportation projects, including road and ferry projects, total approximately $54 million over the six-year planning period. This includes approximately $39 million in local funds, with the remainder coming from the State and Federal governments.

Chapter 10 – Stormwater Facilities

Existing Stormwater Management Facilities

The Public Works Department is responsible for design, engineering, and construction of county-owned stormwater facilities. Many stormwater facilities are road-related stormwater conveyance systems such as culverts and ditches on and adjacent to county roads. Others are off right-of-way facilities that control storm flows and improve water quality.

In response to increasing federal and state mandates to manage stormwater and the public's desire to improve stewardship of sensitive watersheds, Whatcom County established a Stormwater Division in 2005. The Stormwater Division is responsible for planning, designing, engineering, and construction of stormwater facilities. Inventories of existing stormwater facilities are maintained by the Public Works Department. The Engineering Services Division maintains an inventory of all road-related facilities. The Stormwater Division maintains an inventory of public and private stormwater facilities in the area covered by the County's NPDES Phase II permit for Municipal Separate Storm Sewer Systems. This inventory includes ditches, culverts, catch basins, vaults, ponds, and swales. Completed Stormwater Construction Projects since the Stormwater Division was created in 2005 are listed below.

Table 15. Completed Stormwater Construction Projects Since 2005

Existing Site No.	Watershed	Facility Name	Year Completed
1	Lake Whatcom	Geneva Stormwater Retrofits	2006
2	Lake Whatcom	Cable Street Reconstruction & Stormwater Improvements	2007
3	Lake Whatcom	Lahti Drive Stormwater Improvements	2010
4	Lake Whatcom	Silver Beach Creek Improvements - Brownsville Drive to E. 16th Place	2011
5	Lake Whatcom	Silver Beach Creek Improvements - West Tributary	2012
6	Lake Whatcom	Coronado-Fremont Stormwater Improvements	2014
7	Lake Whatcom	Cedar Hills-Euclid Stormwater Improvements	2016
8	Lake Whatcom	Agate Bay Improvements-Phase 1 & 2	2018-2019



Figure 1. Lake Whatcom Cedar Hills-Euclid Stormwater Improvements

Whatcom County Public Works regularly seeks and is awarded grant money that contributes to the design and construction of these stormwater projects that improve water quality through treatment systems and stream stabilization.

Future Needs

An increasing emphasis on the protection of sensitive watersheds has resulted in the adoption of comprehensive stormwater plans, including plans for Lake Whatcom and Birch Bay. The adopted plans identify work towards planning, design, engineering, and construction of capital projects intended to address stormwater issues.

Proposed Improvement Projects

Stormwater improvement projects totaling over $12 million are proposed over the six-year planning period as shown below. These costs would be paid by Real Estate Excise Tax (REET), Lake Whatcom Stormwater Utility, grants, Road fund, and funding from the Birch Bay Watershed and Aquatic Resources Management District (BBWARM).

Table 16. Proposed Stormwater Improvement Projects

		Funding Source	2021	2022	2023	2024	2025	2026	Totals
1	Silver Beach Creek -Phase 1	1	560,000						560,000
2	Academy Stormwater Facility - Phase 2	1, 2	100,000		300,000				400,000
3	Geneva - Bioretention	1, 3	125,000	730,000	10,000	10,000			875,000
4	Sudden Valley - Stormwater Improvements	1	150,000	600,000					750,000
5	Silver Beach Creek - Stream Bank Erosion Project Phase 2	1	70,000	80,000		600,000			750,000
6	Eagleridge - Stormwater Improvements	1			55,000	100,000	325,000		480,000
7	Strawberry Pt/Lake Whatcom Blvd - Stormwater Improvements	1			120,000	140,000	650,000		910,000
8	Austin Court - Stormwater Improvements	1				42,000	80,000	320,000	442,000
9	Viewhaven Lane - Water Quality and Conveyance	1					66,000	160,000	226,000
10	Geneva St./Lake Louise Rd - Culvert Replacement	1, 4						75,000	75,000
11	Shallow Shore Drive - Culvert Relocation	1	100,000	250,000					350,000
12	Semiahmoo Drive - Stormwater Improvements	1, 5	135,000	480,000					615,000
13	Harborview Rd./Birch Bay Dr - Stormwater Improvements	1, 5	1,100,000	30,000					1,130,000
14	Holeman Ave. - Stormwater Improvements	1, 5	50,000	200,000					250,000
15	Lora Lane - Drainage & Tide Gate Modifications	1, 4, 5	35,000	150,000	1,200,000				1,385,000
16	Wooldridge Ave & Sunset Drive - Stormwater Improvements	1, 3, 5		100,000	120,000	1,000,000			1,220,000
17	Hillsdale - Stormwater Improvements Phase 1	1, 5			100,000	150,000	500,000		750,000
18	Morrison Ave & Terrill Drive - Stormwater Improvements	1, 5				100,000	120,000	700,000	920,000
19	Normar Place - Stormwater Improvements	5					50,000	75,000	125,000
	Stormwater Totals		2,425,000	2,620,000	1,905,000	2,142,000	1,791,000	1,330,000	12,213,000

Funding Sources
1. Real Estate Excise Tax (REET)
2. Lake Whatcom Stormwater Utility
3. Grants
4. Road Fund
5. Birch Bay Watershed and Aquatic Resources Management District (BBWARM)

Chapter 11 – Total Costs

Total Costs for the six-year planning period are shown below.

Table 17. Total Costs for the Six-Year Planning Period

	Total Costs 2021-2026	Percent of Total Costs
Parks, Trails, and Activity Centers	11,869,457	4.78%
Maintenance and Operations	812,375	0.33%
General Government Buildings and Sites	52,528,865	21.17%
Sheriff's Office	21,730,000	8.76%
Emergency Management	0	0.00%
Adult Corrections	95,197,922	38.36%
Juvenile Detention	0	0.00%
Transportation	53,797,000	21.68%
Stormwater Facilities	12,213,000	4.92%
TOTAL	248,148,619	100.00%

The County plans to undertake capital improvement projects costing approximately $248 million between 2021 and 2026, which will be financed with a combination of local, state, federal, and other funding sources.

Exhibit B
(Repeal Existing CIP)

Six-Year
Capital Improvement Program
For Whatcom County Facilities
2019-2024

Table of Contents

Chapter 1 – Introduction 3
Growth Management Act Requirements 3
Charter Provisions and the County Budget 4
Chapter 2 – Parks, Trails, and Activity Centers 5
Parks 5
Future Needs 6
Proposed Improvement Projects 6
Trails 6
Future Needs 7
Proposed Improvement Projects 7
Activity Centers 7
Future Needs 7
Proposed Improvement Projects 8
Six-Year Capital Improvement Program 8
Chapter 3 – Maintenance and Operations 9
Existing Maintenance and Operations Space 9
Future Needs 9
Proposed Improvement Projects 9
Chapter 4 – General Government Buildings and Sites 10
Existing Office Space 10
Future Needs 10
Proposed Improvement Projects 10
Chapter 5 – Sheriff's Office 11
Existing Sheriff's Office Space 11

Future Needs 11
Proposed Improvement Projects 12
Chapter 6 – Emergency Management 13
Existing Emergency Management Space 13
Future Needs 13
Proposed Improvement Projects 13
Chapter 7 – Adult Corrections 14
Existing Jail Facilities 14
Future Needs 14
Proposed Improvement Projects 15
Chapter 8 – Juvenile Detention 16
Existing Juvenile Detention Facilities 16
Future Needs 16
Proposed Improvement Projects 16
Chapter 9 – Transportation 17
Existing Roads 17
Future Needs 17
Proposed Improvement Projects 17
Existing Ferry Facilities 18
Future Needs 18
Proposed Improvement Projects 18
Total Transportation Costs 18
Chapter 10 – Stormwater Facilities 19
Existing Stormwater Management Facilities 19
Future Needs 20
Proposed Improvement Projects 20
Chapter 11 – Total Costs 21

Chapter 1 – Introduction

The Growth Management Act requires that the County's Comprehensive Plan include a "capital facilities plan element" (RCW 36.70A.070(3)). The Whatcom County Comprehensive Plan calls for the County to develop and update the Six-Year Capital Improvement Program (CIP) for County projects every two years. The main purpose of the Capital Improvement Program is to identify priority capital improvement projects and estimated costs, outline a schedule for project completion, and designate funding sources for these projects based on a review of existing and projected population and revenue conditions for the six year planning period.

Growth Management Act Requirements

According to the Growth Management Act, a county's capital facilities plan must include five items, which are shown below.

A. *An inventory of existing capital facilities owned by public entities, showing the locations and capacities of the capital facilities.*

Current inventories of existing County capital facilities, based upon information provided by various County departments, are included in each chapter of this document.

B. *A forecast of the future needs for such capital facilities.*

Chapter 4 of the Whatcom County Comprehensive Plan establishes numerical "level of service" standards for County parks and trails and contains policies relating to other County facilities. Capital facility needs are forecasted over the six-year planning period by applying the adopted level of service standards to the expected population in the year 2024 and by considering other relevant factors.

C. *Proposed locations and capacities of expanded or new capital facilities.*

General locations and capacities of proposed County facilities are indicated in this document (as applicable).

D. At least a six-year plan that will finance such capital facilities within projected funding capacities and clearly identifies sources of public money for such purposes.

This Six-Year Capital Improvement Program presents costs and funding sources for proposed County capital facilities (all figures are in 2018 dollars). There are a variety of funding sources that the County utilizes to pay for capital facilities, including real estate excise taxes, the Public Utilities Improvement Fund (also known as the Rural Sales Tax Fund, Economic Development Initiative Fund or EDI Fund), Road Fund, state grants, federal grants and a variety of other funds.

E. ~~*A requirement to reassess the land use element if probable funding falls short of meeting existing needs and to ensure that the land use element, capital facilities plan element, and financing plan within the capital facilities plan element are coordinated and consistent.*~~

~~Finally, in accordance with the Growth Management Act, a requirement to reassess the land use element of the Comprehensive Plan if probable funding falls short of meeting existing needs and to ensure consistency between plans already exists in the Comprehensive Plan (Policy 4A-4).~~

~~Charter Provisions and the County Budget~~

~~In addition to Growth Management Act provisions relating to capital facilities, Section 6.30 of the County Charter also requires the County to include a six-year capital improvement program as part of the budget. Appropriations for 2019-2020 capital projects may be included in the biennial budget or may be adopted through the supplemental budget process. Ultimate funding for capital improvement projects is subject to County Council authorization in the adopted budget. Costs identified for 2021-2024 are included for planning purposes and review of potential future needs, but not for budget authorization at this time.~~

Chapter 2 – Parks, Trails, and Activity Centers

Parks

The 2018 inventory of County parks and open space areas is over 15,800 acres. This inventory is shown below.

Table 1. Existing Parks

Site No.	Park Name and Location	Acres
1	Alderwood Park, 3479 Willowwood Rd.	2.8
2	Bay Horizon Park, 7467 Gemini St.	69.8
3	Birch Bay Community Park, 7930 Birch Bay Dr.	13.2
4	Birch Bay Conservancy Area, 7000 Point Whitehorn Rd.	43.2
5	Birch Bay Tidelands	143.9
6	Boulevard Park, 471 Bayview Dr.	1.8
7	Broadway Beach Access, 7497 Birch Bay Dr.	0.1
8	Cagey Road, 3130 Haxton Way	20.3
9	Camp 2 RR ROW, 3775 Camp 2 Rd.	2.3
10	Canyon Lake Community Forest, 8300 Mt. Baker Hwy.	2,394.4
11	Chuckanut Mountain Park, 745 Old Samish Rd.	973.1
12	Cottonwood Beach Access, 8191 Birch Bay Dr.	4.6
13	Deming Eagle Homestead Park, 5615 Truck Rd.	28.5
14	Dittrich Park, 319 E Lake Samish Dr.	22.8
15	Drayton Harbor Tidelands	0.3
16	Euclid Park, 1570 Euclid Ave.	1.2
17	Galbraith Mountain Access, 800 Birch Falls Dr.	20.3
18	Glacier Cemetery	0.5
19	Halverson Park, 5075 Anderson Rd.	5.6
20	Haynie Road, 2876 Haynie Rd.	1.9
21	Hegg, 3845 Blue Canyon Rd.	4.0
22	Hovander Homestead Park and Tennant Lake, 5299 Nielsen Rd.	338.3
23	Jackson Rd. Beach Access, 7465 Birch Bay Dr.	0.2
24	Jensen Family Forest Park, 8051 Stein Rd.	21.7
25	Josh VanderYacht Park, 4106 Valley Highway	2.2
26	Kickerville Road, 4110 Bay Rd.	2.4
27	Lake Whatcom Park, 3220 North Shore Rd.	4,686.5
28	Lighthouse Marine Park, 811 Marine Dr. in Point Roberts	24.3
29	Lily Point Marine Park, 2315 APA Rd. in Point Roberts	274.0
30	Little Squalicum Park, 640 Marine Dr.	13.7
31	Lookout Mountain Forest Preserve, 2537 Lake Louise Rd.	4,430.3
32	Lummi Island Beach Access, 2198 N. Nugent Rd.	0.1
33	Maple Beach Tidelands	101.5
34	Maple Creek Park, 7842 Silver Lake Rd.	79.7
35	Maple Falls Community Park, 7470 Second St.	4.1
36	Monument Park, 25 Marine Dr. in Point Roberts	7.3
37	Nugent's Corner River Access, 3685 Mt. Baker Highway	16.5
38	Ostrom Conservation Site, 4304 South Pass Rd.	36.3
39	Phillips 66 Soccer Park, 5238 Northwest Dr. (used to be Northwest Soccer Park)	36.5
40	Point Whitehorn Marine Reserve, 6770 Koehn Rd.	55.3
41	Redwood Park, 3310 Redwood Ave.	0.2
42	Samish Park, 673 N. Lake Samish Dr.	26.4
43	Samish Way, 5170 Samish Way	2.0
44	Semiahmoo Park, 9261 Semiahmoo Parkway	304.0
45	Silver Lake Park, 9006 Silver Lake Rd.	410.4
46	South Fork Park, 1530 Mosquito Lake Rd.	550.3
47	South Lake Whatcom Park, 4144 S Bay Dr.	78.9
48	South Pass East, 4900 South Pass Rd.	0.7
49	South Pass West, 4190 South Pass Rd.	0.5
50	Squires Lake Park, 2510 Nulle Rd.	82.3
51	Stimpson Family Nature Reserve, 2076 Lake Louise Rd.	376.1
52	Sunnyside Landing, 2870 Northshore Rd.	6.5
53	Sunset Beach, 2580 West Shore Dr. on Lummi Island	5.4
54	Sunset Farm Park, 7977 Blaine Rd.	70.0
55	Ted Edwards Park, 4150 Oriental Ave.	3.6
56	Teddy Bear Cove Park, 1467 Chuckanut Dr.	8.8
57	Terrell Creek Access, 7417 Jackson Rd.	0.6
58	Terrell Creek Heron Rookery, 7065 Jackson Rd.	14.4
59	Terrell Creek Point, 7685 Birch Bay Dr.	7.6
60	Turner-Jaeger, 1975 Lake Louise Rd.	4.7
61	Welcome Bridge River Access, 5585 Mosquito Lake Rd.	0.5
	TOTAL	**15,839.4**

Pursuant to RCW 36.87.130, there are also public access properties on right-of-way ends that intersect shorelines.

Future Needs

A level of service of 9.6 acres of developed parkland for every 1,000 people in the County was adopted in the Whatcom County Comprehensive Plan. The County's existing parks will meet the adopted level of service over the six-year planning period. However, the County is proposing park improvement projects to increase quality of existing park facilities and develop the Birch Bay Community Park to meet the longer term needs of a growing population.

Proposed Improvement Projects

Park improvement projects, totaling almost $16.1 million, are proposed over the six-year planning period.

Trails

Whatcom County currently has over 73 miles of trails in various locations throughout the County. This inventory is shown below.

Table 2. Existing Trails

Site No.	Trail Name and Location	Miles
1	Bay Horizon/Bay Crest Trail	0.75
2	Bay to Baker Maple Falls-Glacier	4.00
3	Canyon Lake Community Forest	7.01
4	Chuckanut Mountain / Pine & Cedar Lakes	16.60
5	Deming Homestead Eagle Park, Truck Rd.	0.30
6	Hovander Homestead Park	3.20
7	Interurban, Chuckanut area	3.15
8	Jensen Family Forest Park, Stein Rd. and Birch Bay Lynde	0.67
9	Lake Whatcom Park	6.00
10	Lily Point, Point Roberts	2.00
11	Lookout Mountain Forest Preserve	9.11
12	Maple Creek Park, 7842 Silver Lake Rd., Maple Falls	1.28
13	Monument Park, 25 Marine Dr. in Point Roberts	0.35
14	Phillips 66 Soccer Park Trail (Used to be Northwest Socce	0.38
15	Ostrom Conservation Site, 4304 South Pass Rd.	0.56
16	Point Whitehorn Marine Reserve, 6770 Koehn Rd, Birch Ba	0.81
17	Samish Park, 673 N. Lake Samish	1.38
18	Semiahmoo Park	0.63
19	Silver Lake Park, 9006 Silver Lake Rd.	5.28
20	South Fork Park	2.30
21	Squires Lake, 2510 Nulle Rd.	2.88
22	Stimpson Family Nature Reserve, 2076 Lake Louise Rd.	4.02
23	Sunset Farm, 7977 Blaine Rd.	0.56
24	Teddy Bear Cove	0.33
	TOTAL	**73.55**

Future Needs

A level of service of 0.60 miles of trails for every 1,000 people in the County was adopted in the Whatcom County Comprehensive Plan. With projected population growth in Whatcom County over the next six years, about 68 additional miles of trails would be needed by the year 2024 to serve the people of Whatcom County.

Proposed Improvement Projects

Trail improvement projects and associated facilities, totaling almost $7.3 million, are proposed over the six-year planning period. These projects would add almost 27 trail miles (the South Fork Park trails project would add 5 miles and the Lake Whatcom trails project would add 21.8 miles).

While there is a shortfall in trail miles provided by the County, there are other trails that are owned/maintained by a variety of agencies or jurisdictions that provide recreational opportunities for Whatcom County residents and visitors.

Activity Centers

There are currently 13 activity centers that provide a variety of year-round programs for various age groups. The activity center inventory is shown below.

Table 3. Existing Activity Centers

Site No.	Activity Center Name and Location
1	Bay Horizon, 7511 Gemini Street
2	Bellingham Senior Activity Center, 315 Halleck Street
3	Blaine Community Senior Center, 763 G Street
4	East Whatcom Regional Resource Center, 8251 Kendall Rd.
5	Everson Senior Center, 111 W. Main Street
6	Ferndale Senior Center, 1999 Cherry Street
7	Lynden Senior Center, 401 Grover Street
8	Plantation Rifle Range, 5102 Samish Way
9	Point Roberts Senior Center, 1487 Gulf Road
10	Roeder Home, 2600 Sunset Dr.
11	Sumas Senior Center, 461 2nd Street
12	Van Zandt Community Hall, 4106 Valley Highway
13	Welcome Senior Center, 5103 Mosquito Lake Rd.

Note: The Blaine, Everson, Lynden and Sumas Centers are owned by these respective cities. The Point Roberts Center is owned by the Point Roberts Park District. Whatcom County provides and/or contracts for senior activities and recreational programming at these centers.

Future Needs

The Whatcom County Comprehensive Plan does not contain a level of service standard for activity centers. Rather, Comprehensive Plan Policy 4F-5 states:

> Continue to provide and support activity centers, including senior centers, to serve the growing population of Whatcom County by the following methods, as needed, which are listed in priority order: (1) implementing programming

changes, (2) adding space to existing centers, and/or (3) establishing new centers.

Proposed Improvement Projects

One activity improvement project, which will add new multi-use buildings at the East Whatcom Regional Resource Center, is proposed. This project will cost over $2 million within the six-year planning period.

Six-Year Capital Improvement Program

The park, trail, and activity center projects planned over the next six years are shown below.

Table 4. Park, Trail, and Activity Center Projects Planned Over the Next Six Years

Project #		Funding Source	2019	2020	2021	2022	2023	2024	Totals
1	Hovander/Tennant Paintworks	1	75,500						75,500
2	Gerdrum House Museum Renovation (at Silver Lake)	1	50,200						50,200
3	Semiahmoo Park - Siding & Paint	1		57,200					57,200
4	Demo Bay Horizon Hostel/Silver Lake Bldgs	1	500,500						500,500
5	Silver Lake Campground, Access & Restrooms	1	2,225,000	1,028,000	1,005,000	1,115,000	450,000	825,000	6,648,000
6	Silver Lake Cabins Capital Maint.	1	51,100	53,700	57,298	59,800	62,700		284,598
7	South Fork Phase II Bridges & Connector Trails	1	110,000	93,000	385,000	410,000			998,000
8	Lake Whatcom Park Trailhead Improvements	1	370,000	155,000	1,220,000	635,000			2,380,000
9	Lake Whatcom Area Trail Development	1, 2	574,000	441,000	477,000	508,000	538,000	535,000	3,073,000
10	Hovander Park Animal Exhibit	1, 3			264,500				264,500
11	Hovander Park Picnic Shelters	1	39,500	328,000					367,500
12	Tennant Lake Interpretive Center Remodel	1	30,000	11,000	220,000				261,000
13	Hovander Park Roadway & Access Improvements	1	385,000	120,000	1,375,000	550,000			2,430,000
14	Various Locations - Access and General Maintenance	1	75,000	75,000	75,000	75,000	75,000	75,000	450,000
15	Maple Falls Park Trailhead	1		100,000	145,000	565,000			810,000
16	Birch Bay Beach Park Development	1, 4, 5			255,000	260,000	3,433,000	72,500	4,020,500
17	Nessett Farm - Remodel & restroom	6	100,000	445,000	135,000				680,000
18	East Whatcom Regional Resource Center - Buildings	1, 2, 3, 7, 8	2,018,578						2,018,578
	Parks Totals		6,604,378	2,906,900	5,613,798	4,177,800	4,558,700	1,507,500	25,369,076

Funding Sources:

1. REET
2. State Grant
3. Donations
4. Park and Recreation District
5. Parks Special Revenue Fund
6. Nessett Foundation
7. Community Development Block Grant
8. State Capital Budget

Chapter 3 – Maintenance and Operations

Existing Maintenance and Operations Space

The 2018 inventory of maintenance & operations/facilities management space is 70,681 square feet. This inventory is shown below.

Table 5. Existing Space

Site No.	Facility Name	Square feet
1	Central Shop, 901 W. Smith Rd. (Maintenance and Operations)	35,773
2	3720 Williamson Way (Facilities Management)	31,248
3	Minimum Security Correction Facility - 2030 Division St. (Facilities Management Storage)	3,660
	TOTAL	70,681

Future Needs

The Whatcom County Comprehensive Plan does not contain a level of service standard for maintenance and operations. The County will budget for improvements to such facilities as needed.

Proposed Improvement Projects

Improvement and maintenance projects on existing buildings and sites over the six-year planning period total $686,000 as shown below.

Table 6. Proposed Government Building and Site Improvement Projects

Maintenance & Operations	Funding Source	2019	2020	2021	2022	2023	2024	Total Cost
1. Replace Outdoor Security Camera System (Central Shop)	1	120,000						120,000
2. Replace Sewer Line (Central Shop)	1	66,000						66,000
3. Vactor Truck/Equipment Storage Building (Central Shop)	2	170,000	330,000					500,000
TOTAL		356,000	330,000					686,000

Funding Sources
1. Equipment Rental & Revolving (ER&R) Fund
2. Road Fund

Chapter 4 – General Government Buildings and Sites

Existing Office Space

The 2018 inventory of County government office space is 306,691 square feet at eight locations. This inventory is shown below.

Table 7. Existing County Government Office Space

Site No.	Facility Name	Square feet
1	Civic Center Annex (322 North Commercial)	30,000
2	Central Plaza Building (215 N. Commercial)	10,307
3	County Courthouse (311 Grand Avenue)	200,000
4	Forest St. Annex (1000 North Forest St.)	14,000
5	509 Girard St.	13,189
6	3373 Mt. Baker Highway	2,110
7	1500 N. State St.	16,820
8	Northwest Annex (5280 Northwest Dr.)	20,265
	TOTAL	306,691

Future Needs

The Whatcom County Comprehensive Plan does not contain a level of service standard for general government buildings. The County will budget for improvements to such facilities as needed.

Proposed Improvement Projects

Improvement and maintenance projects on existing buildings and sites over the six-year planning period total more than $32 million as shown below.

Table 8. Proposed Government Building and Site Improvement Projects

	Funding Source	2019	2020	2021	2022	2023	2024	Totals
1 Courthouse Exterior (311 Grand Ave)	1, 2	1,224,135	892,917	1,170,775	1,258,207	729,229	644,051	5,919,314
2 Prox/Security Access Control Panels (various locations)	1	238,000						238,000
3 Access Controls/Gate (211 E. Champion)	2	89,000						89,000
4 Asphalt Patching/Sidewalks (various locations)	1	50,000	50,000	50,000	50,000	50,000	50,000	300,000
5 Improvements (1000 N. Forest St)	1	65,000						65,000
6 Improvements (1500 N. State St)	2, 3	2,270,000	1,341,456	2,240,000	2,240,000			8,091,456
7 Relocate Morgue	1	400,000	1,600,000					2,000,000
8 Northwest Annex (tennant improvements for new location)	2	260,000						260,000
9 Interior Painting & Carpets (various locations)	1	115,000	115,000	115,000	115,000	115,000	115,000	690,000
10 Central Plaza Debt Service	1	124,000	124,000	124,000	124,000	124,000	124,000	744,000
11 Civic Center Remodel (322 N Commercial)	4, 8	625,000	3,288,500	10,000				3,923,500
12 Civic Center Access Controls/Cameras (322 N Commercial)	4	105,000						105,000
13 Triage Center (2026 Division St.)	5, 6, 7	9,400,000						9,400,000
14 Courthouse Maintenance and Tenant Improvements (311 Grand Ave)	1, 2	350,000						350,000
Totals		15,315,135	7,411,873	3,709,775	3,787,207	1,018,229	933,051	32,175,270

Funding Sources
1. Real Estate Excise Tax (REET)
2. Economic Development Initiative (EDI)
3. State Street Building Acquisition and Improvement Fund
4. Road Fund
5. Behavior Health Program Fund
6. State Capital Budget
7. State Grant
8. Civic Center Building Improvement Fund

Chapter 5 – Sheriff's Office

Existing Sheriff's Office Space

The 2018 inventory of Sheriff's office space is 23,326 square feet. This inventory is shown below.

Table 9. Existing Sheriff's Facilities

Site No.	Facility Name	Square Feet
1	Public Safety Building (311 Grand Ave)	15,102
2	Minimum Security Correction Facility (2030 Division St.)	6,000
3	Laurel Substation (194 W. Laurel Rd.)	1,800
4	East Whatcom Regional Resource Center (8251 Kendall Road)	144
5	Birch Bay Fire Hall	192
6	Nugent's Corner Fire Hall	88
	TOTAL	23,326

Notes: The Sheriff's Office also has storage facilities at various locations in Whatcom County. The County has two mobile homes and an old detention facility in Point Roberts. The resident deputies operate out of their homes or utilize space at the U.S. Customs office at the border.

Sheriff's Office facilities include shared space at local fire districts, which is rented or leased space not solely dedicated to Sheriff's Office use. This space is available depending on Fire District needs and is generally subject to change with short notice.

Future Needs

The Whatcom County Comprehensive Plan does not contain a level of service standard for Sheriff's Office facilities. Rather, Comprehensive Plan Policy 4D-2 is to:

> Maintain Sheriff's Office adult corrections facilities and headquarters to provide a safe environment for the community, staff and inmates. . . Existing facilities may be expanded, remodeled, and/or new facilities developed in response to changing need.

Proposed Improvement Projects

A new public safety radio system will be constructed and installed within the six-year planning period. This comprehensive radio system update will include infrastructure (such as towers), radio systems in buildings, radios in vehicles, and hand-held radios. The system costs $4 million, as shown below.

Table 10. Proposed Sheriff's Office Improvement Projects

Project #		Funding Source	2019	2020	2021	2022	2023	2024	Totals
1	Public Safety Radio System	1	873,000	3,127,000					4,000,000
	Totals		873,000	3,127,000					4,000,000

Funding Source
1. Economic Development Initiative (EDI)

Chapter 6 – Emergency Management

Existing Emergency Management Space

The 2018 inventory of Sheriff's Office, Division of Emergency Management space is 24,000 square feet, located at the Whatcom Unified Emergency Coordination Center (WUECC). Rented by and shared between both Whatcom County and the City of Bellingham, the WUECC is comprised of 2,000 square feet of office space and an additional 22,000 square feet of support facilities (used for meetings, training, exercises, and during emergencies). The WUECC serves as the Emergency Operations Center for both the County and the City.

Table 11. Existing Emergency Management/EOC Facilities

Site No.	Facility Name	Square feet
1	Whatcom Unified Emergency Coordination Center 3888 Sound Way, Bellingham	24,000

Future Needs

The Whatcom County Comprehensive Plan does not contain a level of service standard for emergency management facilities. Rather, Comprehensive Plan Policy 4D-4 is to:

> Maintain adequate facilities for daily emergency management activities and, during an emergency or disaster, for the emergency operations center. The facilities will provide sufficient space for activities relating to emergency/disaster planning, mitigation, response and recovery. Existing facilities may be expanded, remodeled, and/ or new facilities developed in response to changing need.

The County will budget for improvements to such facilities as needed.

Proposed Improvement Projects

The emergency management projects planned over the next six years are shown below.

Table 12. Emergency Management Improvement Projects

Project #		Funding Source	2019	2020	2021	2022	2023	2024	Totals
1	WUECC - HVAC Improvements	1, 2	20,000	70,000					90,000
	Totals		20,000	70,000					90,000

Funding Source
1. REET
2. City of Bellingham Cost Share

Chapter 7 – Adult Corrections

Existing Jail Facilities

The County's Main Jail was designed and originally built to hold 148 beds, although with some limited remodeling and the use of double bunking, the operational capacity of the main jail should be for the use of 212 beds. Additionally, the jail is currently not in compliance with the Building/Fire Codes for double bunking, although a plan has been approved to bring it into partial compliance. Over the next several years the downtown jail will undergo major construction work which may reduce the available jail beds for an undetermined length of time. Whatcom County completed construction of a 150 bed minimum security correction facility on Division St. in 2006. The Main Jail is located in the Public Safety Building next to the County Courthouse in downtown Bellingham and the Minimum Security Correction Facility is located in the Bakerview Rd. industrial area.

Table 13. Existing Jail Beds

Site No.	Facility Name	Jail Beds
1	Public Safety Building (311 Grand Ave.)	212
2	Minimum Security Correction Facility (2030 Division St.)	150
	TOTAL	362

Future Needs

There are serious concerns among law and justice officials relating to jail facility needs in the community. This need has been documented by recommendations from the *Whatcom County Law and Justice Plan Phase II Report* (June 2000), in a report entitled *Operational Review of the Whatcom County, Washington Jail* (March 2004), in the Whatcom County Jail Planning Task Force Recommendations (Dec. 2011 and March 2012), the *Whatcom County Adult Corrections Facilities & Sheriff's Headquarters Pre-Design Report* (Sept. 2013), and the *Building Assessment Studies and Cost Estimates for Capital Improvements at the Jail (Public Safety Building)* (Sept. 2017).

The Whatcom County Comprehensive Plan does not contain a level of service standard for jail facilities. Rather, Comprehensive Plan Policy 4D-2 is to:

> Maintain Sheriff's Office adult corrections facilities and headquarters to provide a safe environment for the community, staff and inmates. The number of jail beds in adult corrections facilities will be determined after review of multiple factors, including projected population growth, State sentencing laws, alternative programs, treatment diversion programs, early release programs, the need to separate violent inmates, the need to separate inmates by gender, the need to separate inmates by other classification considerations, average length of stay, peak inmate populations and available funding. Existing facilities may be expanded, remodeled, and/ or new facilities developed in response to changing need.

Proposed Improvement Projects

The adult corrections projects planned over the next six years are shown below.

Table 14. Proposed Jail Improvement Projects

Project #		Funding Source	2019	2020	2021	2022	2023	2024	Totals
1	Jail Improvements	1, 2	3,425,000	7,000,000					10,425,000
2	Jail Work Center Walls	2	150,000						150,000
	Totals		3,575,000	7,000,000					10,575,000

Funding Sources
1. REET
2. General Fund

Chapter 8 – Juvenile Detention

Existing Juvenile Detention Facilities

The 2018 inventory of County juvenile detention facilities includes 32 beds serving the countywide population. The juvenile detention facility is located on the sixth floor of the County Courthouse at 311 Grand Avenue.

Table 15. Existing Juvenile Detention Beds

Site No.	Facility Name	Beds
1	County Courthouse (311 Grand Ave.)	32

Future Needs

The Whatcom County Comprehensive Plan does not contain a level of service standard for juvenile detention facilities. Rather, Comprehensive Plan Policy 4D-3 is to:

> Maintain juvenile detention facilities and alternative corrections programs to provide safe and secure methods to provide accountability and support for minors who break the law. Existing facilities may be expanded, remodeled, and/or new facilities developed in response to changing need.

The County will budget for improvements to such facilities as needed.

Proposed Improvement Projects

There are no capital improvement projects planned in the six-year planning period.

Chapter 9 – Transportation

Existing Roads

The 2017 inventory shows a total of 938.57 miles of County roads. Additionally, there are 217.5 miles of state highways in Whatcom County (including I-5). Therefore, there are approximately 1,156 miles of public roads in Whatcom County.

Future Needs

The Whatcom County Comprehensive Plan sets level of service (LOS) standards for County roads. Future traffic and the level of service for roads can be forecasted using computer modeling software. The Whatcom Council of Governments forecasts future traffic utilizing a computer transportation model. This modeling effort will inform transportation planning in Whatcom County.

Whatcom County accomplishes planning for County road improvements by approving a Six-Year Transportation Improvement Program each year, as required by RCW 36.81.121.

Proposed Improvement Projects

The Whatcom County Six-Year Transportation Improvement Program includes preliminary planning for three proposed new road projects:

- Horton Road Connector (between Northwest Drive and Aldrich Road);
- Slater Road Connector (between Northwest Drive and Aldrich Road); and
- Lincoln Road extension (between Harborview Road and Blaine Road).

While these three projects are on the Six-Year Transportation Improvement Program, construction is not anticipated within the six-year planning period. Rather, preliminary engineering to determine project feasibility may be initiated within this time frame.

The six-year plan contains a variety of projects, including bridge replacements, intersection improvements, reconstruction projects, and the Birch Bay Drive & Pedestrian Facility improvements, which include pedestrian and non-motorized enhancements along Birch Bay Dr.

Existing Ferry Facilities

Whatcom County currently has one ferry vessel serving Lummi Island. The ferry runs between Lummi Island and Gooseberry Point on a daily basis.

Future Needs

Whatcom County Comprehensive Plan Policy 6A-1 establishes the following LOS standard for the ferry:

> The Lummi Island Ferry Advisory Committee (LIFAC) is cooperating with Public Works to develop an updated LOS standard. LIFAC will present a revision to this section when that work is complete. The interim LOS is calculated using the scheduled trips, the estimated car units of the ferry and the Small Area Estimates Program (SAEP) population figure. The interim standard is established at 439 (LOS = (Scheduled one way trips X estimated car units for the boat) X 2/ SAEP [Small Area Estimate Program] Population figure from OFM for Lummi Island).

The Special Programs Manager for the County Public Works Department confirmed that the ferry service currently meets the interim LOS standard.

Proposed Improvement Projects

The Six-Year Transportation Improvement Program includes construction of ferry terminal improvements, preliminary engineering for replacing the Whatcom Chief, and preliminary engineering and right-of-way acquisition for relocation of the ferry terminal.

Total Transportation Costs

Transportation projects, including road and ferry projects, total approximately $40.6 million over the six-year planning period. This includes approximately $31.4 million in local funds, with the remainder coming from the State and Federal governments.

Chapter 10 – Stormwater Facilities

Existing Stormwater Management Facilities

The Public Works Department is responsible for design, engineering, and construction of county-owned stormwater facilities. Many stormwater facilities are road-related stormwater conveyance systems such as culverts and ditches on and adjacent to county roads. Others are off-right-of-way facilities that control storm flows and improve water quality.

In response to increasing federal and state mandates to manage stormwater and the public's desire to improve stewardship of sensitive watersheds, Whatcom County established a Stormwater Division in 2005. The Stormwater Division is responsible for planning, designing, engineering, and construction of stormwater facilities. Inventories of existing stormwater facilities are maintained by the Public Works Department. The Engineering Services Division maintains an inventory of all road-related facilities. The Stormwater Division maintains an inventory of public and private stormwater facilities in the area covered by the County's NPDES Phase II permit for Municipal Separate Storm Sewer Systems. This inventory includes ditches, culverts, catch basins, vaults, ponds, and swales. Completed Stormwater Construction Projects since the Stormwater Division was created in 2005 are listed below.

Table 16. Completed Stormwater Construction Projects Since 2005

Existing Site No.	Watershed	Facility Name	Year Completed
1	Lake Whatcom	Geneva Stormwater Retrofits	2006
2	Lake Whatcom	Cable Street Reconstruction & Stormwater Improvements	2007
3	Lake Whatcom	Lahti Drive Stormwater Improvements	2010
4	Lake Whatcom	Silver Beach Creek Improvements - Brownsville Drive to E. 16th Place	2011
5	Lake Whatcom	Silver Beach Creek Improvements - West Tributary	2012
6	Lake Whatcom	Coronado-Fremont Stormwater Improvements	2014
7	Lake Whatcom	Cedar Hills-Euclid Stormwater Improvements	2016



Figure 1. Lake Whatcom Cedar Hills-Euclid Stormwater Improvements

Whatcom County Public Works regularly seeks and is awarded grant money that contributes to the design and construction of these stormwater projects that improve water quality through treatment systems and stream stabilization.

Future Needs

An increasing emphasis on the protection of sensitive watersheds has resulted in the adoption of comprehensive stormwater plans, including plans for Lake Whatcom and Birch Bay. The adopted plans identify work towards planning, design, engineering, and construction of capital projects intended to address stormwater issues.

Proposed Improvement Projects

Stormwater improvement projects totaling almost $10.5 million are proposed over the six-year planning period as shown below. These costs would be paid by Real Estate Excise Tax (REET) and funding from the Birch Bay Watershed and Aquatic Resources Management District (BBWARM).

Table 17. Proposed Stormwater Improvement Projects

	Funding Source	2019	2020	2021	2022	2023	2024	Totals
1 Agate Hghts/Bay Ln Stormwater - Phase II	1	750,000						750,000
2 Edgewater Lane Stormwater	1	170,000	472,500					642,500
3 Civic Center Parking Lot Stormwater	1	50,000	105,000	357,500				512,500
4 Silver Beach Creek Stormwater	1	30,000	105,000	319,000	161,000		750,000	1,365,000
5 Sudden Valley Stormwater	1	15,000	42,000	132,000	661,250			850,250
6 Lowell - Cedarbrook Stormwater	1			148,500	86,250	696,000		930,750
7 Glen Cove - Lakeside Stormwater	1				155,250	90,000	512,500	757,750
8 South Bay Drive Stormwater	1					174,000	93,750	267,750
9 Strawberry Point Stormwater	1						156,250	156,250
10 Shallow Shore Drive - Culvert	1		50,000					50,000
11 Birch Bay Dr./Petticote Lane - Storm Drain	1, 2	810,000						810,000
12 Harborview Rd./Birch Bay Dr. - Storm Drainage	1, 2		1,300,000					1,300,000
13 Lora Lane - Drainage & Tide Gate Modifications	1, 2	50,000	30,000	320,000				400,000
14 Semiahmoo Dr. - Drainage Improvements (North)	1		50,000		150,000			200,000
15 Holeman Ave. - Storm Drain	1, 2			85,000		200,000		285,000
16 Wooldridge Ave. - Stormwater Improvements	1, 2				200,000	20,000	1,000,000	1,220,000
Stormwater Totals		1,875,000	2,154,500	1,362,000	1,413,750	1,180,000	2,512,500	10,497,750

Funding Sources
1. REET
2. BBWARM

Chapter 11 – Total Costs

Total Costs for the six-year planning period are shown below.

Table 18. Total Costs for the Six-Year Planning Period

	Total Costs 2019-2024	Percent of Total Costs
Parks, Trails, and Activity Centers	25,369,076	20.46%
Maintenance and Operations	686,000	0.55%
General Government Buildings and Sites	32,175,270	25.95%
Sheriff's Office	4,000,000	3.23%
Emergency Management	90,000	0.07%
Adult Corrections	10,575,000	8.53%
Juvenile Detention	0	0.00%
Transportation	40,612,000	32.75%
Stormwater Facilities	10,497,750	8.47%
TOTAL	124,005,096	100.00%

The County plans to undertake capital improvement projects costing approximately $124 million between 2019 and 2024, which will be financed with a combination of local, state, federal, and other funding sources.

WHATCOM COUNTY
PLANNING COMMISSION

Capital Facility
Comprehensive Plan Amendments

FINDINGS OF FACT AND REASONS FOR ACTION

Background Information

1. The proposal is to amend the Whatcom County Comprehensive Plan as follows:

   a. Adopting the new Six-Year Capital Improvement Program (CIP) for Whatcom County Facilities 2021-2026 (Appendix F of the Whatcom County Comprehensive Plan).

   b. Repealing the existing Six-Year CIP for Whatcom County Facilities 2019-2024.

2. Notice of the subject amendments was submitted to the Washington State Department of Commerce on August 21, 2020.

3. A determination of non-significance (DNS) was issued under the State Environmental Policy Act (SEPA) on August 28, 2020.

4. Notice of the Planning Commission hearing for the subject amendments was published in the Bellingham Herald on September 11, 2020.

5. Notice of the Planning Commission hearing was posted on the County website on September 14, 2020.

6. Notice of the Planning Commission hearing was sent to citizen, media, cities and other groups on the County's e-mail list on September 14, 2020.

7. The Planning Commission held a public hearing on the subject amendments on September 24, 2020.

8. Pursuant to WCC 22.10.060(1), in order to approve the proposed comprehensive plan amendments the County must 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.

Growth Management Act

9. The Growth Management Act (GMA) establishes planning goals in RCW 36.70A.020 to guide adoption of comprehensive plan amendments.

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

11. The subject amendments include updating the Six-Year CIP for Whatcom County Facilities for the 2021-2026 planning period. Updating the CIP is one step in the process of planning regional facilities provided by the County to serve the people of Whatcom County.

12. The GMA, at RCW 36.70A.070(3), requires that a comprehensive plan must include a capital facilities plan element consisting of:

    a. An inventory of existing capital facilities owned by public entities, showing the locations and capacities of the capital facilities.

    b. A forecast of the future needs for such capital facilities.

    c. The proposed locations and capacities of expanded or new capital facilities.

    d. At least a six-year plan that will finance such capital facilities within projected funding capacities and clearly identifies sources of public money for such purposes.

    e. A requirement to reassess the land use element if probable funding falls short of meeting existing needs and to ensure that the land use element, capital facilities plan element, and financing plan within the capital facilities plan element are coordinated and consistent.

13. The Six-Year CIP for Whatcom County Facilities contains an inventory of existing facilities, a forecast of future needs based upon the level of service standards adopted in the Whatcom County Comprehensive Plan and/or other relevant factors, proposed renovated, expanded or new capital facilities, costs and funding sources.

14. Existing Comprehensive Plan Policy 4A-4 addresses the GMA requirement to reassess the land use element if probable capital facility funding falls short.

County-Wide Planning Policies

15. County-Wide Planning Policy K-1 indicates that, as part of the comprehensive planning process, the County must identify appropriate land for public facilities that meets the needs of the community including recreation, transportation and human service facilities.

16. The Six-Year CIP identifies County park, trail, transportation and other improvements as contemplated by the County Wide Planning Policies.

Interlocal Agreements

17. Existing interlocal agreements between Whatcom County and the cities indicate that the County will consult with the appropriate city in planning new road construction projects within the city's urban growth area. The interlocal agreements also address joint planning for parks.

18. The County Engineer confirmed on August 31, 2020 that the County sends a copy of the six-year transportation improvement program to cities prior to approval, requests comments, and informs cities of the hearing date. The Whatcom County Parks Director confirmed on September 10, 2020 that the County Parks' staff maintains a consistent working relationship with appropriate staff from cities on joint park projects and planning. Therefore, the type of cooperation envisioned by the interlocal agreements is occurring.

Further Studies/Changed Conditions

19. The Whatcom County Comprehensive Plan calls for an update of the Six-Year CIP for County facilities every other year. Specifically, Policy 4B-1 is to:

> Maintain and update, on at least a biennial basis, a six-year capital improvement program (CIP) that identifies projects, outlines a schedule, and designates realistic funding sources for all county capital projects based on a review of population and revenue conditions existing at that time.

20. A revised CIP has been formulated for County owned or operated facilities, which presents improvement projects over the new six-year planning period.

Public Interest

21. The Six-Year CIP for Whatcom County Facilities 2021-2026 is based upon anticipated population growth over the six-year planning period and other relevant factors. Therefore, the proposal should complement the County's growth and development plans.

22. The Six-Year CIP for Whatcom County Facilities will have a positive impact on the County's ability to provide public facilities by planning ahead for such facilities.

23. The goal of the Six-Year CIP for Whatcom County Facilities is to plan for County owned or operated parks, trails, activity centers, maintenance & operations, general government buildings and sites, Sheriff's Office, emergency management, adult corrections, juvenile detention, transportation, and stormwater facilities to serve the people of Whatcom County. Planning for such County facilities is in the public interest.

Spot Zoning

24. The subject proposal does not involve rezoning property.

Funding Sources and Budgeting

25. The Planning Commission recommends that the County Council carefully consider sources of funding and budgetary restraints.

CONCLUSION

The subject Whatcom County Comprehensive Plan amendments are consistent with the approval criteria in WCC 22.10.060.

RECOMMENDATION

Based upon the above findings and conclusions, the Planning Commission recommends:

1. Approval of Exhibit A, the Six-Year Capital Improvement Program for Whatcom County Facilities 2021-2026 (Appendix F of the Whatcom County Comprehensive Plan).

2. Repealing Exhibit B, the Six-Year Capital Improvement Program for Whatcom County Facilities 2019-2024.

WHATCOM COUNTY PLANNING COMMISSION

Kelvin Barton, Chair

09-25-2020
Date

Ashley Ubil, Secretary

09/24/2020
Date

Commissioners voted to recommend approval of the Findings of Fact & Reasons for Action, approval of Exhibit A, and repeal of Exhibit B on September 24, 2020 (vote was 5-3 with 1 member absent). Members present at the meeting when the vote was taken: Robert Bartel, Kelvin Barton, Atul Deshmane, Jim Hansen, Stephen Jackson, Jon Maberry, Natalie McClendon, and Dominic Moceri.

Whatcom County

COUNTY COURTHOUSE
311 Grand Avenue, Ste #105
Bellingham, WA 98225-4038
(360) 778-5010

Agenda Bill Master Report

File Number: AB2020-448

File ID:	AB2020-448	**Version:**	1	**Status:**	Agenda Ready
File Created:	10/14/2020	**Entered by:**	DBrown@co.whatcom.wa.us		
Department:	Council Office	**File Type:**	Ordinance		
Assigned to:	Council			**Final Action:**	
Agenda Date:	10/27/2020			**Enactment #:**	

Primary Contact Email: TDonovan@co.whatcom.wa.us

TITLE FOR AGENDA ITEM:

Ordinance designating a Commercial Property Assessed Clean Energy and Resiliency (C-PACER) Program within Whatcom County

SUMMARY STATEMENT OR LEGAL NOTICE LANGUAGE:

Ordinance designating a Commercial Property Assessed Clean Energy and Resiliency (C-PACER) Program within Whatcom County

HISTORY OF LEGISLATIVE FILE

Date:	Acting Body:	Action:	Sent To:

Attachments:

PROPOSED BY: DONOVAN
INTRODUCTION DATE: OCTOBER 27, 2020

ORDINANCE NO. _____

DESIGNATING A COMMERCIAL PROPERTY ASSESSED CLEAN ENERGY AND RESILIENCY (C-PACER) PROGRAM WITHIN WHATCOM COUNTY

WHEREAS, commercial and multi-family buildings are major sources of energy use in Whatcom County, and major sources of greenhouse gas emissions; and

WHEREAS, permanent improvements to those buildings in the form of efficiency technologies, products, or activities to reduce or support the reduction of energy consumption, or support the production of clean, renewable energy, can save building owners money, and reduce greenhouse gas emissions known to drive climate change; and

WHEREAS, in 2007, Whatcom County completed a Climate Protection and Energy Conservation Action Plan that laid out specific actions and targets for reducing greenhouse gas emissions and increasing energy conservation efforts in response to potential climate change; and

WHEREAS, Chapter 10 of the Whatcom County Comprehensive Plan recognizes that climate change is a global phenomenon that has the potential for significant local impacts to natural resources, ecosystem functions, as well as human health, infrastructure, and the economy; and

WHEREAS, Policy 10B-1 of the Whatcom County Comprehensive Plan is to develop environmental programs, involving non-regulatory measures that include voluntary activity, education, and incentives; and

WHEREAS Policy 10D-7 of the Whatcom County Comprehensive Plan encourages sustainability by developing strategies and practices to increase the use of renewable energy; and

WHEREAS, Policy 7G-4 of the Whatcom County Comprehensive Plan supports renewable energy and conservation techniques to minimize demands for energy; and

WHEREAS, in RCW 36.165.005, the State Legislature granted county governments in Washington the authority to establish a commercial property assessed clean energy and resiliency ("C-PACER") program that jurisdictions can voluntarily implement to ensure that free and willing owners of agricultural, commercial, and industrial properties and of multifamily residential properties with five or more dwelling units can obtain low-cost, long-term financing; and

WHEREAS, the State Legislature found that this financing can be used for qualifying improvements, including energy efficiency, water conservation, renewable energy, and resiliency projects; and

WHEREAS, the establishment and operation of a C-PACER program serves important public health and safety interests; and,

WHEREAS, A qualified improvement as defined in RCW 36.165.010 provides benefit to the public, either in the form of energy or water resource conservation, reduced public health risk, or reduced public emergency response risk; and

WHEREAS, the C-PACER program authorized in RCW 36.165.005 promotes voluntary energy efficiency programs, energy conservation, and resiliency; and

WHEREAS, the C-PACER program authorized in RCW 36.165.005 is consistent with goals and policies of the Whatcom County Comprehensive Plan and the Whatcom County Climate Protection and Energy Conservation Action Plan.

NOW, THEREFORE, **BE IT ORDAINED** that Whatcom County adopt a C-PACER Program as outlined in Exhibit A to this ordinance.

ADOPTED this _____ day of _____, 2020.

ATTEST:

WHATCOM COUNTY COUNCIL
WHATCOM COUNTY, WASHINGTON

_____
Dana Brown-Davis, Clerk of the Council

_____
Barry Buchanan, Council Chair

WHATCOM COUNTY EXECUTIVE
APPROVED AS TO FORM:

WHATCOM COUNTY, WASHINGTON

_____
Civil Deputy Prosecutor

_____
Satpal Sidhu,
County Executive

( ) Approved ( ) Denied

Date Signed: _____

EXHIBIT A

(Drawn from a model ordinance available from the Northwest Energy Coalition.)

SECTION 1: Establishment.

There is hereby established within the boundaries of Whatcom County (the "County") a Commercial Property Assessed Clean Energy and Resiliency ("C-PACER") program (the "Program") in accordance with Chapter 36.165 RCW (the "C-PACER Act"). The County finds that it is convenient and advantageous to establish the Program, at no net cost to the County, in order to finance Qualified Projects (as hereinafter defined), repaid by a voluntary assessment on the property benefited by such Qualified Projects, and that the Program is in the public interest, providing for the safety, health, and environmental public benefits, and provides for economic development of the community. The Program shall allow financing for the full range of Qualified Improvements on all Eligible Properties, as authorized by the C-PACER Act, and shall abide by and operate according to the C-PACER Act.

SECTION 2: Definitions

The definitions in this section apply throughout this Ordinance unless the context clearly requires otherwise.

(1) "Application Checklist" means the list of items in a Project Application required by the C-PACER Act, this Ordinance, and the Program Guidebook, and the corresponding documentation that the County accepts in order to show the requirement has been met.

(2) " Assessment" means the voluntary agreement of a Property Owner to allow the County to place an annual assessment on their property to repay C-PACER Financing.

(3) "Assessment Agreement" means an agreement between the County and a Property Owner whereby the County agrees to place an assessment and C-PACER Lien on the property to secure the obligation to repay the financing.

(4) "Capital Provider" means any private entity, their designee, successor, and assigns that makes or funds C-PACER Financing under this Ordinance.

(5) "C-PACER Financing" means an investment from a Capital Provider to a Property Owner to finance or refinance a Qualified Project as described under this Ordinance. The proposed C-PACER Financing for a Qualified Improvement may authorize the Property Owner to (a) purchase directly the related equipment and materials for the installation or modification of a Qualified Improvement; and (b) contract directly, including through lease, power purchase agreement, or other service contract, for the installation or modification of a Qualified Improvement.

(6) "C-PACER Lien" means the lien recorded at the County on the Eligible Property to secure the voluntary annual assessment, which remains on the property until paid in full.

(7) "Eligible Property" means privately owned commercial, industrial, or agricultural real property or multifamily residential real property with five or more dwelling units. Eligible Property may be owned by any type of business, corporation, individual, or nonprofit organization permitted by state law. Eligible property may include ground leases on eligible property and property financed through power purchase agreements.

(8) "Financing Agreement" means the contract under which a Property Owner agrees to repay a Capital Provider for the C-PACER Financing including, but not limited

to, details of any finance charges, fees, debt servicing, accrual of interest and penalties, and any terms relating to treatment of prepayment and partial payment of the C-PACER Financing.

(9) "Program" means the C-PACER program established under this Ordinance.

(10) "Program Administrator" means the department or office designated by the County to administer the C-PACER program.

(11) "Program Guidebook" means a comprehensive document that illustrates the Program's territory, establishes appropriate guidelines, specifications, approval criteria, and the standard application forms for the Program consistent with this Ordinance and the C-PACER Act.

(12) "Project Application" means an application submitted to a program to demonstrate that a proposed project qualifies for C-PACER Financing and for a C-PACER Lien.

(13) "Property Owner" means an owner of qualifying Eligible Property who desires to install Qualified Improvements and provides free and willing consent to the assessment against the Eligible Property.

(14) "Qualified Improvement" means a permanent improvement affixed to real property and intended to: (a) decrease energy consumption or demand through the use of efficiency technologies, products, or activities that reduce or support the reduction of energy consumption, allow for the reduction in demand, or support the production of clean, renewable energy, including but not limited to a product, device, or interacting group of products or devices on the customer's side of the meter that generates electricity, provides thermal energy, or regulates temperature; (b) decrease water consumption or demand and address safe drinking water through the use of efficiency technologies, products, or activities that reduce or support the reduction of water consumption, allow for the reduction in demand, or reduce or eliminate lead from water which may be used for drinking or cooking; or (c) increase resilience, including but not limited to seismic retrofits, fire suppression, flood mitigation, stormwater management, wildfire and wind resistance, energy storage, and microgrids.

(15) "Qualified Project" means a project approved by the Program Administrator, involving the installation or modification of a Qualified Improvement, including new construction or the adaptive reuse of Eligible Property with a Qualified Improvement. Together, Qualified Improvements, inclusive of all related and eligible costs pursuant to RCW 36.165 that are to be financed as described in a Project Application and approved by the Program Administrator, are a Qualified Project.

SECTION 3: Territory.

The Program shall be available to all Eligible Property within the following Region, defined by the County in accordance with RCW 36.165, within the boundaries of the County, including both incorporated and unincorporated territory. The Region is the incorporated and unincorporated areas of Whatcom County.

SECTION 4: Program Administration

A. Pursuant to the C-PACER Act, the County designates [X] as the Program Administrator. The Program Administrator shall review and approve the Project Applications submitted in accordance with the Program Guidebook, collect any fees, execute the documents required by the Program Guidebook to enable a C-PACER Financing, and record the documents requested by the Property Owner and Capital Provider.

B. No services, including but not limited to energy audits, project development, or other

activities associated or related to the development of a Project Application or installation of Qualified Improvements shall be offered through the C-PACER Program unless priced separately and open to purchase by the Property Owner from third parties.

SECTION 5: C-PACER FINANCING

A. C-PACER Financing, under Chapter 36.165 RCW, is to be provided by Capital Providers through a Financing Agreement entered into with the owner of an Eligible Property to fund a Qualified Project.

B. The C-PACER Financing through a program established under this Ordinance may include:
(1) The cost of materials and labor necessary for installation or modification of a Qualified Improvement;
(2) Permit fees;
(3) Inspection fees;
(4) Financing or origination fees;
(5) Program application and administrative fees;
(6) Project development and engineering fees;
(7) Third-party review fees, including verification review fees;
(8) Capitalized interest;
(9) Interest reserves;
(10) Escrow for prepaid property taxes and insurance; or
(11) Any other fees or costs that may be incurred by the Property Owner incident to the installation, modification, or improvement on a specific or pro rata basis.
(12) Any other costs or fees as outlined in the Program Guidebook.

C. Prior to entering into a Financing Agreement, the Capital Provider must receive written consent from every holder of a lien, mortgage, or security interest in the real property that will be subject to the Assessment and C-PACER Lien agreeing that the property may participate in the program and that the C-PACER Lien will take precedence over all other liens except for a lien for taxes. Additionally, prior to entering into a Financing Agreement on an Eligible Property that is a multifamily residential property with five or more dwelling units, the Program Administrator must also receive written consent from any holder of affordable housing covenants, restrictions, or regulatory agreements in the real property as a condition precedent to the participation in the program by the property agreeing that the property may participate in the program and that the C-PACER Lien will take precedence over all other liens except for a lien for taxes.

D. The proposed C-PACER Financing for a Qualified Project may authorize the Property Owner to:
(1) Purchase directly the related equipment and materials for the installation or modification of a Qualified Improvement; and
(2) Contract directly, including through lease, power purchase agreement, or other service contract, for the installation or modification of a Qualified Improvement.

SECTION 6: C-PACER Lien

A. The C-PACER Lien amount, plus any interest, penalties, and charges accrued or accruing on the C-PACER Lien: (a) takes precedence over all other liens or encumbrances except a lien for taxes imposed by the state, a local government, or a junior taxing district on real property, which liens for taxes shall have priority over such C-PACER Lien, provided existing mortgage holders, if any, have provided written consent described in section 5.C of this

Ordinance; and (b) is a first and prior lien, second only to a lien for taxes imposed by the state, a local government, or a junior taxing district against the real property on which the C-PACER Lien is imposed, from the date on which the notice of the C-PACER Lien is recorded until the C-PACER Lien, interest, penalties, and charges accrued or accruing are paid.

B. The C-PACER Lien runs with the land, and that portion of the C-PACER Lien that has not yet become due is not accelerated or eliminated by foreclosure of the C-PACER Lien or any lien for taxes imposed by the state, a local government, or junior taxing district against the real property on which the C-PACER Lien is imposed.

C. Delinquent installments due on a C-PACER Lien incur interest and penalties as specified in the Financing Agreement.

D. After the C-PACER Lien is recorded as provided in this Ordinance, the voluntary assessment and the C-PACER Lien may not be contested on the basis that the improvement is not a Qualified Improvement or that the project is not a Qualified Project.

SECTION 7: Application and Review

A. A Property Owner and Capital Provider shall complete a Project Application and submit it to the Program Administrator for review.

B. The Project Application shall require:

1. An attestation by the Property Owner that the project is a "Qualified Improvement" as defined by Section 2(13) of this Ordinance and, if applicable, the Program Guidebook.

2. For an existing building seeking improvements (a) where energy or water usage improvements are proposed, a certification by a licensed professional engineer or other professional listed in the guidebook, stating that the proposed Qualified Improvements will either result in more efficient use or conservation of energy or water, the reduction of greenhouse gas emissions, the addition of renewable sources of energy or water, or the reduction of lead in potable water; or (b) where resilience improvements are proposed, a certification by a licensed professional engineer stating that the Qualified Improvements will result in improved resilience and savings in insurance, improved property values, or other benefits sufficient to leverage financing of those improvements.

3. For new construction, a certification by a licensed professional engineer or other professional listed in the Guidebook stating that the proposed Qualified Improvements, individually, or acting as a whole, will enable the project to exceed the energy efficiency or water efficiency or renewable energy or resilience requirements of the current building code of the County.

C. The Program Administrator shall review the application according to the Application Checklist solely to determine whether it is complete, proposes a "Qualified Improvement," contains no errors on its face, and that all information is provided in the substance and form required by the Application Checklist. If so, the Program Administrator shall sign the checklist indicating that the Project Application is deemed approved. If a Project Application is incomplete and/or does not conform to the requirements of the Application Checklist, the Program Administrator shall inform the applicant as soon as practicable that the application is denied, the reasons for the denial, and any corrections that could make the application

acceptable. If feasible, the applicant shall have an opportunity to correct the application.

D. Upon approval of a Project Application, a Property Owner or Capital Provider shall provide the following completed forms to the ___ Office for execution at least five (5) days prior to close of the C-PACER transaction, along with a requested date for recordation of the Assessment Agreement, Notice of Assessment Interest and C-PACER Lien, and Assignment of Notice of Assessment and Assessment Agreement. Expedited service may be available for a fee to be determined by the ___ office.

E. The County [ ] shall record in its real property records the Assessment Agreement, the Notice of Assessment Interest and C-PACER Lien, and the Assignment of Notice of Assessment and Assessment Agreement, at the date requested by the Property Owner and Capital Provider or, at the request of the Property Owner and the Capital Provider, the executed documents may be delegated for recordation by the parties to the C-PACER transaction.

F. For a Property Owner and Capital Provider whose Project Application is denied by the County's Program Administrator, either party, or both, may request an adjudicative proceeding before the County's adjudicative body, consistent with the County's rules and subject to the applicable provisions of Washington's Administrative Procedures Act, RCW 34.05.

SECTION 8: Program Guidebook.

A. The C-PACER Program shall be administered in accordance with the requirements contained in the Program Guidebook, adopted and incorporated herein as Exhibit A. The Program Guidebook shall include:

1. A Project Application form, to be used by the Property Owner and Capital Provider.
2. An Application Checklist, to be used by the Program Administrator to approve or disapprove an application.
3. A form Assessment Agreement.
4. A form Notice of Assessment Interest and C-PACER Lien.
5. A form Assignment of Notice of Assessment Interest and Assessment Agreement.
6. A statement that the period of the Financing Agreement will not exceed the useful life of the Qualified Project, or weighted average life if more than one Qualified Improvement is included in the Qualified Project.
7. A description of the application and review process established under Section 7 of this Ordinance.
8. A statement explaining the lender consent requirement under the C-PACER Act.
9. A statement explaining the requirements for qualifying as a Capital Provider for this Program.
10. A statement that the County has no liability as a result of the agreement and a statement that neither the County, its governing body, executives, or employees are personally liable as a result of exercising any rights or responsibilities granted under this Ordinance, especially and including all actions related to, or arising from, administering the program.
11. A description of the marketing and participant educational services, if any, provided in support of the program.

B. The Program Guidebook and forms may be updated by the Program Administrator without approval by the Board of Commissioners, so long as it complies with this Ordinance and RCW Chapter 36.165.

SECTION 9: Collection and Enforcement

A. Collection and enforcement of delinquent C-PACER Liens or C-PACER Financing installment payments, including foreclosure, shall remain the responsibility of the Capital Provider.

B. Pursuant to the Assessment Agreement, the C-PACER Lien shall be solely enforced by the Capital Provider at any time after one year from the date of delinquency in the same manner that the collection of delinquent real property taxes is enforced by the County, by prosecution of foreclosure proceedings under chapter 84.64 RCW et seq. This includes the provisions of RCW 84.64.040, excepting that a sworn declaration by the Capital Provider or assignee attesting to the assessment delinquency of at least one year shall be used in lieu of the certificate of delinquency required under RCW 84.64.050. The sworn declaration shall have the same legal standing as a certificate of delinquency enumerated in RCW 84.64.050.

C. Chapter 36.165 RCW provides that "collection and enforcement of delinquent C-PACER liens or C-PACER financing installment payments, including foreclosure, shall remain the responsibility of the capital provider" and that "the capital provider or their assignee shall have and possess the same powers and rights at law or in equity to enforce the C-PACER lien" in the "same manner that the collection of delinquent real property taxes is enforced by the county under chapter 84.64 RCW." As such, the County shall have no obligation to prosecute the foreclosure of a C-PACER Lien on behalf of the Capital Provider, and the Capital Provider, by accepting an assignment of a C-PACER Lien pursuant to an Assignment of Notice of Assessment and Assessment Agreement, shall assume under applicable law, the obligations, responsibilities, and duties of the County in respect of the enforcement and foreclosure of a C-PACER Lien under chapter 84.64 RCW. Any duties by the County mutually deemed non-delegable by the County shall be performed, on a reimbursable basis, by the County on behalf of the Capital Provider.

SECTION 10: Fees.

An application fee of $500 shall be paid to the County when the Project Application is submitted.

Upon approval of an application by Property Owner and a Capital Provider, and prior to recordation of documents for a C-PACER transaction, the parties shall pay a fee equal to 1% of the financing amount of the C-PACER transaction, with a minimum fee of $2,500 and a cap on the fee of $15,000, as a good faith estimate of the costs of establishing and implementing the Program, to the County to make the costs of the C-PACER program cost-neutral.

SECTION 11: Enactment.

The provisions of this Ordinance are hereby declared to be severable and if any section, phrase or provision shall for any reason be declared by a court of competent jurisdiction to be invalid or unenforceable, such declaration shall not affect the validity or enforceability of the remainder of the sections, phrases and provisions hereof. All Ordinances, orders, resolutions, and parts thereof in conflict herewith are to the extent of such conflict hereby repealed upon the effectiveness of this Ordinance. No provision of the [County Code] or violation of any provision of the [County Code] shall be deemed to impair the validity of this Ordinance or the instruments authorized by this Ordinance or to impair the security for or payment of the instruments authorized by this Ordinance; provided further, however, that

the foregoing shall not be deemed to affect the availability of any other remedy or penalty for any violation of any provision of the [County Code]. In the event and to the extent of a conflict between this Ordinance and chapter 36.165 RCW, chapter 36.165 RCW shall govern.

SECTION 12. Effective Date.

This Ordinance shall take effect ten days after enactment. The County shall begin accepting applications for review no later than sixty (60) days after the effective date.

SECTION 13: No Liability. No Public Funds.

A. This Ordinance does not confer any right of action nor property interest upon any party to a C-PACER transaction against the County, and the County shall incur no liability for enacting this Program, nor shall the County, its governing body, executives, or employees be personally liable as a result of exercising any rights or responsibilities granted under this Ordinance.

B. The County shall not enforce any privately financed debt under this Ordinance. The County shall not use public funds to fund or repay any loan between a Capital Provider and Property Owner. No section under this Ordinance shall be interpreted to pledge, offer, or encumber the full faith and credit of the County, nor shall the County or any local government within the County pledge, offer, or encumber its full faith and credit for any lien amount through a program.

Whatcom County

COUNTY COURTHOUSE
311 Grand Avenue, Ste #105
Bellingham, WA 98225-4038
(360) 778-5010

Agenda Bill Master Report

File Number: AB2020-449

File ID:	AB2020-449	**Version:**	1	**Status:**	Agenda Ready
File Created:	10/14/2020	**Entered by:**	MCaldwel@co.whatcom.wa.us		
Department:	Finance Division	**File Type:**	Ordinance		
Assigned to:	Council			**Final Action:**	
Agenda Date:	10/27/2020			**Enactment #:**	

Primary Contact Email: mcaldwel@co.whatcom.wa.us

TITLE FOR AGENDA ITEM:

Ordinance amending the project budget for the Civic Center Improvement Fund, Request No. 1 in the amount of $4,350,000

SUMMARY STATEMENT OR LEGAL NOTICE LANGUAGE:

Requests $4,350,000 of additional budget authority to provide for life safety and energy efficiency improvements throughout the entire building, in addition to fourth floor renovations, for a total project budget amount of $6,850,000.

HISTORY OF LEGISLATIVE FILE

Date:	Acting Body:	Action:	Sent To:

Attachments: Ordinance, Exhibit A, Supplemental

PROPOSED BY: Executive
INTRODUCTION DATE: 10/27/20

ORDINANCE NO. _____

ORDINANCE AMENDING THE PROJECT BUDGET FOR THE CIVIC CENTER IMPROVEMENT FUND, REQUEST NO. 1

WHEREAS, Ordinance No. 2013-061 established a $2.5 million project budget for the renovation of the Civic Center to prepare the building for full occupancy; and

WHEREAS, architectural studies determined the project to be much more extensive than originally anticipated; and

WHEREAS, additional budget authority is needed to provide for life safety and energy efficiency improvements throughout the entire building, in addition to fourth floor renovations, and

WHEREAS, funding is available from the Road Fund ($3,850,000) and from Real Estate Excise Tax I Fund ($500,000) to provide the additional support needed,

NOW, THEREFORE, BE IT ORDAINED by the Whatcom County Council that Ordinance 2013-061 is hereby amended by adding $4,350,000 of expenditure authority, as described in Exhibit A, to the current project budget of $2,500,000, for a total amended project budget of $6,850,000.

ADOPTED this ____ day of _____, 2020.

WHATCOM COUNTY COUNCIL
WHATCOM COUNTY, WASHINGTON

ATTEST:

_____
Dana Brown-Davis, Council Clerk

_____
Barry Buchanan, Chair of the Council

APPROVED AS TO FORM:

( ) Approved ( ) Denied

Approved by email/C Quinn/M Caldwell
Civil Deputy Prosecutor

_____
Satpal Sidhu, County Executive
Date:_____

CIVIC CENTER IMPROVEMENT FUND - FUND 331
EXHIBIT A

Account	Descriptions	Current Project Budget	Amendment #1 to Ordinance #2013-061	Total Amended Project Budget
	Expenditures			
7350	Buildings & Structures	$2,500,000	$4,350,000	$6,850,000
		$2,500,000	$4,350,000	$6,850,000
	Revenues			
8301.108	Operating Transfer In - Road	$2,500,000	$3,850,000	$6,350,000
8301.326	Operating Transfer In - REET I	$0	$500,000	$500,000
		$2,500,000	$4,350,000	$6,850,000

Supplemental Budget Request

Status: Pending

Administrative Services **Facilities Management**

Supp'l ID # 3111 **Fund** 331 **Cost Center** 331100 **Originator:** Rob Ney

Year 2 **2020** **Add'l FTE** ☐ **Priority** 1

Name of Request: Civic Center Renovations

X

Department Head Signature (Required on Hard Copy Submission) **Date**

Costs:

Object	*Object Description*	*Amount Requested*
7350	Buildings & Structures	$4,350,000
8301.326	Operating Transfer In	($500,000)
8301.108	Operating Transfer In	($3,850,000)
Request Total		***$0***

1a. Description of request:

Facilities Management is seeking funding for planned improvements to the Civic Center Building. These improvements consist of life safety improvements (new fire suppression and fire alarm systems), new energy efficient HVAC equipment, electrical switchgear upgrades, and new energy efficient LED lighting. Additional improvements include accessibility upgrades to the Garden Level conference room and the main entrance to the building.

1b. Primary customers:

Public Works and patrons of the Civic Center are the primary customers that will be served by these improvements. However, the planned improvements also benefit the entire County by replacing aging and inefficient HVAC equipment and lighting. Additionally, improvements will also improve building accessibility.

2. Problem to be solved:

The building is not served by fire suppression with the exception of the Garden Level (former restaurant was required to have fire sprinklers). The County has used every exception to date to allow improvements to the building. No further improvements or tenant improvements can be made without fire suppression to the building. Facilities management has an agreement with the City of Bellingham that allows a staged implementation of these improvements. However, all fire suppression must be in place within five years of the completion of phase 1 improvements.

3a. Options / Advantages:

The most advantageous outcome of these improvements is to life safety. Additional advantages include energy efficiency and substantial accessibility improvements to the building.

3b. Cost savings:

With the exception of the modest remodel of the fourth floor, the scope of the project has been reduced to only those improvements to systems and accessibility. Additionally, it is believed that the current construction environment and uncertainty will bring many bidders to the table for this long term project.

4a. Outcomes:

The funding will be put in place to execute the improvements to the building.

4b. Measures:

There should be substantial energy cost savings by replacing the aging HVAC and lighting systems.

5a. Other Departments/Agencies:

Public Works is the only department affected by this action.

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

Rob Ney

6. Funding Source:

Road fund ($3,850,000) and REET 1 ($500,000) transfer to the Civic Center Project Based Budget

Whatcom County

COUNTY COURTHOUSE
311 Grand Avenue, Ste #105
Bellingham, WA 98225-4038
(360) 778-5010

Agenda Bill Master Report

File Number: AB2020-450

File ID:	AB2020-450	**Version:**	1	**Status:**	Agenda Ready
File Created:	10/14/2020	**Entered by:**	MCaldwel@co.whatcom.wa.us		
Department:	Finance Division	**File Type:**	Ordinance		
Assigned to:	Council			**Final Action:**	
Agenda Date:	10/27/2020			**Enactment #:**	

Primary Contact Email: mcaldwel@co.whatcom.wa.us

TITLE FOR AGENDA ITEM:

Ordinance amending the 2020 Whatcom County Budget, request no. 20, in the amount of $4,476,128

SUMMARY STATEMENT OR LEGAL NOTICE LANGUAGE:

Supplemental #20 requests funding from the Road Fund:

1. To appropriate $3,850,000 to fund transfer in support of Civic Center Improvement Fund renovation project.

From the Election Reserve Fund:

2. To appropriate $126,128 to fund addition 2020 General Election costs from Center for Tech and Civic Life grant proceeds.

From Real Estate Excise Tax I Fund:

3. To appropriate $500,000 to fund transfer in support of Civic Center Improvement Fund renovation project.

HISTORY OF LEGISLATIVE FILE

Date:	Acting Body:	Action:	Sent To:

Attachments: Ordinance, Summary, Supplemental Requests

PROPOSED BY: Executive
INTRODUCTION DATE: 10/27/20

ORDINANCE NO.
AMENDMENT NO. 20
OF THE 2020 BUDGET

WHEREAS, the 2019-2020 budget was adopted November 20, 2018; and,

WHEREAS, changing circumstances require modifications to the approved 2019-2020 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 2019-2020 Whatcom County Budget Ordinance #2018-064 is hereby amended by adding the following additional amounts to the 2020 budget included therein:

Fund	Expenditures	Revenues	Net Effect
Road Fund	3,850,000	-	3,850,000
Election Reserve Fund	126,128	(126,128)	-
Real Estate Excise Tax I Fund	500,000	-	500,000
Total Supplemental	4,476,128	(126,128)	4,350,000

ADOPTED this ____ day of _____, 2020.

ATTEST:

WHATCOM COUNTY COUNCIL
WHATCOM COUNTY, WASHINGTON

_____
Dana Brown-Davis, Council Clerk

_____
Barry Buchanan, Chair of Council

APPROVED AS TO FORM:

( ) Approved ( ) Denied

Approved by email/C Quinn/M Caldwell
Civil Deputy Prosecutor

_____
Satpal Sidhu, County Executive

Date: _____

WHATCOM COUNTY				
Summary of the 2020 Supplemental Budget Ordinance No. 20				
Department/Fund	Description	Increased (Decreased) Expenditure	(Increased) Decreased Revenue	Net Effect to Fund Balance (Increase) Decrease
Road Fund	To fund Road Fund transfer in support of Civic Center Improvement Fund renovation project.	**3,850,000**	**-**	**3,850,000**
Election Reserve Fund	To fund additional 2020 General Election costs from Center for Tech and Civic Life grant proceeds.	**126,128**	**(126,128)**	**-**
Real Estate Excise Tax I Fund	To fund Real Estate Excise Tax I Fund transfer in support of Civic Center Improvement Fund renovation project.	**500,000**	**-**	**500,000**
Total Supplemental		**4,476,128**	**(126,128)**	**4,350,000**

Supplemental Budget Request

Status: Pending

Public Works **Administration**

Supp'l ID # 3113 **Fund** 108 **Cost Center** 10895 **Originator:** Randy Rydel

Year 2 **2020** **Add'l FTE** ☐ **Priority** 1

Name of Request: Supplement Civic Center Rehab Fund

X

Department Head Signature (Required on Hard Copy Submission) **Date**

Costs:	Object	Object Description	Amount Requested
	8351.331	Operating Transfer Out	$3,850,000
	Request Total		***$3,850,000***

1a. Description of request:

This is a funding companion to SBR-3111

Facilities Management is seeking funding for planned improvements to the Civic Center Building. These improvements consist of life safety improvements (new fire suppression and fire alarm systems), new energy efficient HVAC equipment, electrical switchgear upgrades, and new energy efficient LED lighting. Additional improvements include accessibility upgrades to the Garden Level conference room and the main entrance to the building.

1b. Primary customers:

Public Works and patrons of the Civic Center are the primary customers that will be served by these improvements. However, the planned improvements also benefit the entire County by replacing aging and inefficient HVAC equipment and lighting. Additionally, improvements will also improve building accessibility.

2. Problem to be solved:

The building is not served by fire suppression with the exception of the Garden Level (former restaurant was required to have fire sprinklers). The County has used every exception to date to allow improvements to the building. No further improvements or tenant improvements can be made without fire suppression to the building. Facilities management has an agreement with the City of Bellingham that allows a staged implementation of these improvements. However, all fire suppression must be in place within five years of the completion of phase 1 improvements.

3a. Options / Advantages:

The most advantageous outcome of these improvements is to life safety. Additional advantages include energy efficiency and substantial accessibility improvements to the building.

3b. Cost savings:

With the exception of the modest remodel of the fourth floor, the scope of the project has been reduced to only those improvements to systems and accessibility. Additionally, it is believed that the current construction environment and uncertainty will bring many bidders to the table for this long term project.

4a. Outcomes:

The funding will be put in place to execute the improvements to the building.

4b. Measures:

There should be substantial energy cost savings by replacing the aging HVAC and lighting systems.

5a. Other Departments/Agencies:

Public Works is the only department affected by this action.

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

Rob Ney

6. Funding Source:

Road Fund Balance

Supplemental Budget Request

Status: Pending

Auditor

Suppl ID # 3121 | **Fund** 109 | **Cost Center** 10928 | **Originator:** Diana Bradrick

Expenditure Type: One-Time | **Year** 2 | **2020** | **Add'l FTE** ☐ | **Add'l Space** ☐ | **Priority** 1

Name of Request: Center for Tech and Civic Life Grant

X Diana Bradrick

Department Head Signature (Required on Hard Copy Submission) **Date**

Costs:

Object	*Object Description*	*Amount Requested*
4367.1000	Donations	($126,128)
6120	Extra Help	$20,000
6140	Overtime	$3,000
6320	Office & Op Supplies	$33,128
6330	Printing	$50,000
6620	Contract Employment	$10,000
6710	Postage/Shipping/Freight	$10,000
Request Total		***$0***

1a. Description of request:

The Elections division applied for and was awarded a grant through Center for Tech and Civic Life to be used exclusively for the public purpose of planning and operating safe and secure election administration in Whatcom County in 2020.

1b. Primary customers:

Voters and elections staff.

2. Problem to be solved:

Administration of elections in 2020 has been challenging due to the corona virus pandemic and overall media attention. We are expecting record voter participation in the upcoming general election. The size of this election and the extra activities have resulted in increased costs. The grant monies will be used to fund temporary staff as well as security costs, advertising, printing, overtime, and supplies.

3a. Options / Advantages:

There are no other options.

3b. Cost savings:

N/A

4a. Outcomes:

The election will be administered in a timely, safe and secure environment.

4b. Measures:

Completion & certification of November election.

5a. Other Departments/Agencies:

Coordination with IT and facilities for procurement and implementation of equipment.

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

No

6. Funding Source:

Center for Tech and Civic Life for $126,128.00 to be used for 2020 election expenses.

Supplemental Budget Request

Status: Pending

Non-Departmental

Supp'l ID # 3122 **Fund** 326 **Cost Center** 32600 **Originator:** M Caldwell

Year 2 **2020** **Add'l FTE** ☐ **Priority** 1

Name of Request: Transfer in support of Civic Center PB Amend #1

X

Department Head Signature (Required on Hard Copy Submission) **Date**

Costs:	Object	Object Description	Amount Requested
	8351	Operating Transfer Out	$500,000
	Request Total		***$500,000***

1a. Description of request:

Companion to Supplemental #3111 to support Amend #1 to the Civic Center Improvement Fund Project Budget. This transfer, together with $3,850,000 from the Road Fund, will support Civic Center life safety, energy efficiency and remodeling renovations thorughout the Civici Center.

1b. Primary customers:

2. Problem to be solved:

3a. Options / Advantages:

3b. Cost savings:

4a. Outcomes:

4b. Measures:

5a. Other Departments/Agencies:

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

6. Funding Source:

REET I